The Need to Know: Acquiring Your Client’s Criminal History

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2016-17
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Be Thinking of the BEST & BRIGHTEST for the 2017 KBA Awards

Spotlight fellow attorneys with a nomination.

- Phil Lewis Medal of Distinction
- Distinguished Service
- Professionalism
- New Pillars of the Community
  - Distinguished Government Service
  - Courageous Attorney
  - Outstanding Young Lawyer
  - Diversity
  - Outstanding Service
  - Pro Bono

Learn more about the awards online at http://www.ksbar.org/awards.
The KBA Awards Committee is seeking nominations for award recipients for the 2017 KBA Awards. These awards will be presented in June at the KBA Annual Meeting in Manhattan. Below is an explanation of each award and a nomination form for completion. The Awards Committee, chaired by Sara Beezley, of Girard, appreciates your help in bringing worthy nominees from throughout the state of Kansas to the committee’s attention! Deadline for nominations is Friday, March 3.

**Phil Lewis Medal of Distinction**

The KBA’s Phil Lewis Medal of Distinction is reserved for individuals or organizations in Kansas who have performed outstanding and conspicuous service at the state, national, or international level in administration of justice, science, the arts, government, philosophy, law, or any other field offering relief or enrichment to others.

- A recipient need not be a member of the legal profession or related to it, but the recipient’s service may include responsibility and honor within the legal profession;
- This award is only given in those years when it is determined that there is a worthy recipient.

**Distinguished Service Award**

This award recognizes an individual for continuous long-standing service on behalf of the legal profession or the public, rather than the successful accomplishment of a single task or service.

- The recipient must be a lawyer and must have made a significant contribution to the altruistic goals of the legal profession or the public;
- Only one Distinguished Service Award may be given in any one year. However, the award is given only in those years when it is determined that there is a worthy recipient.

**Professionalism Award**

This award recognizes an individual who has practiced law for 10 or more years who, by his or her conduct, honesty, integrity, and courtesy, best exemplifies, represents, and encourages other lawyers to follow the highest standards of the legal profession.

**Pillars of the Community Award (NEW)**

This award is available to a Kansas lawyer and KBA member with a minimum of 10 years active non-specialized, general legal practice in a predominately low-density population area of Kansas. Recipients will have had substantial practice in small or solo law firms or local government service. Requirements are flexible but consideration will be given to the following factors, including how such factors apply to the lawyer’s community:

- the variety/diversity of law practiced
- impact/high profile law work
- general contributions to the law and legal profession
- specific contributions to the legal profession
- mentoring and support for legal education
- contributions to the State/community
- notable civic activities
- periods of elected or appointed public/government service
- military service
- examples of volunteerism and charitable activity
- reputation in the organized bar, State and community

This award may be but need not be given every year. More than one recipient can receive the award in a one year.
Awards of the Kansas Bar Association (Con’t.)

**Distinguished Government Service Award**
This award recognizes a Kansas lawyer who has demonstrated an extraordinary commitment to government service. The recipient shall be a Kansas lawyer, preferably a member of the KBA, who has demonstrated accomplishments above and beyond those expected from persons engaged in similar government service. The award shall be given only in those years when it is determined that there is a recipient worthy of such award.

**Courageous Attorney Award**
The KBA created a new award in 2000 to recognize a lawyer who has displayed exceptional courage in the face of adversity, thus bringing credit to the legal profession. Examples of recipients of this type of award in other jurisdictions include a small town lawyer who defended a politically unpopular defendant and lost most of his livelihood for the next 20 years, an African-American criminal defense attorney who defended two members of the white supremacist movement, and a small town judge who lost his position because he refused the town council’s request to meet monetary quotas on traffic offenses. This award will be given only in those years when it is determined that there is a worthy recipient.

**Outstanding Young Lawyer**
This award recognizes the efforts of a KBA Young Lawyers Section member who has rendered meritorious service to the legal profession, the community, or the KBA.

**Diversity Award**
This award recognizes an individual who has shown a continued commitment to diversity; or a law firm; corporation; governmental agency, department, or body; law-related organization; or other organization that has significantly advanced diversity by its conduct, as well as by the development and implementation of diversity policies and strategic plans, which include the following criteria:

- A consistent pattern of the recruitment and hiring of diverse attorneys;
- The promotion of diverse attorneys;
- The existence of overall diversity in the workplace;
- Cultivating a friendly climate within a law firm or organization toward diverse attorneys and others;
- Involvement of diverse members in the planning and setting of policy for diversity;
- Commitment to mentoring diverse attorneys, and;
- Consideration and adoption of plans to continue to improve diversity within the law firm or organization, whereas;
- Diversity shall be defined as differences of gender, skin color, religion, human perspective, as well as disablement.

The award will be given only in those years when it is determined there is a worthy recipient.

**Outstanding Service Award(s)**
These awards are given for the purpose of recognizing lawyers and judges for service to the legal profession and/or the KBA and for recognizing nonlawyers for especially meritorious deeds or service that significantly advance the administration of justice or the goals of the legal profession and/or the KBA.

- No more than six Outstanding Service Awards may be given in any one year.
- Recipients may be lawyers, law firms, judges, nonlawyers, groups of individuals, or organizations.
Awards of the Kansas Bar Association (Con’t.)

Outstanding Service Awards may recognize:

• Law-related projects involving significant contributions of time;
• Committee or section work for the KBA substantially exceeding that normally expected of a committee or section member;
• Work by a public official that significantly advances the goals of the legal profession or the KBA; and/or
• Service to the legal profession and the KBA over an extended period of time.

Pro Bono Award(s)
This award recognizes a lawyer or law firm for the delivery of direct legal services, free of charge, to the poor or, in appropriate instances, to charitable organizations whose primary purpose is to provide other services to the poor.

• No more than three Pro Bono Awards may be given in any one year.

In addition to the Pro Bono Award, the KBA awards a number of Pro Bono Certificates of Appreciation to lawyers who meet the following criteria:

• Lawyers who are not employed full time by an organization that has as its primary purpose the provision of free legal services to the poor;
• Lawyers who, with no expectation of receiving a fee, have provided direct delivery of legal services in civil or criminal matters to a client or client group that does not have the resources to employ compensated counsel;
• Lawyers who have made a voluntary contribution of a significant portion of time to providing legal services to the poor without charge; and/or
• Lawyers whose voluntary contributions have resulted in increased access to legal services on the part of low and moderate income persons.
KBA Awards Nomination Form

Nominee’s Name ____________________________________________

Please provide a detailed explanation below of why you have nominated this individual for a KBA Award. Attach additional information as needed.

☐ Phil Lewis Medal of Distinction ☐ Courageous Attorney Award
☐ Distinguished Service Award ☐ Outstanding Young Lawyer
☐ Professionalism Award ☐ Diversity Award
☐ Pillars of the Community Award (NEW) ☐ Outstanding Service Award
☐ Distinguished Government Service Award ☐ Pro Bono Award/Certificates

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________________________________________________________________________

Nominator’s Name __________________________

Address __________________________

Phone __________________________ E-mail __________________________

Return Nomination Form by Friday, March 3, 2017, to:

KBA Awards Committee
Attn: Deana Mead
1200 SW Harrison St.
Topeka, KS 66612-1806

www.ksbar.org | October 2016 9
Kansas Supreme Court Justices Deserve Your Support!

William Roper: So, now you give the Devil the benefit of law!

Sir Thomas More: Yes! What would you do? Cut a great road through the law to get after the Devil?

Roper: Yes, I’d cut down every law in England to do that.

More: Oh? And when the last law was down, and the Devil turned ‘round on you, where would you hide, Roper, the laws all being flat? This country is planted thick with laws, from coast to coast, Man’s laws, not God’s! And if you cut them down, and you’re just the man to do it, do you really think you could stand upright in the winds that would blow then? Yes, I’d give the Devil the benefit of law, for my own safety’s sake!

As lawyers we would like to think we would all have Sir Thomas More’s courage, to advocate for the rule of law when the most unpopular groups and people are under attack. No doubt many of us would, yet thankfully few of us are ever faced with this choice. The Kansas Supreme Court Justices face it day in and day out. Who among us would sign up to review a death penalty case or wade through voluminous briefs and make a tough call based on the Constitution when we know our decision will be vilified in the public arena. The Kansas Supreme Court Justices do this according to their oaths—to uphold the Constitutions of the United States and of the State of Kansas.

Fair and impartial courts for all Kansans. This motto on the back of Chief Justice Lawton Nuss’ business card sums up what the current and former Kansas Supreme Court Justices stand for. Over the decades Kansas’ appellate courts have been a model of stability and impartiality. My father Fred Six served on the Court, with some of the current justices, for fifteen years. I saw at every opportunity he strived to provide fair and impartial justice to the parties appearing before him. The current five justices up for retention elections this year are no different. They are the finest lawyers our state has to offer, have stepped up to provide public service, and have all performed their jobs to the highest degree of independence and allegiance to the Constitution. Doing so requires making tough and often unpopular decisions—but that comes with the job.

The evidence is in and it supports retention. In a recent survey of those of us who know the work of the justices best, lawyers and other judges, the results supported retaining all five justices. More broadly, reported opinion polls show that Kansans are far more satisfied with the work of the Kansas Supreme Court than the other two branches of state government. Newspapers across the state from Wichita to Dodge City to Pittsburg have voiced support to retain the justices, and business groups like the Kansas City Chamber of Commerce have advocated to retain the justices.

Hillary Clinton or Donald Trump?—vote your conscience, flip a coin, try out a third party candidate . . . whoever wins we will not like and four years from now they may be just a bad memory. A more critical vote is on the ballot in November, a vote to retain five justices and to maintain Kansas’ well functioning, fair and impartial courts. No vote is more important this year for our State. Doing their job according to their constitutional oath is why I am voting to retain Justices Lawton Nuss, Marla Luckert, Carol Beier, Dan Biles and Caleb Stegall.

Another group of courageous public servants deserve the support of the members of the Kansas Bar. The Kansas Bar Association has long supported fair and impartial appellate courts and believes that the merit selection process used to select Supreme Court Justices best serves that goal. All 125 members of the Kansas House will be up for election in 2016. The 54 legislators in the accompanying box voted to oppose changes to Kansas’ merit selection process. These legislators have taken great steps to make sure Kansas continues to have well qualified, impartial and fair justices on our Supreme Court. It is important that the KBA membership knows who stood with our organization on this issue and important that these legislators know the KBA membership supports their vote on merit selection. I encourage you to reach out to these legislators and thank them for their support.
### HCR 5005 – Final Action Nay votes (54)

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### About the KBA President

**Steve Six** is a partner at Stueve Siegel Hanson in Kansas City, Mo. He specializes in complex litigation, focusing on class actions and commercial litigation.

ssi@ksbar.org

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Changing the Tide

Soon after the KBA published my column on the need for lawyer engagement in the legislative process, I received a kind e-mail asking about practical contributions lawyers can provide to improve the laws in Kansas. The attorney commented that while many lawyers learn through their practice about laws that did not work, this knowledge may not translate easily into drafting laws successfully or using the system to improve the statutes. His observation is prudent, and led me back to my introduction to legislation.

During my final year of law school, I was a visiting student at the University of Kansas. My wife’s job brought us to Kansas, and I was pleased to see a course that had been unavailable at Iowa: Legislation and Statutory Interpretation. Judge Steve Leben taught the course, and his choice for a textbook, Cases and Materials on Legislation, is the only remaining textbook I have from my time in law school.

The book contains in its introduction an analysis that is useful for those considering whether to engage in the legislative process: “Each theory [on how legislation becomes a law] has a descriptive feature (this is how the legislative process works) and a normative dimension (this is how the legislative process should work).” Though the textbook may not have emphasized it, I hope most would agree that lawyer involvement in legislation ought to be a normative characteristic of any legislative body.

While it may not seem natural to shift from the practice of law to the drafting of laws or even submitting testimony on a bill, it is the experience of legal practice that translates so well in the legislative process. I analogize the process of drafting or amending legislation to setting a toy boat adrift in a fast current. You can plan, design, and execute to the best of your ability, but once it floats away, it is challenging to predict what might happen. But I have found that when lawyers engage in the legislative process—particularly while bills are still in committee—they can greatly improve the predictability of the result. Even offering anecdotal experiences to supplement statutory analysis can serve to change the course of legislation for the better.

It is valuable for attorneys to keep an eye on the legislation that most affects your practice. Fortunately, this is easier to accomplish than ever before, even from the comfort of your own office. Joe Molina, the KBA’s Legislative Services Director, provides helpful analysis and frequent updates on what occurs in the statehouse. In addition to the KBA Advocate, the weekly review of action in the Kansas Legislature, Joe also provides real-time updates through Twitter under the handle, @KansasBarLeg.

Twitter may gain significant attention when used by athletes, musicians, and actors. But it is an essential tool to track action in Topeka and understand how laws are changing. Simply searching Twitter for #ksleg reveals news relating to Topeka politics. The statehouse reporters provide up-to-the-minute coverage, which only later becomes the articles you see in the newspapers. They add #ksleg to their tweets, so information on the Kansas Legislature is searchable by topic. If you are interested in staying current on the legislature, this is the best step to stay informed.

Once you know what is happening, it is easier to engage. Joe adds further support for participation in policymaking because attorneys are on the frontline of working with the laws in practical ways: “Lawyers are asked to deal with many new issues on a daily basis which gives them a great deal of insight into potential problems and possible solutions. Who better to steer the discussion of a new law than the very people engaged on the issue when it first appeared.”

When Joe or other legislative players give updates on significant bills, there is an opportunity to submit testimony and help craft the end result. I do not expect or even desire lawyers to flood the statehouse hallways for every bill, but even a page of written testimony can improve a bill when it explains how legislation could affect a specific practice. And when something sizeable appears on the calendar, then we do need lawyers to step in and help. This may mean written testimony, it may mean calling or writing your legislator, or it may mean speaking in a committee hearing.

In that same vein, having a cup of coffee with your representative or senator when they are not in session helps ensure they will take your call or e-mail when they are evaluating a bill. Legislators are pulled in endless directions during session, so a familiar source of information—one who is known outside of the statehouse hallways—is quite valuable. Further, as David O. Stewart described the socializing prowess of James and Dolly Madison, “social conversation softens political life and allows the exchange of news and ideas.” It is worth investing time in the relationships now to better participate when legislation is critical.

These thoughts may serve as an imprecise instruction manual on how to engage the legislature, but achieving success in the statehouse is an equally imprecise process. As Eskridge described in his textbook, there are ways the legislative process does work and ways it should work, and it is not always clear what must happen to achieve the latter. But attempting to understand and attempting to participate are two good steps toward helping Kansas more closely resemble its ideals.

2. Id. at 1.

About the YLS President

Nathan P. Eberline serves as the Associate Legislative Director and Legal Counsel for the Kansas Association of Counties. His practice focuses on public policy, legal aspects of management, and KOMARKORA. Nathan holds a J.D. from the University of Iowa College of Law and a B.A. from Wartburg College in Waverly, Iowa.

eberline@kansascounties.org
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www.ksbar.org/Election2017
Gender Neutral Dress Codes

It is foreseeable that conflict over dress codes for lawyers will be an abiding element of practice. After all, fashions change and so do the humans embracing them. Consider that Dennis Hawver appeared before the Kansas Supreme Court in 2014 dressed in his Jeffersonian best. His was professional attire in 1776 but distinctly out of character for our era. His performance might suggest a need for specific dress codes or, it can be countered, he was a solitary outlier and outliers are risky targets for broad proscriptions.

By 2016, our Senate made news for a dress code declaring women as problematically attired with distracting low necklines and high hems. A Senator later explained, “...there’s a misunderstanding that I have a rule that only applies to women,” but no examples of men in plunging necklines or miniskirts were cited and it was acknowledged that one vexatious woman inspired the rule. Men, it was said, did not need specific counsel on professional dress because there is a male uniform – suit and tie – that is generally observed or excused when it is not. By contrast, women need specific coaching as they may deviate from the male uniform veering into feminine fashions.

The Senate fiasco illustrates for our profession that attempting to define and codify professional attire will almost inevitably trigger conversations about gender. The reason may be simple. The legal profession has only been open to women for a relatively short time and in small numbers throughout. When Dolly Parton was singing “9 to 5” in 1980 women only accounted for eight percent of our profession and are now just 36% in 2016. In other words, it is no wonder the legal profession does not know what to do about women – we have only recently encountered them.

Disproportionate Impact

An innocuous dress code can go sideways by interpretation or enforcement. For example, consider a court rule which says,

All attorneys should wear professional and conservative attire. Men shall wear coats, ties, slacks and appropriate footwear, which does not include athletic shoes, sandals or shoes without socks. Women shall wear business dresses, suits or pantsuits with professional tops and appropriate footwear, which does not include sandals or athletic shoes.

On its face, that rule declares a standard of professionalism – conservative attire. That standard is explained through specific proscriptions shared across genders. There are some gender differences accommodating existing traditions. It would be non-traditional in Kansas for men to wear dress shoes without socks and it would be traditional in Kansas for women to wear dresses as an alternative to suits, the uniform borrowed from our male history. However, a simple interpretative change can alter the balance.

If the interpretation expands to include a ban on open-toed shoes, the balance of the rule shifts. There are no traditional, open-toed shoes commonly worn or generally acceptable for men but there are many open-toed, professional shoe designs available for women. The formerly neutral rule now disproportionately impacts women’s clothing options by interpretation. A range of professional attire is foreclosed for women alone so the question then is, “For what purpose?”

Environments with machinery or heavy lifting often bar open-toed shoes as do medical environments where biohazards and sharp instruments are common. Those situations describe a very small minority of courtrooms and law offices, however. If not necessary for safety or performance of legal duties, then the basis for such a proscription may be personal taste or fashion sense and that is a sticky wicket.

Personal taste and fashion is variable according to a range of factors including: generational identity, gender, race, physical ability, zip code, and socio-economic strata. Neutrality in a dress code becomes harder to maintain as prohibitions accumulate. Inevitably, the proscriptions appear to pile up against the newer participants in the bar demographically speaking. The women just now carving out a statistically significant presence in the profession are more likely to be noted and proscribed than the historically established male members. We should be cognizant and cautious of that.

Simple Questions

When we American lawyers left the Commonwealth tradition of robes, we invited perpetual friction about dress codes. Our judges can cover their game day shirts, blue jeans, and bolo ties while tucking their bare feet or cowboy boots under the bench. But what lawyers wear is on display and so a question then is whether our professional image will be based solely on the inherited, male dress code. Optimally, for our profession, dress codes we work out should aim to be neutral and, to that end, here are some simple steps:

1. Does the dress code have a disproportionately impact on women?
2. Is there a credible safety need for the disproportionate impact?
3. Can the desired aim be achieved without the disproportionate impact? (Alternatively, do you even need a rule at all if the situation is an outlier.)

The first and second are easy evaluations. The third can be difficult, of course. It may require that we realize that as more women enter the profession, more women may want to deviate from the traditions and uniforms inherited from our profession’s men-only era. As Arianna Huffington suggests, “It would be futile to attempt to fit women into a masculine pattern of attitudes, skills and abilities and disastrous to force them to suppress their specifically female characteristics and abilities by keeping up the pretense that there are no differences between the sexes.”

About the Author

Larry N. Zimmerman is a partner at Zimmerman & Zimmerman P.A. in Topeka and former adjunct professor teaching law and technology at Washburn University School of Law. He is one of the founding members of the KBA Law Practice Management Committee.

kslpm@larryzimmerman.com
LUNCH & LEARN

Ten Most Common Mistakes In Auto Insurance Cases
Thursday, November 10, 2016

11:00 a.m. - Check-in and lunch (provided)
11:30 a.m. - Programming begins
2:10 p.m. - Adjourn

The seminar will address some of the sticky issues and pitfalls of handling automobile cases, including who can be sued, how to determine the amount of insurance coverage, and related issues. It also addresses how to construct settlements, deal with issues of liens and attorney fees. Also covered are ethical issues related to conflicts of interest and other ethical concerns. Issues related to procedure in handling UM/UIM are also addressed.

3 hours of CLE credit, including 3 hours of ethics and professionalism in Kansas
Approved for 3 hours of CLE credit in Missouri

41st Annual KBA/KIOGA CLE

Topics include:
• Recent Developments in Oil & Gas Law of Interest to Kansas Practitioners
• Tax Aspects of Structuring Oil & Gas Transactions
• The KCC’s Jurisdiction: Waste, Correlative Rights, Pollution and Potentially Anything Else
• Bankruptcy 101 for the Oil & Gas Practitioner
• Oil & Gas Lein Law and Foreclosure in Today’s Oil & Gas Industry
• Ethics in Negotiations

In Partnership with
Approved for 6.0 hours of CLE credit, including 1.0 hours of ethics and professionalism in Kansas and Missouri.

KIOGA

Sponsored Social Event

Friday, October 14, 2016
Hyatt Regency
400 W. Waterman St.
Wichita, KS

Social Event Sponsors: Depew Gillen Rathbun & McInteer, LC; Edmiston Law Office, LLC; Foulston Siefkin LLP; Prof. David E. Pierce; Stinson Leonard Street LLP

http://www.ksbar.org/event/2016KIOGACLE

Hosted by the KBA Oil, Gas & Mineral Section. Members of this section receive a $30 discount off their registration.

Thursday, October 13
(the night before the CLE)
6-8 p.m.
River City Brewing Co.
150 N. Mosley St.
Wichita, KS
Hors d’oeuvres and beer tickets will be provided.
**KBF Leverage in the War on Domestic Abuse**

**Jackie vs. Steve***

Fear for her unborn child finally pushed Jackie to get away from Steve. Every time she had tried, he caught her, threatened her and beat her. Humiliation was part of his bag of tricks. During a previous attempt to leave him, Steve had yanked her out of her car, stripped off her clothes and beat her naked on the front lawn until she wilted and agreed to return to the house. This last time Steve had picked up on the clues that she was preparing to leave, so he forcibly held her hostage in the house. Over those long three days she’d been subjected to physical abuse, threats and intimidation. Unable to get to her job, her meager earnings dwindled even further. But worse, the abuse was causing contractions in only her second trimester. She’d finally had enough.

When Jackie managed to slip past Steve she contacted Kansas Legal Services for help. A staff attorney immediately obtained an emergency protection order from the district court to prevent Steve from having any contact with her, whether in person, by telephone or by any other means. Three weeks later the order became permanent for a year. The order was entered into a national database, so local law enforcement can access the order no matter where Jackie decides to go. If Steve ignores the order he can be arrested for criminal trespass and violation of a protection order.

Thanks to accessible legal counsel, the intervention of the court, a nationally-recognized protection order, and a supportive community, Jackie can now try to plan for a future for herself and her child, free from the violence and abuse she had suffered.

**The Pipeline**

Part of the funding to help Jackie obtain this critical legal assistance came through a pipeline that began with lawyers across Kansas voluntarily contributing the bank interest on their trust accounts to IOLTA, the Supreme Court-sanctioned Interest On Lawyer Trust Accounts program. With the consent of the lawyer or law firm, the Kansas Bar Foundation sweeps accumulated interest from participating financial institutions holding lawyer trust accounts. No effort is required from the law firm; the sweep is entirely between the lawyer’s bank and the KBF bank.

Within the limits of available funds, each September a broad-based committee convened under the auspices of the KBF proposes an allocation of grants to legal services organizations across the state that have submitted applications. Final approval comes from the entire Board of Trustees of the Bar Foundation. IOLTA grants are used exclusively for civil legal services. In the 2017 grant cycle sixteen organizations have applied to the Kansas Bar Foundation for IOLTA money. The requests total over $275,000, almost three and a half times the available funds.

**The Multiplier**

Because participation is voluntary, not all Kansas lawyers/law firms have agreed to the use of interest from their trust accounts for the program, and of course not all lawyers maintain trust accounts. Outside of the legal services community few Kansas lawyers are aware of the enormous leverage their trust account interest can wield. Under the federal Victim of Crime Act (VOCA) a legal services organization can receive four dollars for every one dollar raised from non-federal sources. Thus a dollar of trust account interest can yield five dollars of support for domestic violence prevention and protection from abuse. In addition, many participating banks will waive service fees and even offer enhanced interest rates on IOLTA accounts.

Increased lawyer participation in IOLTA, combined with matching VOCA funds, can greatly enhance available funding for legal services to low income Kansans and other charitable law-related public service projects. Legal service organizations have suffered serious loss of funding in recent years from the Legal Services Corporation and the Department of Justice. Without the IOLTA funds administered by the Kansas Bar Foundation, legal services offices in Kansas would face further staff cuts and desperate individuals like Jackie could be turned away to an uncertain fate at the hands of an abuser.

* Real people, fictional names.

**About the Author**

Rich Hayse practices in the areas of estate planning, real estate, small business entities and banking. His clients include manufacturers, distributors, retailers, banks, computer companies, food service, real estate, professional firms and public agencies. Rich has handled the legal aspects of business sales, prepared and delivered opinions in complex interstate financial transactions, and represented clients in commercial litigation. He practices in both state and federal courts in Kansas, as well as before state administrative agencies. He is admitted to practice before the U.S. Supreme Court. Rich’s practice also includes work with the Kansas Legislature on pending legislation.

In a former life Rich was a Foreign Service Information Officer, posted to U.S. embassies in Brussels, London and Dakar, and the U.S. Missions to NATO and the EC. The Hayses now enjoy entertaining friends and the challenges of the Kansas climate for gardening at their home in Topeka, with the occasional cruise to more exotic locales. Rich and his wife, Linda, have two adult children and two granddaughters, all of whom live in Seattle or nearby, the perfect excuse for trips to Seattle several times a year for family visits.

Visit www.ksbar.org/Iolta to learn more about Iolta.
My Ties are at the Bar
A KBA fundraiser for Pro Bono Programs at KLS

It is that time of year, and instead of Jeans for Justice, the KBA is hosting My Ties for Justice. Each year, the KBA dedicates time and resources to do a fund raising campaign for pro bono programs at Kansas Legal Services. The past couple of years the campaign provided individuals and law firms an opportunity to show their support by paying $5 to wear jeans to work. The response from KBA members has been quite good. This year, the theme is My Ties are at the Bar and members can wear a tie or scarf to show their support.

In October each year, the ABA promotes Celebrate Pro Bono Week during the last part of October. The color for this celebration is orange. The KBA centers its KLS fundraising campaign around Celebrate Pro Bono Week. Help show your support by paying $5 to wear an orange tie or scarf.

Win an Amazon Gift Card

Have some fun with this. The KBA would like you to consider hosting a day for your firm to wear your ties and scarves and send us photos. You may even win the individual or group photo contest!

Visit www.ksbar.org/MyTiesForJustice to download a flier to promote this event in your office. Submit your photo for the photo contest to Anne Woods awoods@ksbar.org by November 4, 2016.

Donate your Gently Used Tie or Scarf

During this campaign, the KBA will also be gathering gently used ties or scarves (of any color or design) to donate to local organizations that provide accessories for those in need who may need to attend a job interview or special event. You can drop off your items at the KBA or at any KLS office.
Join the Celebration!

In Kansas, fall brings crisper weather and trees with leaves of bronze, vermilion, yellow and scarlet. Orange is also a color of fall and it is the color we use each year to celebrate the work of attorneys throughout Kansas who have donated their time and expertise for pro bono causes. According to color psychologists, orange is like pro bono in that it offers emotional strength in difficult times. It is said that orange helps us bounce back from disappointments and despair. Think of this when you do pro bono work. Think of the people who need your help and are provided relief at a time in their lives that they could not afford to hire an attorney.

The ABA has designated October 23-29 as Celebrate Pro Bono Week. Take this as an opportunity to show your appreciation for attorneys who provide pro bono and to help spread the word about the need for attorneys to provide pro bono. As former US Attorney General Eric Holder states, “We are bound by a responsibility to use our unique skills and training - not just to advance cases, but to serve a cause; and to help our nation fulfill its founding promise of equal justice under law. The obligation of pro bono service must become a part of the DNA of both the legal profession and of every lawyer.”

How can I help?

Answer questions for Kansans on www.kansas.freelegalanswers.org

A new pro bono program will launch in October that will provide licensed attorneys in Kansas an opportunity to volunteer to answer basic civil legal questions. Many things that are simple for lawyers are baffling to those without legal training. In an effort to provide some guidance for lower income persons who need legal information or advice to help them understand their situation, Kansas is joining other states in a national effort to provide online answers to civil legal questions. There are no requirements regarding the number of volunteer hours you provide. Work will be done via computer, and the client will not have your direct email address or phone number. Nothing from the client will come directly to you. You will be able to go online and select the questions you will answer, based on geography or legal matters involved. Visit (http://www.americanbar.org/groups/probono_public_service/projects_awards/free_legal_answers.html) for additional information and to complete a form to indicate your interest in volunteering. The program is led by the American Bar Association, but you do not have to be an ABA or KBA member to volunteer.

Wear an orange tie or scarf

Lawyers and law firms across Kansas will participate in the My Ties for Justice event. Participants in the event show their support for pro bono activities by wearing an orange tie or scarf during the week. This fun/fundraising event is designed to benefit Kansas Legal Services. You can learn more at http://www.ksbar.org/page/MyTiesForJustice

Volunteer at an event or for a year-round program

October 19 Elder Law Outreach Event

KLS-Kansas City is seeking pro bono attorneys to participate in an Elder Law outreach at the Matt Ross Community Center - 8101 Marty Street, Overland Park, KS 66204 - on Wednesday October 19th from 9:00 a.m. to 4:00 p.m. Volunteers may come for the whole day or any time period they choose. Please contact Kim Sharitz at (913) 279-4212 or sharitzk@klsinc.org to sign-up to participate.

Johnson County Courthouse Help Center event the week of October 23

In Johnson County, a volunteer appreciation and recruitment event will be held at the Help Center in the Johnson County Courthouse. The event is planned for the week of October 23 and will be from 5:30 – 7:30. With emphasis on veteran’s services, the volunteers in the Veteran’s Treatment Court will be special guests. Enjoy refreshments and show your support for pro bono by participating in My Ties for Justice by wearing orange. Staff from Kansas Legal Services will also be on hand to share information about volunteering.

November 10 Colmery-O’Neil VA Medical Center (Topeka)

A Call to Service will occur at the Colmery-O’Neil VA Medical Center in Topeka on November 10. Volunteer attorneys can receive CLE credit for training and work with Veterans that day. Morning and afternoon shifts are still available. This event is sponsored by Kansas Legal Services – Topeka. For more information, contact Allison Berndsen, berndsen@klsinc.org.

Fall Heart of America Stand Down Event

This event brings numerous community service groups together to provide assistance and help remove the barriers that prevent homeless veterans from reentering society. One area of assistance offered is legal advice. You can learn more about this event at www.kcstanddown.org. Kansas Legal Ser-
SERVICES WILL BE ONSITE AND WOULD LIKE YOUR ASSISTANCE AS A VOLUNTEER ATTORNEY. CONTACT KIM SHARITZ FOR DETAILS. KIM SHARITZ SHARITZK@KLSINC.ORG.

KLS PRO BONO PROGRAM – APPLICATIONS FOR EACH PROGRAM AT HTTP://WWW.KSBAR.ORG/PROBONO

THE KLS PRO BONO PROGRAM PROVIDES SERVICE TO LOW-INCOME CLIENTS OR CHILDREN ON AN UNCOMPENSATED BASIS. NO POTENTIAL CLIENT IS GIVEN AN ATTORNEY’S NAME WITHOUT SPECIFIC APPROVAL FROM THE ATTORNEY. ALL POTENTIAL CLIENTS WILL BE SCREENED FOR FINANCIAL ELIGIBILITY THROUGH KLS. MANY OF THE CASES REFERRED WILL BE CASES THAT KLS CANNOT ACCEPT DUE TO CONFLICTS OR OTHER BARRIERS. CLIENTS USING THIS PROGRAM UNDERSTAND THAT THE ATTORNEY HAS AGREED TO PROVIDE SERVICES AT NO COST FOR THE REFERRED CASE ONLY. CLIENTS ALSO UNDERSTAND THAT THEY MAY BE REQUIRED TO PAY FILING FEES, WITNESS FEES, ETC. ACCEPTANCE OF THE CASE IS WITH NO EXPECTATION OF PAYMENT FOR TIME OR OFFICE EXPENSES. KLS MAY BE ABLE TO HELP WITH EXTRAORDINARY LITIGATION EXPENSES, WHEN THE INTERESTS OF JUSTICE REQUIRE IT.

KANSAS ELDER LAW HOTLINE

JOIN OTHER KANSAS ATTORNEYS IN PROVIDING LEGAL SERVICES TO KANSANS AGE 60 AND OLDER. THE KANSAS ELDER LAW HOTLINE IS A PROJECT OF KANSAS LEGAL SERVICES INC. THERE IS NO INCOME ELIGIBILITY FOR CALLERS TO PARTICIPATE IN THIS PROGRAM. VOLUNTEERS CAN EXPECT TO TALK TO CLIENTS OF WIDELY VARYING ECONOMIC AND SOCIAL BACKGROUNDS. THE HOTLINE PROVIDES KANSAS SENIOR CITIZENS ACCESS TO AN ATTORNEY WILLING TO ADVISE THEM ABOUT LEGAL ISSUES AND MAY ALSO REFER THEM TO OTHER RESOURCES FOR ADDITIONAL ASSISTANCE. YOU MIGHT BE REFERRED CASES THAT MAY NOT MATCH YOUR EXPERIENCE/EXPERTISE; HOWEVER, KLS WILL PROVIDE INTERNET RESOURCES TO HELP YOU GUIDE THOSE CALLERS. THE ELDER LAW HOTLINE ASKS THAT ATTORNEYS VOLUNTEER A THREE AND ½ HOUR BLOCK OF TIME EVERY OTHER MONTH. CALLS WILL BE TRANSFERRED TO YOUR OFFICE, ALONG WITH DEMOGRAPHIC INFORMATION ABOUT EACH CLIENT.

KANSAS EMERITUS ATTORNEY PROGRAM

ANY ATTORNEY WHO CURRENTLY HAS A STATUS OF INACTIVE OR RETIRED ON THEIR LICENSE TO PRACTICE LAW IN KANSAS CAN WORK WITH A NOT FOR PROFIT PROVIDER OF CIVIL LEGAL SERVICES ON A PRO BONO BASIS. KANSAS LEGAL SERVICES IS SUCH AN ORGANIZATION AND HAS OFFICES THROUGHOUT THE STATE.

KLS PROVIDES MALPRACTICE INSURANCE COVERAGE, TRAINING, AS NEEDED, AND OTHER SUPPORT FOR VOLUNTEERS IN ALL OF THESE PRO BONO PROGRAMS.

KANSAS COALITION AGAINST SEXUAL AND DOMESTIC VIOLENCE’S LEGAL ASSISTANCE FOR VICTIMS PROJECT

THE KANSAS COALITION AGAINST SEXUAL AND DOMESTIC VIOLENCE’S LEGAL ASSISTANCE FOR VICTIMS PROJECT IS A GRANT-BASED PRO BONO REFERRAL PROGRAM FOR VICTIMS OF SEXUAL AND DOMESTIC VIOLENCE. NO CASES ARE REFERRED WITHOUT SPECIFIC APPROVAL FROM THE ATTORNEY. ALL POTENTIAL CLIENTS HAVE BEEN SCREENED BY ADVOCATES FOR VICTIMIZATION AND BY THE LAV PROJECT ATTORNEY FOR APPROPRIATENESS AND INCOME. CLIENTS ARE INFORMED ABOUT AND UNDERSTAND THE EXTENT TO WHICH PRO BONO ATTORNEYS ARE ABLE TO PROVIDE SERVICES. IN ADDITION, ATTORNEYS ARE RECRUITED TO REPRESENT DOMESTIC VIOLENCE AND SEXUAL ASSAULT PROGRAMS TO QUASH SUBPOENAS TO TESTIFY IN ONGOING LITIGATION. CONTACT JESSICA NASTERNAK, KCSDV DIRECTOR OF LEGAL AND POLICY DIVISION, JNASTERNAK@KCSDV.ORG.

SHOP!

AMAZON SMILE PROGRAM

WHEN YOU SHOP ON AMAZON YOU HAVE AN OPTION TO SELECT A CHARITY AND A PORTION OF YOUR SPENDING WILL SUPPORT IT. BOTH KANSAS LEGAL SERVICES AND THE KANSAS BAR FOUNDATION ARE OPTIONS TO SELECT.

DILLONS COMMUNITY REWARDS

KANSAS LEGAL SERVICES IS A PARTICIPANT IN THE DILLON’S COMMUNITY REWARDS PROGRAM. BY REGISTERING YOUR DILLON’S SHOPPER CARD, YOU CAN DIRECT FUNDS TO KANSAS LEGAL SERVICES. ENROLLMENT IS EASY AT HTTPS://WWW.DILLONS.COM/COMMUNITY-REWARDS. YOU CAN APPLY FOR (OR REGISTER AN EXISTING) DILLON’S REWARDS CARD. REGISTER YOUR CARD IN THE COMMUNITY REWARDS PROGRAM WITH YOUR EMAIL ADDRESS. ENTER 64929 TO SELECT KANSAS LEGAL SERVICES AS YOUR CHARITY.

VISIT WWW.KSBAR.ORG FOR ADDITIONAL INFORMATION ABOUT PRO BONO PROGRAMS AND TO SEE PHOTOS AND BIOS OF THE KBA 2016 PRO BONO AWARD RECIPIENTS.
What do our current KBA President, a U.S. Senator, the current and prior Governors, the current and prior Attorneys General, a U.S. Court of Appeals Judge, a U.S. District Court Judge, a U.S. Bankruptcy Court Judge, a Kansas Supreme Court Justice, and multiple Kansas district court judges have in common? They are among the approximately 200 married couples with two licensed Kansas attorneys. Retired Lawrence Municipal Judge Randy McGrath once told me that, “when a woman goes to law school it is the beginning of the end.” As you will read below, it is frequently the beginning of a life together.

Paul Ailslieger and Suzanne Dwyer graduated together from law school in 1992, attended each other’s wedding to their first spouses in 1992, and then did not see or talk to each other until 2005. They reconnected while Paul was serving in Iraq and were married December 28, 2005. They are “very big Parrothead fans” (i.e. Jimmy Buffett fans).” Jennifer and Karin Amyx met at Washburn Law School in 2006. After studying and passing the Kansas Bar together, they moved to Wichita where Jennifer prosecutes criminal cases for the gang and violent crime unit in the Sedgwick County D.A.’s office and Karin is with the Wichita Chapter 13 Trustee’s office. Karin and Jennifer were married in Wichita in October 2012 and obtained their marriage certification in New York in August 2013.

Cristy and Brent Anderson do yoga together often. Although she still practices law, she and a partner started a hot yoga studio in Wichita. According to Brent, the photo of them is “symbolic” of their “lawyerly relationship”.

Katie and Mike Andrusak were married by Sedgwick County Judge Terry Pullman and honeymooned by taking a safari in South Africa.

Kate Baird’s identical twin sister married her husband Ted’s best man. Her sister was a practicing attorney and the best man is a judge in the state due east of us. Kate’s brother is a Kansas judge who is also married to an attorney. Each of the three marriages has one KU law grad and one Washburn law grad. Two nieces of Kate and Ted are also married to attorneys. Holiday discussions must be lively.

Andrew Bauch and Skyler O’Hara met in 2000 as first year law students. They married six years later.

Dave and Susan Berson met in Washington, D.C. when he worked on the U.S. Senate Banking Committee and she worked for the Tax Division of the U.S. Justice Department. After marrying in 1996, they became partners in life and in the law by forming Berson Law Group LLP to work together helping their clients.

Robert and Stacy Bowman met in law school at the University of Iowa. In 2008 they graduated, started at Husch Blackwell LLP and were married. They are still together at the same firm.

Aaron Breitenbach and Joni Franklin met in the Wichita Young Lawyers Association. Their first kiss was on the “annual and infamous trolley trek” put on by the Young Lawyers. They were married on Valentine’s Day 2004.

Sarah Briley and Christopher Omlid met at KU Law School and are engaged to be married in November 2016.

Kari Burks and Ryan Meyer met in the summer of 2008 at an intern orientation at the Wichita Bar Association building. He was interning at Fleeson Gooing and she at the DA’s office, where they both still are. When Ryan proposed in 2010 he took Kari back to the Wichita Bar Association building under the guise of needing a book from the law library for a law journal article he was editing. He proposed at the exact spot where they first introduced themselves.

Dan Calderon and Katie Gates Calderon met at KU Law School in 2005 and were married four years later.

James Clark and Shelley Hickman Clark thought of marrying on New Year’s Eve but realized they would both lose their head of household tax status.

Bill Cummings and Nika Jerkovich Cummings both graduated from law school in 1991 (he from Washburn and she from KU). They met at a Wichita Young Lawyers meeting. They are criminal defense attorneys with four children. Bill...
tells of a trial judge who introduced Nika by stating “I’m sure glad she got married because I couldn’t pronounce her last name before she got married. She must have married that guy with that last name so I could pronounce her last name.” This was after a glowing introduction of the opposing prosecutor and her team. These comments (along with other statements by the judge) resulted in a reversal of her client’s conviction by the Kansas Court of Appeals.5

I chided Stan Davis and Kathy Perkins for having a “draft circulating” as something only a lawyer couple would do. They responded with their “Top 10 Indicators Kathy and Stan are Both Lawyers.”6

Greg Drumright and Cameron Michaud-Drumright began dating in high school. Greg pitched for the Wichita State University baseball team. During one of their several summers of baseball for Greg and work for Cameron, she was at Bollettieri Sports Academy and they decided they wanted to be professional sports agents with Greg handling the legal side and Cameron taking care of marketing for the players. That night they went to the bookstore and Greg began studying for the LSAT. Having interned in the legal department of the Kansas Insurance Commissioner and hearing horrific Bar Exam stories from the law clerks, Cameron was going to pursue a Master’s degree in Sports Administration. She did not want Greg left alone in Topeka so faced her fears and attended Washburn Law School with him. After taking a Sports Law Class they realized they wanted to live in Wichita and not sacrifice themselves in a cut-throat business on the East or West Coast. Coaching their three boys provides them enough “sports management” while they work at different firms in Wichita.

Michael Fessinger and Christina Hansen met while clerking for the Kansas Court of Appeals (he for Judge Anthony Powell and she for Chief Judge Thomas Malone). Though they graduated from Washburn Law School one year apart they never crossed paths there. They practice in Wichita (he in the D.A.’s office and she for Stinson Leonard Street LLP) and have set a wedding date in June 2017.

Gloria Farha Flentje and Jack Focht were married on Leap Day 1996 so celebrated the fifth anniversary of their marriage this year. Both had long tenures as the Wichita Bar Show Stage Manager with Gloria following Jack.

In 2014, Splurge magazine had a cover story entitled “The Laws of Love” about Nola and Steve Foulston. It described
how Nola successfully prosecuted a child molester defended by Steve. They opposed each other on another criminal case before he asked her out after Nola prevailed in court again. Their life got even more interesting when Nola became Sedgwick County District Attorney and had to go to crime scenes at all hours of the night. In first grade, their son Andrew wrote, “My daddy sues people and my mommy puts people in jail.”

Carl Gallagher and Nancy Ulrich were both Assistant Attorneys General assigned to the Litigation Division when Bob Stephan was Kansas Attorney General. When a trial was expected to take at least the better part of a week, two Assistants would be assigned. Carl and Nancy were so assigned several times. During an employment law case, Carl and Nancy were having dinner with their state employee defendants when one of their clients whispered to Carl, “What does your wife think about you being here?” Carl asked what he meant and the client responded, “You know, what does she think about you spending a week here in Wichita with Nancy?” Carl mulled the question, then suggested “I don’t know. Why don’t you ask her?” The client was then puzzled and Carl said, “Ask her. She’s sitting right there.” They learned that their clients had no idea they were married. They kept their personal life out of their professional life in the Attorney General’s office. Carl indicated it was not a conscious decision to hide their marriage from the clients “but it had nothing to do with the counsel we were providing so it never came up.”

Last November, Annette and Larry Gurney were recognized by the Wisconsin Supreme Court for the purpose of moving for their son Sam’s acceptance and Larry’s attesting to their son’s good moral character because Annette couldn’t quit crying long enough to address the Court.

Judge David Hauber met Kate on the steps of Ellsworth Hall at the University of Kansas as the young man from New Jersey watched storm clouds during a tornado warning. He started out as a news reporter and she as a junior high English and Common Learnings teacher before both entered law school in 1980 and then carried their first baby down the hill with them at KU Law’s graduation in 1983. Kate has great memories of Dave preparing for finals with baby Erin nestled in his arms.

Jennifer and Reese Hays met at Washburn Law School. They graduated in 2006 and were married later that year. Jennifer is with Zimmerman & Zimmerman, P.A., in Topeka. Reese is a Major with the United States Air Force and Chief of Litigation at the Kansas Board of Healing Arts.

John Head and Lucia Orth met just before each left their homes in Missouri for law school (Lucia at Notre Dame and John at Oxford). They got to know each other in England where their legal studies overlapped for a year. They have spent parts of their married life (and celebrated numerous wedding anniversaries) outside the United States. John practiced international law before joining the KU faculty in 1990. Lucia has taught at Haskell Indian Nations University and now concentrates on her career as a novelist.

Matthew and Patty Hesse both graduated from Washburn Law School in 1985 after marrying the summer before that.

On August 10, 2000, Jennifer and Scott Hill sat next to each other and exchanged pleasantries as Professor Nancy Maxwell started grilling students, Socratic method style, on a case in the orientation packet. Scott, ever prepared, had a highlighted version of the case with perfect notes in the margin. Jennifer, admittedly forever playing catch up, had not yet opened her orientation packet. Scott slid his packet over and advised Jennifer “just read the highlights.” According to Jennifer, she “was pretty sure she owed Scott her LIFE after that.” Two days later, Jennifer invited Scott to dinner “to say thank you and they were pretty much attached at the hip after that.” They married during the second year of law school and “two law practices, two sons, two houses, one chocolate lab and countless dinners later, they are married 14 years and happy to report that it still appears to be working out.”

The first date for John and Suzy Holt was a New Year’s Eve party sponsored by WIBW-TV in Topeka, where John was working part time. John’s task was to do live cut-ins throughout the evening leading up to the start of 1982 at midnight. After that they spent lots of time studying together and decided that if their romance could survive law school, it could survive pretty much anything. They took the bar exam in July 1984 and got married in September. John joined classmate Mark Parkinson at Payne & Jones for about 9 months before
Jennifer & Reese Hays

-moving to Wichita to work for an NBC affiliate. Suzy worked for the old FSLIC for a few years before the Wichita move. They eventually moved back to Kansas City where John is a Fox 4 newscaster.

Peggy Kittel describes her KU Law School Class of 1983 as very social. She knew of at least 11 marriages with lawyers from her class. Peggy and Rick did not date in law school, but after law school Rick took a job with an American law firm in Germany and they began corresponding by snail mail. Peggy went to visit him and their first date was in Paris.

John Knoll gave permission to his wife and me for inclusion in this article by stating: “Sure. We can tell the world how you stalked me, reined me in, and I haven’t won an argument since.” Kim’s response was, “Sadly, his take on things is pretty spot on.”

Jason and Staci Lane met in high school and started dating in 1999. They went to college and law school together. Their first jobs out of law school were with the Sedgwick County District Attorney’s office where they were known as the “Traffic Lanes” for their work on traffic cases. Staci is still there and Jason is now with the Harvey County District Attorney.

Marti and Shawn Leisinger met and dated at Washburn Law School. He now works for the law school and she works for the Kansas Board of Regents.

Daniel Luppino and Julie Parisi both have parents who are attorneys. His are Tony and Janet Luppino, who are both in education (Tony is a law professor at UMKC). Hers are John Parisi and Ellen Goldman, and they both practice in the Kansas City area. Julie estimates that there were 80 lawyers at her wedding.

Rachel Lyle and Jonathon Paretsky were both in graduate programs in foreign language (she in Spanish and he in German) before law school and long before they met.

Jared Maag had been an intern to the Kansas Secretary of State’s office and met Melissa Wangemann when he stopped by to visit when she was a law clerk to Secretary of State Bill Graves.

Many would think that Amanda and Andrew Marino met in law school, but she did not know he existed. They met when Andrew camped and saved seats for a friend and unknowingly for Amanda at Allen Fieldhouse. She remembers it was the January 25, 2003 game against Arizona. She says “opposites attract”. She also says their home of married lawyers is a curse for their children’s teachers as their “three little angels”
are also “little litigators” who “question everything.”

Dee and Steve Marsh met in the City of Wichita Prosecutor’s office. Steve was glad to have a new prosecutor take over night court allowing him to participate in lawyers league softball. After his one year appointment ended, official dating started. They celebrated 30 years of marriage with a KU Law alumni trip to be sworn in as members of the Bar of the U.S. Supreme Court. They stayed in the same hotel and visited some of the same places as they had during a training trip Dee had with the FDIC when they were first married.

Mary and Tony Mattivi met the first day of law school at Washburn in 1991 and married a few months after graduation. She is a state district judge and he is a federal prosecutor in Topeka.

Jill Michaux and Mark Neis met as opposing counsel in a divorce case. Two years later they were again opponents in a divorce case. After the case was over, Mark asked Jill out. They married and merged their law practices in 1984. Their daughter, Michelle, is an attorney.

Derenda Mitchell and Seth Valerius both went to KU as undergrads and to Washburn Law School. Although they were at Washburn for the same two years they did not know each other. After Seth practiced in Hawaii for two years he moved back and a mutual friend introduced them. Derenda is an Assistant Attorney General and is Director of the violent sexual predator program. She enjoys spare time with her quilting groups. Seth is on the Workers Compensation Appeals Board and plays guitar and mandolin in three bands.

John Terry Moore and Robin Barkett Moore met at “Judges Day” (a Wichita picnic for lawyers held every September) in 1980. After crossing paths several more times, Terry invited Robin to lunch. That morning Robin went to the Sedgwick County Courthouse and saw a car that was very old, beat up and wrecked with a bright shiny neon tag that read “Terry.” Robin was a nervous wreck wondering if it was Terry Moore’s car and what she had gotten herself into. She was relieved when he picked her up in a bright shiny BMW and took her to the Wichita Club for lunch. That pleasant surprise led to their dating for three years and then marriage.

Jerry and Robba Moran met in 1982 when Robba was a summer clerk and Jerry was a first-year associate at Stinson Mag Fizzell (now Stinson Leonard Street). They married in 1984 and Jerry convinced Robba to move to Hays so he could practice small town law at Jeter and Larson. Robba taught Business Law at Fort Hays State University for several years.

Dave and Mary Beth Mudrick met in Aggieville when he was a junior and she was a sophomore at K-State. They were married 16 years later in Kearney, Nebraska on a snowy New Year’s Eve. They enjoy K-State sports, 60’s rock-and-roll concerts and scuba diving.

Andrew Nazar and Kelsey Patterson Nazar were introduced by mutual friends the day before the first day of law school. He told her to “calm down” after learning that she had finished all of her homework prior to the first day of school, and she assumed that she had scared him away forever. They found themselves with side-by-side school lockers and after many study sessions in the law library they were married. They are now raising their three children in Prairie Village while practicing at different firms.

Pat and Shannon O’Byran met in KU Professor Drahozal’s small section Contracts class.

Fran and Matt Oleen met at a KCDAA conference when they were both prosecutors. Both have served as Staff Judge Advocate (Fran for the Kansas Air Guard and Matt for the Kansas National Guard). She is now Deputy Director of Plans, Operation and Training for the Kansas Air Guard and he is Chief of Staff with the Kansas Army National Guard.

Mark and Stacy Parkinson met as “summer starters” on the first day of law school in 1981. They were married in March 1983 during their second year of law school by Judge Terry Bullock (who taught their ethics class). They opened their own law firm and practiced together for five years until they transitioned into business owners, opening 10 assisted living and nursing facilities and operating them for 15 years. During that time, Mark also served in the Kansas legislature, then in 2006 as Lieutenant Governor and in 2009 as Governor. They are now in Washington, D.C. where Mark is CEO for the American Health Care Association (a trade group for nursing homes and assisted living facilities). They have three adult children and the oldest married his college sweetheart in their second year of law school.

Jim and Judy Pottorff met when he was a cadet at West Point and she was a freshman at Smith College. After Judy graduated from college, she married Lt. James Pottorff, who was stationed at Fort Gordon, Georgia. In true 70’s fashion the bridesmaids wore dresses of different colors (blue, pink, yellow, mint green) and wore hats matching their dress color with a daisy on the hat. The groomsmen wore white suits and their shirts matched the color of the bridesmaid they escorted. Four years later they started law school together at the University of Kansas. They have had 14 moves with the Army, with almost all occurring on their anniversary and as Judy says, all were “in complete marital bliss.” After 25 years in the Army, Jim retired from active duty as a colonel to become General Counsel at the University of Kansas. Instead of taking multiple bar exams as they moved, Judy taught law related courses at colleges and community colleges near their various Army posts. She is now corporate counsel for Kansas Athletics, Inc.

Jim and Leslie Prentice were married in the courthouse by Judge Richard Rogers and played city co-rec softball that evening with their long-time team of courthouse employees and friends.

Barb and Jim Rankin met when she was in law school at Washburn and he was an associate with a Topeka law firm. Their first date was at the Celtic Fox (then “the Benz”) on St. Patrick’s Day in 1981. They married on Kansas Day in 1983. Barbara is Chief Counsel for the Kansas Department of Transportation and Jim is managing partner of the Topeka office of Foulston & Siefkin, LLP. They credit the success of their 33 years marriage “to having followed very different legal career paths and occasionally having fun together.”

Patricia and Phil Ridenour met in grade school in Peabody, Kansas. Their son Eric was born during their second year of law school after Patricia had a panic attack during Charles
Daniel Luppino & Julie Parisi
Jared Maag & Melissa Wangemann
Amanda & Andrew Marino

Dee & Steve Marsh
Derenda Mitchell & Seth Valerius
John Terry Moore & Robin Barkett Moore

Jerry & Robba Moran
Dave & Mary Beth Mudrick
Matthew Flesher & Amber Norris
Oldfather’s commercial law final exam that had questions unrelated to what had been presented in class. She had four finals yet to take. During their final semester at KU in spring 1970 she left Green Hall and there was tear gas in the air and fire trucks at the Union. Finals were not required because of the trouble, and Patricia was that year’s only female graduate. “The large Kansas City downtown law firm where Phil became employed made it clear that it would be inconvenient for [Patricia] to practice law in another firm that would create potential conflicts.” Patricia and Phil have now practiced together in Cimarron for over 40 years. Their daughter Blythe Ridenour Jones met her husband at KU Law School.

In 1977, Wes Weathers needed help to try a series of cases across Kansas regarding a new law. The firm’s managing partner said he did not know any good candidates, but Wes found Patty Riley’s resume in the trash can next to the couch where he was seated. Crystal Marquardt was the only woman in private practice in Topeka at that time. Wes interviewed and hired Patty, who had just graduated from Washburn Law School. According to Patty, they “tried a lot of cases together within a short time, laughed a lot even under stress, came to respect each other’s legal opinions, and the rest is history. It’s been a great lifelong partnership, though by far the best thing we ever did was to bring into the world and raise our incredible daughter, Catherine.” Although the firm names have changed they have practiced together the entire time. Patty’s take is that, “We have had a ball practicing together; we never had to ask how each other’s day went — we knew. We have always looked to each other to talk over thorny legal issues and to share our love of the funny side of life.”

Kay Rute was a high school English teacher when she married Larry in Meade Park shortly after he graduated from Washburn Law School. Four years later she started law school.

Betsy Brand Six and Steve Six went to Lawrence High School together, but were a few years apart. They met again after both finished law school. Betsy’s dad, Jack Brand, took Betsy and a friend of hers to the KU-Utah football game in 1993 and they sat in front of Steve. During the game Steve was gathering the nerve to talk to her. With KU down 21-0 Betsy and her friend left after the first quarter before Steve had a chance to say anything. Steve followed up later and says “the rest is history. Lopsided KU football losses bring back fond memories.”

Jeff Spahn and Jennifer Lind-Spahn met in the courthouse elevator in Wichita. Their son Matthew is an attorney at Martin Pringle with Jennifer.

Elizabeth and Sean Tassi were both born in Chicago and raised in the Midwest but did not meet until they attended law school together in New Hampshire.

L. Dale Ward and T. Lynn Ward were married September 2, 1989, shortly after they started their third year of law school. They waited until they had received their student loans for the semester so they could have money for a honeymoon. Their ceremony was conducted by husband and wife lawyers Dan and Linda DeWitt.

Greg and Misty Watt are from Iola and Garnett, Kansas. They met when she was a senior in high school and he was a college freshman. They were married in July 2004 and started law school as newlyweds. They were in the same section at the University of Tulsa College of Law and had every first year class together and ultimately took the bar exam together.

Brian and Marcia Wood met while he was clerking for Judge Patrick Kelly and she was
clerking for Judge Frank Theis in federal court, but they actually met in Judge Monte Belot’s chambers. In 2013-2014, Marcia was part of the first ever all-female executive committee (all four of whom were married to lawyers). 7

Angel and Larry Zimmerman met at Emporia State University Debate Camp. Their first date was to the ESU Theatre’s “The Apple Tree”. The next day Angel started tagging evidence “Larry dies” and the coaches encouraged her to date more guys at camp since dating Larry made her so focused on beating Larry at camp (which she did). Larry’s line is “she may have won the battle but I won the war.” Angel says, “We have been debating ever since.”

There are undoubtedly regular healthy (and even legalistic) discussions in each of these marriages. Love and friendship must outweigh the legalese for these couples, however, and hopefully for you too.

ENDNOTES

1 The title is from Jackson Browne’s seventh album issued in 1983.
2 There are approximately 11,000 active attorneys in Kansas, so almost 4% of them are married to another attorney. Approximately 50% of those contacted consented to inclusion and they are listed at the end of the article with the year of marriage if provided.
3 Since then he has authored a book titled “Lessons Learned – Recollections and Reflections on Criminal Defense”. It too contains some thought-provoking observations.
4 I dedicate this article to Jean Shepherd and the memory of John Bork. They met in law school, married, had a lifetime of service and raised three fantastic sons.
Lawyers in Love Participants

Bryce Abbott & Jana Deines Abbott – 1987  
Paul Ailsieger & Suzanne Dwyer – 2005  
Martin & Shari Albrecht – 1988  
Jennifer & Karin Amyx – 2013  
Brent & Cristy Anderson – 1990  
Katie & Mike Andrusak – 2015  
Kate & Ted Baird – 1986  
Frank & Jessica Basgall  
Andrew Bauch & Skyler O’Hara – 2006  
Dave & Susan Berson – 1996  
Carolyn McMinn Blakemore & David Blakemore  
Robert & Stacy Bowman – 2008  
Aaron Breitenbach & Joni Franklin – 2004  
Sarah Briley & Christopher Omlid – 2016  
Chuck & Mary Briscoe – 1974  
Kari Burks & Ryan Meyer – 2012  
Glenda Cafer & David Debenham – 1990  
Dan Calderon & Katie Gates Calderon – 2009  
James Clark & Shelley Hickman Clark – 1993  
Crisa & JJ Cook – 2004  
Dan Crabtree & Maureen Mahoney  
Walter Craig & Becky Hurtig  
Kori & Toby Crouse  
Marli & Mike Crow – 1968  
Bill Cummings & Nika Jerkovich Cummings – 1993  
Jeff & Lisa Dahlgren – 1993  
Stan Davis and Kathy Perkins  
Bryan Docking & Emily Cassell Docking – 2005  
Cameron Michaud-Drumright & Greg Drumright  
Holly Dyer & Gary Owens – 1992  
Nathan & Tara Eberline – 2004  
Anne & Mark Emert – 2006  
Michael Fessinger & Christina Hansen – 2017  
Gloria Farha Flentje & Jack Focht – 1996  
Matthew Flesher & Amber Norris – 2001  
Nola & Steve Foulston  
Carl Gallagher & Nancy Ulrich  
Kirk & Shirley Goza – 1982  
Annette & Larry Gurney – 1983  
Jason & Julia Hart  
Dave & Kate Hauber – 1973  
Jennifer & Reese Hays – 2006  
John Head & Luci Orth – 1979  
Matthew & Patty Hesse – 1984  
Jennifer & Scott Hill – 2002  
John & Suzy Holt – 1984  
Cal & Jan Karlin – 1975  
Peggy Carr Kittel & Rick Kittel – 1990  
John & Kimberly Knoll  
Jason & Staci Lane – 2004  
Gayle & Randy Larkin  
Marti Paulsen Leisinger & Shawn Leisinger – 2000  
Daniel Luppino & Julie Parisi – 2013  
Rachel Lyle & Jonathan Paretsky – 1990  
Jared Maag & Melissa Wangemann  
Chris & Jennifer Magana – 1998  
Brad Manson & Teresa Meagher – 1986  
Amanda & Andrew Marino – 2004  
Dee & Steve Marsh – 1986  
Mary & Tony Martivi – 1994  
Stephen McAllister & Suzanne Valdez  
Alan & Emily Metzger – 1976  
Jill Michaux & Mark Neis – 1984  
Derenda Mitchell & Seth Valerius – 1987  
John Terry Moore & Robin Barkett Moore – 1983  
Jerry & Robba Moran – 1984  
Dave & Mary Beth Mudrick  
Andrew Nazar & Kelsey Patterson Nazar – 2005  
Pat & Shannon O’Bryan – 2007  
Fran & Matt Olesen – 2006  
Liz & Nate Orr  
Mark and Stacy Parkinson – 1983  
Don & Linda Peterson – 1986  
Jim & Judy Pottorff – 1977  
Jim and Leslie Prentice – 1984  
Barb & Jim Rankin – 1983  
Patricia & Phil Ridenour  
Ann & Calvin Rider – 1985  
Patty Riley & Wes Weathers – 1981  
Kay & Larry Rute – 1973  
Ellen Ryan & James Sanders – 1997  
Jason & Megan Scheiderer – 2008  
Derek Schmidt & Jennifer Shaw Schmidt – 1998  
Catherine & Daniel Singer – 2013  
Betsy Brand Six & Steve Six – 1995  
Dustin & Michelle Slinkard – 2014  
Jeff Spahn & Jennifer Lind-Spahn -1986  
Elizabeth & Sean Tassi – 2007  
Derek & Holly Teeter – 2006  
Michelle & Steve Torline – 2006  
Greg Watt & Misty Cooper Watt – 2004  
Samuel Wendt & Tanya Redecker Wendt – 2007  
Brian & Marcia Wood – 2002  
Angel & Larry Zimmerman

About the Author

Calvin J. Karlin is managing member at Barber Emerson, L.C., Lawrence, Kansas, where he prepares wills and trusts and handles probate and related litigation. He is Editor of the Kansas Bar Association Real Estate, Probate & Trust Newsletter.  
ckarlin@barberemerson.com
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Attention All Members of the Kansas Bar Association:

Here’s your chance to make a difference. Opportunities to serve as an officer or on the Board of Governors of the Kansas Bar Association are open.

Nominations are now being sought for the following officer positions:

- Vice President
- Secretary-Treasurer
- KBA Delegate to the ABA House of Delegates – Rachael Pirner is eligible for re-election.
- Young Lawyer Delegate to the ABA House of Delegates – Joslyn Kusiak is eligible for re-election.

If you or someone you know would be interested, please contact Jordan Yochim, Executive Director of the KBA, at jeyochim@ksbar.org, or 785-234-5696 by Friday, October 28, 2016. Those interested may also be nominated by petition – the form is located here in the Journal – bearing the signatures of 50 KBA members across all 12 KBA districts, due to Jordan Yochim by Friday, November 18, 2016.

Those interested in serving your district as a representative to the Board of Governors must submit a petition – same form, located here in the Journal – bearing the signatures of 25 KBA members from that district to Jordan Yochim by Friday, November 18, 2016. Governor positions are open in the following districts:

- **District 1, Johnson county – one open position.** Mark Dupree, the current Governor is eligible for re-election.
- **District 3, Allen, Anderson, Bourbon, Cherokee, Crawford, Labette, Linn, Montgomery, Neosho, Wilson and Woodson counties – one open position.** Eric Rosenblad, the current Governor is NOT eligible for re-election.
- **District 5 – Shawnee county – one open position.** Terri Savely, the current Governor is NOT eligible for re-election.
- **District 7 – Sedgwick county – one open position.** Gary Ayers, the current Governor is eligible for re-election.
- **District 8 – Barber, Barton, Harper, Harvey, Kingman, Pratt, Reno, Rice, and Stafford counties – one open position.** John Swearer, the current governor is NOT eligible for re-election.
- **District 11 – Wyandotte county – one open position.** Nancy Gonzalez, the current governor is NOT eligible for re-election.
- **District 12 – Out of state – one (perhaps three) open position(s)**. – Bill Quick, the current governor is NOT eligible for re-election.

*As of this printing the Board of Governors is considering a proposal to increase representation from district 12 to three members from one.

For more information about officer or Governor positions or the nomination process, please contact Natalie Haag, Chair of the Nominating Committee, nhaag@ksbar.org, or Jordan Yochim, (785) 234-5696, jeyochim@ksbar.org.
2017 NOMINATING PETITION (BOG MEMBER OR OFFICER)

Name of Nominee

Those signing this petition must be current Kansas Bar Association members.

For KBA Board of Governors Positions
In accordance with Article V, Elections, Section 5.1, of the Kansas Bar Association Bylaws, candidates for the Board of Governors shall be nominated by petition signed by at least twenty-five (25) KBA members in the candidate's district. Candidates must maintain their principal place of practice or reside in the district they shall represent.

2017 Open KBA Governors Positions (circle one)
Number of open position(s) per district is noted in parenthesis.

- District No. 1 (1): Johnson county
- District No. 3 (1): Allen, Anderson, Bourbon, Cherokee, Crawford, Labette, Linn, Montgomery, Neosho, Wilson, and Woodson counties
- District No. 5 (1): Shawnee county
- District No. 7 (1): Sedgwick county
- District No. 8 (1): Barber, Barton, Harper, Harvey, Kingman, Pratt, Reno, Rice, and Stafford counties
- District No. 11 (1): Wyandotte
- District No. 12 (3): Out-of-state

For KBA Officers & KBA Delegates to ABA House
In accordance with Article V, Elections, Section 5.2, of the Kansas Bar Association Bylaws, candidates for Vice President, Secretary-Treasurer, KBA Delegate to the ABA House, and Young Lawyers Delegate to the ABA House may be nominated by petition bearing the signatures of fifty (50) KBA members with at least one signature from each district.

KBA Office Sought

All petitions must be returned by Monday, November 18, 2016 to: Jordan Yochim, Kansas Bar Association, 1200 SW Harrison Street, Topeka, KS 66612. We suggest returning the petition a week prior to deadline to allow time for verification of member signatures.

(over)
We, the undersigned, hereby nominate ________________________________ to become a member of the KBA Board of Governors representing District No. ____________, and do certify that we are currently members in good standing of the KBA with our principal place of practice in said District.

OR

We, the undersigned, hereby nominate ________________________________ to become ______________________ (an officer/delegate) of the KBA, and do certify that we are currently members in good standing.

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Diversity of Leadership: Lessons from Lincoln

In Lincoln on Leadership¹, Donald Phillip examines why Lincoln was such an effective leader. By examining historical records, including many letters written by Lincoln but never sent, Phillip concludes the current school of thought on leadership was actually successfully employed by Lincoln roughly 150 years before becoming mainstream. Throughout the book, Phillip demonstrates that Lincoln’s greatness came not because he was good at one particular type of leadership, but rather, because he had an innate ability to recognize that different situations call for different leadership styles.

Phillip defines leadership as “leaders inducing followers to act for certain goals that represent the values and the motivations – the wants and needs, the aspirations and expectations – of both leaders and followers. And the genius of leadership lies in the manner in which leaders see and act on their own and their followers’ values and motivations.”

A simple web search for “types of leadership” reveals a multitude of theories; however, there seem to be a few basic categories. According to the American Society of Association Executives (ASAE), there are eight common leadership styles which include: Charismatic, Innovative, Command and Control, Laissez-Faire, Pace Setter, Servant, Situational, and Transformational.²

Using Lincoln as an example, it is easy to see how each of these “types of leadership” have a place and a time based on the environment. Having a diverse leadership skill set available helps leaders respond quickly in a diverse workplace. ASAE describes Charismatic as having the ability to “influence others though power of personality.” Lincoln personified this characteristic. Phillips described Lincoln as a man who “combined an extraordinary wit with a gift for storytelling to become an effective communicator.” He was known for overpowering those listening with the sheer power of his words.

Phillips writes that Lincoln “was naturally inquisitive and he learned rapidly, which led him to be extremely innovative. He is, in fact, the only U.S. president to hold a patent.” Additionally, Lincoln was keenly aware of the situation surrounding his election. When he took office, seven states had seceded from the Union and Congress had not responded. Recognizing the North was not ready for war, Lincoln nearly single-handedly reorganized the North’s fighting forces. He also held weekly demonstrations of new weapons because he recognized winning the war meant staying ahead of the technology curve.

Lincoln used a variety of leadership styles with his generals throughout the war. Typically, Lincoln began with a Laissez-Faire approach. Lincoln would meet with each general to discuss his objectives but he also emphasized that the general’s success would be his own but his failures Lincoln’s. He encouraged risk taking but took a hands-off approach. While Lincoln gave direction and encouragement, he expected his generals to take initiative.

When he didn’t get the necessary results, Lincoln transitioned to a Command and Control leadership style. Lincoln directly planned the war strategy even going so far as to command troops in battle. He was not afraid to remove nonperforming generals from command. Lincoln used a Pace Setting style by setting high performance standards for himself and his staff but never expecting more from others than himself.

Throughout his presidency, Lincoln was known as a servant leader. ASAE describes Servant as someone who “puts service to others before self-interest... Stays out of limelight, lets team accept credit for results.” For example, Phillips discussed how Lincoln was known for his open door policy. Anyone with a complaint could come to the White House and see the President. Lincoln was also known for issuing the most pardons. His view was that if a man was pardoned for deserting, he was more likely to become a better fighter because he would be fueled by gratitude and guilt.

Lincoln regularly stayed out of the spotlight, letting his generals take credit for their victories. However, he also believed in the benefits of being seen by the people and seeing the people; two very unique things. Phillips relates that when terminating one of his generals, Lincoln once wrote, “His cardinal mistake is that he isolates himself and allows nobody to see him; and by which he does not know what is going on in the very matter he is dealing with.”

An overarching leadership technique Lincoln used was Transformational. ASAE describes transformational as someone who expects others to transform even when it is uncomfortable. Lincoln held himself to high standards, and in turn, held the nation to high standards. Through his interactions with the highest general to the lowest soldier, Lincoln gained acceptance of his philosophy by daily living it. He expected
the nation to transform itself into its best version and in the process changed the course of history.

Diversity is not simply hiring a diverse workforce; it is maintaining a diverse workforce. It is crucial that leaders evaluate their skill sets to ensure that, like Lincoln, they have the flexibility to employ the most effective technique based on the given situation.


About the Author

Amanda Stanley is a member of the KBA Diversity Committee. Stanley received her juris doctorate from the University of Kansas School of Law in 2014 and her Bachelor of Science in Biology from Newman University in 2008. After law school Stanley clerked for Judge Kim Schroeder of the Kansas Court of Appeals. She currently serves as Legal Counsel for the League of Kansas Municipalities.

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Members in the News

Changing Positions
Matthew Gorney has joined Monnat & Spurrier as an associate attorney.
Dan Heinz has joined Crow & Associates, Leavenworth, Kansas.

Changing Locations
Angela Meyer has opened her own firm, Meyer Law Firm LLC, 103 W. 11th St., PO Box 1103, Pittsburg, KS 66762.
Josh and Courtney Boehm opened Cotonwood Law Group at 107 E. Grand Ave., Hillsboro, KS.

Obituaries

Judge Michael A. Barbara
Judge Michael A. Barbara left this world for a better place following a brief illness on August 25, 2016.
He was born November 11, 1921, in Brooklyn, New York and was one of eight children born to Italian immigrants who landed in Ellis Island July 20, 1912. He is survived by one son Michael, two grandchildren, Joe and Gina, and five great-grandchildren.
In 1942, he joined the Army Air Corp and served as radio operator/gunman aboard a B-17. He flew 30-plus bombing missions over Germany and earned numerous citations including the DFC (Distinguished Flying Cross).
After the war, Judge Barbara met his wife Irma (now deceased) and settled in Kansas. He graduated in 1953 from Washburn School of Law and enjoyed a long and stellar career in law related activities. Starting as a criminal defense lawyer, he was appointed by the governor in 1967 and served as Shawnee County District Court Judge. Next the governor appointed him as Kansas Secretary of Corrections and he capped off his 50 year career as professor emeritus of law at Washburn Law School.
Judge Barbara literally wrote “the books” on Kansas Criminal Law and Evidence. Many copies are in use today by judges and practitioners across the state.
He lived a full and rich life and showed much love and caring for everyone he came across. He lived his last decade primarily in Puerto Vallarta, Mexico, with his wife, Roberta, who also survives him.

Ronald L. Leslie
Ronald L. Leslie, 75, died Aug. 12, 2016, in Goodland. He was born Aug. 19, 1940, in Goodland, to U.H. and Nellie Leslie.
Ron graduated from Goodland High School, then from the University of Kansas in 1962 with a business degree and again in 1965 with a law degree.
On Sept. 12, 1964, he married the love of his life, Joleen Miller, from Oberlin. To that marriage were born two sons, Brian and Kent. Ron is survived by his son, Brian, currently living in Manhattan. He was preceded in death by his parents, his wife (on April 17, 2015) and a son, Kent.
During the Vietnam War, Ron served in the U.S. Army and was honorably discharged as a captain. He practiced law in Hutchinson for over 40 years with several different firms and groups of lawyers. Ron was a member and past president of the Reno County Bar Association and served as the chair of the Ethics and Grievance Committee for over 20 years. Ron also served as the Municipal Court Judge of Buhler, South Hutchinson, Haven, and Nickerson at various times in his career. In his later years, he specialized in bankruptcy law and had been elected by his peers to a term as chairman of the bankruptcy section of the Kansas Bar Association.
He believed strongly in his community and was very active in it. In his youth, he had been named one of the three outstanding young men of Kansas by the Kansas Jaycees, due primarily to his work in organizing one of the first Big Brothers chapters in the state. Ron also had been president or a board member of many organizations, including the Hutchinson Jaycees, Reno County United Way, YMCA, Rotary, and the Cosmosphere. He was also a member of Trinity United Methodist Church and had served on its administrative board.
One of his passions had been classical music, and that led him into performing with the Hutchinson Symphony as a percussionist. He also served two terms as its president.
Another of his passions was politics. During his youth, he had been chairman of the Reno County Republican Party. Later he was elected to the Hutchinson City Commission and served as mayor in 1992.
After he left the commission he was re-elected by his fellow commissioners to serve out the unexpired terms of two commissioners who had resigned.
He was a life member of the University of Kansas Alumni Association and an avid follower of K.U. sports.

Miscellaneous
Hon. Patricia A. Macke Dick, Hutchinson, was recently elected president of the Kansas District Judges’ Association, Hon. Rob¬ert J. Frederick, Garden City, was elected Vice President, Hon. Bruce T. Gatterman, Larned, was elected treasurer.
The Need to Know:
Acquiring Your Client’s Criminal History

By Ed Frock
This article examines the fairness of the Kansas system that prevents a criminal defendant from getting the documents and records of his prior criminal history before the completion of the Pre-Sentence Investigation (PSI) after a guilty plea or no contest plea has been entered. To a lesser extent it examines the defendant’s inability to secure the prior criminal records of witnesses called on behalf of the State. Nothing in K.S.A. 22–4709 (b) requires such a disclosure and it only permits the defendant the “right of inspection” coupled with the ability to “make notes of the information.”

The first time I represented a criminal client in Kansas I asked for the defendant’s criminal history because I was unsure if what he was telling me was correct. The response from the prosecutor was that there existed a statute which prevented me from receiving a written or printed history, but that I could stand behind the county attorney and “look over” his shoulder while he worked on his computer to examine my client’s criminal history. My response was: “Haven’t you heard of Brady?”

In Brady v. Maryland, 373 U.S. 83, Justice William O. Douglas wrote these words: “We now hold that the suppression of evidence favorable to an accused person upon request violates the due process clause where evidence is material to either guilt or punishment, irrespective of the good faith or bad faith of the prosecution.” Douglas’ rationale, in part, was that: “…our system of justice suffers when any accused is treated unfairly.” Douglas’ opinion and rationale were based in part on comments made by Simon Sobeloff, while serving as United States Solicitor General, who stated: “The Solicitor General is not neutral, he is an advocate; but an advocate for a client whose business is not merely to prevail in the instant case. My client’s chief business is not to achieve victory but to establish justice. We are constantly reminded of the now classic words penned by one of my illustrious predecessors, Frederick Lihmann, that the Government wins its point when justice is done in its courts.”

In Kansas the relevance of the prior criminal history cannot be overstated. Under the cumulative sentencing grid now used to progressively enhance punishment of a defendant, failure to openly and fully disclose the full nature of a defendant’s criminal history can be prejudicial. Such evidence is material to the decision a defendant must make whether to proceed to trial or enter a plea of guilty or no contest. In Bagley v. United States, 473 U.S. 667 (1985), the court defined the term “material to guilt or punishment” as found in Brady as: “the requirement of materiality is that the suppressed evidence might have affected the outcome of the trial.”

Not every person accused of a crime proceeds to trial. In fact, very few do. But in Kansas each person who enters a plea to a felony offense will have his or her criminal history examined. Although such history will not have “affected the outcome of the trial,” it will affect the outcome of the punishment, making it a material element of discovery as contemplated by Brady. Though warned that their criminal history will play a part in their sentencing, not all defendants are forthcoming with their prior convictions. Most criminal defense attorneys have surely encountered defendants who were unsure or forgetful about their previous encounters with the criminal justice system.

With this in mind the Federal Rules of Criminal Procedure, Rule 16(a)(1)(D) states the following: “Upon a defendant’s request, the government must furnish the defendant with a copy of the defendant’s prior criminal record that is within the government’s possession, custody, or control if the attorney for the government knows—or should know—the record exists.” Rules similar to Rule 16(a)(1)(D) can be found in the statutes or court rules of many states including West Virginia, South Dakota, Massachusetts, Minnesota, Ohio, South Carolina, Arizona, Texas, North Dakota, Georgia, Pennsylvania, Tennessee, Oregon, New Jersey, Iowa, the District of Columbia, Michigan, Washington, and several others.

The commentary to Rule 16(a)(1)(D) explains the rationale behind the rule and states: “A defendant may be uncertain of the precise nature of his prior record and it seems therefore in the interest of efficient and fair administration of justice to make it possible to resolve prior to trial any disputes as to the correctness of the relevant criminal record of the defendant.” The American Bar Association (ABA) Criminal Justice Section concurs with this statement. The Association in its Criminal Justice Section Standards states in Part II, Standard 11–2.1, that it should be the obligation of the prosecution to reveal to the defendant his or her “record of prior convictions, pending charges, or probationary status of the defendant or of any codefendant…” paragraph (vi). The Association equates this discovery with the “constitutional rights of the defendant,” and considers it necessary “to provide the defendant with sufficient information to make an informed plea; permit thorough preparation for trial and minimize surprise at trial.” ABA Standard 11.1.1, Discovery: Objectives of Pretrial Procedures.

An attorney armed with a client’s prior history is better able to inform the client of the potential punishment using the appropriate “grid box” or “criminal history score”, and be better equipped to confront the client with the true consequences of a decision to enter a plea of guilty or no contest or proceed to trial.
Full disclosure also prevents the possibility of game playing by the prosecution whenever a defendant takes the witness stand. It prevents a “forgetful” defendant from being impeached by crimes committed many years ago which the defendant may have forgotten or became confused about. He or she may not know or remember whether the conviction was for a misdemeanor or a felony, or was subject to a deferred sentence without an adjudication of guilt. Absent full written disclosure by the state of his or her prior convictions, a defendant risks being ambushed by the prosecution during cross examination, which runs counter to a fair trial.

Under the present Kansas system, too often the defendant is not fully aware of the criminal history until the time the PSI is created, often so near in time to sentencing that the defendant cannot adequately contest the history. A better policy would be to allow the defendant to view the criminal history from the filing of the charges, or at time of arraignment, so that the defendant might better prepare an argument against them.

Take for example the case of State of Kansas v. Anthony Hankins, No. 109,123 (2016). In Hankins, the PSI listed one prior non-person felony in Oklahoma for possession of a firearm on school property. Based in part on that charge the defendant was given a criminal score of “G.” While some mention of the Oklahoma charge was made at the time of the sentencing, there was essentially no objection, and the sentencing went forward with the defendant receiving a controlling term of 68 months.

Hankins subsequently filed a motion with the appellate courts arguing that his Oklahoma felony charge, though he pled guilty to it, had been dismissed pursuant to the deferred sentencing procedure used in Oklahoma. Under that procedure the defendant may enter a plea of guilty and the court will delay the imposition of sentence. Should the defendant comply with the conditions of the deferred sentence, the case is dismissed by the court without an adjudication of guilt.

The Kansas Supreme Court ruled in favor of Hankins. The court stated: “In conclusion, we hold that under Kansas law, the entry of a judgment of guilt by a foreign court is necessary to meet the State’s definition of a conviction. Under the Oklahoma deferred judgment procedure (Title 22, Section 991 of the Oklahoma statutes) a judgment of guilt was never lawfully entered…and therefore he did not have a conviction….” The case was remanded to reassess the proper criminal history classification.

The problem found in Hankins could have been avoided if the defendant had been provided his criminal history prior to the sentencing, and if his attorney had the opportunity to review the law of Oklahoma. Had the attorney been furnished a criminal history prior to the PSI he or she could have simply called the proper persons in Oklahoma and discovered the truth concerning the plea of guilty and the deferred sentencing procedure. It is unrealistic to believe that a defendant will remember the detailed circumstances surrounding his sentencing, other than the fact that he pled guilty and was placed on probation for a certain amount of years.

Other states including Oklahoma, Michigan, Iowa, Washington, Arizona, Maryland, Colorado, and Ohio have sentencing schemes which allow an individual to plead guilty or no contest to a specific crime and yet have no formal adjudication of guilt entered against them so long as they abide by the terms of probation they are given. When a defendant has completed those terms the case is dismissed or the plea of guilt or no contest is allowed to be withdrawn and an expungement of the record takes place. The ruling in Hankins would apply to any of those adjudications from any of the states mentioned above, yet without a written history provided to the defendant they could not be investigated.

The Hankins case alone shows the importance of the state providing a written criminal history of the defendant when out of state convictions or adjudications are involved. Should the attorney have from the beginning of the proceedings an accurate rendition of the criminal history, including the jurisdictions involved, it will make for a more frank discussion with the defendant, and also allow the attorney to investigate the type of sentence the defendant may have received in another state.

In addition, the failure of the state to provide written documentation of a prior criminal history may lead to costly mistakes at trial when deciding whether the defendant should testify on his own behalf. A defendant who may have been convicted many years ago, under the impression his conviction was for a misdemeanor within Kansas, or one who believes his crime was committed while a juvenile and the records sealed (a policy in many states), or who labors under the mistaken belief that his prior plea has been withdrawn or his case dismissed, takes the risk of impeachment on the witness stand. Many arrests are displayed in a typical examination of a person’s criminal record but mistakes are often made as to their disposition. If asked by the prosecutor: “Were you convicted of a crime in Ohio?” the defendant is forced to respond to his detriment even though his case may have been dismissed. The defendant’s choice could be to explain what happened in Ohio and then explain Ohio’s sentencing procedure and adit to the crime or to say “I am not sure.” Neither answer will impress...

With the risk of impeachment on the witness stand comes a higher risk of being convicted. A study conducted by John Blume, Professor of Law, Cornell Law School, published in the Journal of Empirical Legal Studies, Vol. 5, Issue 3 (September 2008) entitled The Dilemma of the Criminal Defendant with a Prior Record – Lessons from the Wrongfully Convicted, reports that fifty-five percent of defendants with a criminal record declined to testify in the sampling of cases taken. And almost one-half of Americans believe that a defendant who does not testify in his or her own defense is guilty. The study indicates that there is a statistically significant association between defendants failing to testify and innocence and that failure to be aware of one’s criminal history as known to the state discourages defendants from testifying.

It is obvious that the very first thing a jury wants to know about a person is his or her explanation for being charged with a crime. The fact that Kansas permits the prosecutor to hold all the cards when it pertains to a complete and accurate knowledge of the defendant’s criminal record puts the
the need to know: acquiring your client’s criminal history

State at a distinct advantage at trial. The failure of the state to turn over the written prior criminal history of the defendant prevents the defendant from being prepared for any impeachment questioning from the state. The failure to turn over the criminal history also increases the risk that the state will make a mistake when asking the defendant about criminal history, if there was some type of deferred adjudication. It is easy to see a conversation or cross examination between a prosecutor and the defendant going back and forth as to whether or not the defendant pled guilty to some offense, because the prosecutor has the paperwork and the defendant insists the case was dismissed.

As stated in Bagley: “A prosecution that withholds evidence on demand of an accused which, if made available, would tend to exculpate him, or reduce the penalty helps shape a trial that bears heavily on the defendant.” Having no access to the criminal record of the defendant and the chance to investigate that record prior to sentencing does in fact shape a situation “that bears heavily on the defendant.” Only the prompt disclosure of a defendant’s criminal record can make the process fair to the defendant, providing material by which the defendant could be impeached as contemplated in Brady.

It will allow the defense to discover the true nature of defendant’s record and by doing so permit justice to be done in our courts.

About the Author

Harry Edward Frock, Garden City, Kan. graduated with his Bachelor of Arts Degree from the University of Missouri in 1982. Frock then went on to University of Tulsa, College of Law graduating in 1985. He was admitted to the Oklahoma Bar in 1985 and the Kansas Bar in 2016, where he currently resides. In 2015 he became Assistant Public Defender, Western Regional Public Defender, Garden City Kansas. Representing defendants in a variety of felony cases.

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Attorney Discipline

ONE-YEAR SUSPENSION
IN THE MATTER OF LYLE LOUIS ODO
NO. 114,863 – JULY 15, 2016

FACTS: Odo is a Kansas-licensed attorney with a primary place of business in Missouri. In November 2015, a hearing panel of the Kansas Board for Discipline of Attorneys determined that Odo violated Kansas Rules of Professional Conduct 1.7(a)(2) (conflict of interest), 1.8(a) (conflict of interest), 1.8(e) (providing financial assistance to client), 1.9(a) (duties to former clients), 1.15(d) (preserving client funds), and 8.4(d) (engaging in conduct prejudicial to the administration of justice). The disciplinary investigation arose after Odo represented two individuals who had been injured in the same car accident. When one of the clients experienced financial difficulties, Odo steered him to a lending operation of which Odo was president. Although Odo is not technically the owner, he derives benefit from profits earned by the company. Odo did not advise his client that he had the right to seek independent counsel on the loan terms, and the lines were blurred between Odo’s representation of his client in the personal injury case and Odo’s representation of his company. Odo’s license to practice law in Missouri has been indefinitely suspended.

HEARING PANEL: The hearing panel determined that Odo’s actions violated the KRPC because his concurrent conflicts between client and business kept him from adequately representing either client. After weighing the aggravating and mitigating factors, the panel recommended that Odo be indefinitely suspended.

HELD: The court accepted the recommendation of the disciplinary administrator that Odo be suspended for one year. He must appear for a reinstatement hearing before being allowed to practice law in Kansas.

60 DAY SUSPENSION
IN THE MATTER OF KENTON M. HALL
NO. 114,636 – JUNE 29, 2016

FACTS: In June 2015, a hearing panel of the Kansas Board for Discipline of Attorneys determined that Hall violated KRPC 3.3(a)(1) (candor toward tribunal), 8.4(c) (engaging in conduct involving misrepresentation), 8.4(d) (engaging in conduct prejudicial to the administration of justice), and Supreme Court Rule 208 (registration of attorneys). Hall was initially licensed in Kansas, but after he was licensed in Missouri, he changed his Kansas registration status to “inactive.” In 1996, Hall failed to pay the inactive registration fee, and his Kansas license was suspended. Hall twice inquired about the procedure for changing his status to “active,” but he never completed the process. After 2012, Hall submitted several applications to appear pro hac vice in Kansas district courts. On the applications, Hall did not list his Kansas bar admission. A complaint was submitted to the Office of the Disciplinary Administrator after local counsel discovered that Hall’s Kansas license was suspended.

HEARING PANEL: The hearing panel determined that Hall did not engage in the unauthorized practice of law. Hall stipulated to violations of KRPC 3.3(a)(1), 8.4(c), 8.4(d), and Supreme Court Rule 218. The hearing panel found that Hall acted negligently. After considering many mitigating factors, the hearing panel recommended discipline of published censure. The Disciplinary Administrator appealed, arguing that the hearing panel assigned Hall the wrong mental state and considered an inappropriate mitigating circumstance.

HELD: The hearing panel erred when it found that Hall did not violate Supreme Court rule 5.5(a) by engaging in the unauthorized practice of law. Because he had a Kansas license, albeit a suspended one, Hall was ineligible to be admitted to practice pro hac vice. The Disciplinary Administrator recommended that Hall’s license to practice be suspended for 60 days. After finding that the hearing panel erred by finding that Hall’s conduct was negligent rather than knowing, a majority of the court agreed and imposed a 60 day suspension. A minority of the court would have imposed a greater sanction.

Civil

JURISDICTION—MANDAMUS—STATUTORY INTERPRETATION
AMBROSIER V. BROWNBACK
ORIGINAL JURISDICTION—MANDAMUS DENIED
NO. 115,982 – JULY 29, 2016

FACTS: A district magistrate judge from the 26th Judicial District retired in February 2016. Governor Sam Brownback received the statutorily required notice of the retirement and notified Chief Judge Ambrosier that the governor’s office would accept applications to fill the vacancy. The governor indicated that an interim district magistrate judge would be
appointed within the 90-day period established by K.S.A. 2015 Supp. 25-312a. However, after applications were received, the governor notified all applicants that he did not intend to fill the position and would instead allow voters in the district to make a choice in the August 2, 2016, primary election. The chief judge and two district court judges of the 26th Judicial District filed an action in mandamus against the governor asking him to immediately appoint an interim district magistrate judge for Haskell County.

ISSUE: Whether K.S.A. 2015 Supp. 25-312a establishes a ministerial duty to appoint that would render mandamus an appropriate remedy

HELD: Although concurrent jurisdiction exists, the question of statewide importance and the inherent delay in seeking a remedy in district court warrant the invocation of the Supreme Court’s original jurisdiction. K.S.A. 2015 Supp. 25-312a reads that any appointment by the governor shall be made within 90 days following receipt of a notice of vacancy. Using the tools of statutory construction, it is clear that the word “shall” as used in the statute is directory rather than mandatory. Because there is no mandatory or ministerial duty, mandamus is not an appropriate remedy and the petition for writ was denied. 

STATUTES: Article 3, § 3 of the Kansas Constitution; K.S.A. 2015 Supp. 20-2909, -2911, -2914, 25-312a

GRANDPARENT VISITATION—JURISDICTION—PROTECTION FROM ABUSE ACT

BAKER V. MCCORMICK

JOHNSON DISTRICT COURT—AFFIRMED IN PART, REVERSED IN PART, REMANDED WITH DIRECTIONS NO. 114,756—JULY 29, 2016

FACTS: Two sets of grandparents filed a Protection from Abuse (PFA) action against McCormick, claiming that he physically and verbally abused the children’s mother, placing the children in fear of imminent bodily injury. Baker asked that orders of protection be entered against McCormick in order to protect the children. At the time the action was filed, the children and their mother were living with Baker. But within days of the filing of the action, the mother moved out, taking the children. Baker responded by filing a motion asking for court-established visitation with the grandchildren. The evidence presented at the PFA hearing established significant acts of abuse against the children’s mother. The district court refused to grant a PFA on grounds that the children were not living with the grandparents at the time the PFA application was filed. The district court also determined that there was no mechanism for allowing grandparent visitation within the scope of a PFA proceeding. Baker appealed.

ISSUES: (1) Can a PFA claim continue if a child no longer resides with the adult who filed the action (2) Can grandparents bring a claim for grandparent visitation within a PFA proceeding

HELD: The district court erred when it determined that the children were not residing with Baker when he filed the PFA application. Under the facts of this case, the children were residing with Baker at the time the application was filed. And because of the broad purposes of the PFA, it is sufficient if the children resided with the adult at the time of filing, even if the children moved subsequent to the filing of the application. Because the district court did not consider the PFA claims on their merits in regards to one of the children, the case must be remanded. There is no mention in the Protection from Abuse Act of grandparent visitation rights, which strongly suggests that grandparent visitation rights are not available to be litigated in PFA cases. Accordingly, the district court correctly determined that grandparent visitation issues were not properly before the court within the context of the PFA proceeding.

FACTS: Rizo was convicted in bench trial on stipulated facts to charges of first-degree felony murder, aggravated battery, fleeing or attempting to elude a law enforcement officer, and battery. District court imposed life prison sentence for felony murder with consecutive 89 month term for remaining convictions. On appeal Rizo claimed his waiver of a jury trial was not knowing and voluntary because district court failed to fully inform him that proceeding on stipulated facts waived right to cross-examine witnesses, compel appearance of favorable witnesses, appeal adverse evidentiary rulings, and appeal an alleged violation of Fifth Amendment rights. He also claimed that the district court erred in denying motion for a departure sentence. State argued the waiver claim cannot be raised for first time on appeal.

ISSUES: (1) Preservation of issue for appellate review, (2) waiver of jury trial, (3) Motion for departure sentence

HELD: Rizo's claim is analogous to issue reviewed in State v. Beaman, 295 Kan. 853 (2012), and is likewise considered in this case.

Rizo was advised in open court of his right to a jury trial. Cases were cited as upholding jury trial waivers even when district court failed to explain particulars surrounding right to jury trial. Under facts in this case, district court obtained a knowing and voluntary jury trial waiver from Rizo, and there was no error in allowing case to proceed under the stipulated facts agreement.

No legal authority allowed district court to depart from life sentence, and there was no appellate jurisdiction to consider a departure claim with respect to remaining sentences derived from KSGA grid.

STATUTES: K.S.A. 2015 Supp. 21-6801 et seq., -6803(q), -6806(c), -6820(c)(1), 22-3601(b); K.S.A. 21-4721(c)(1), 22-3210, -3403(1)

CRIMINAL PROCEDURE—JURY—SIXTH AMENDMENT RIGHT TO COUNSEL
STATE V. JOHNSON
WYANDOTTE DISTRICT COURT – AFFIRMED NO. 111,375 - AUGUST 5, 2016

FACTS: Johnson was convicted of first-degree murder and aggravated burglary related to his shooting open patio door to enter living room where former girlfriend (Griffin) and male murder victim (Hill) were sleeping on floor, angrily arguing with former girlfriend, and then shooting murder victim in the head. On appeal he claimed district court erred in: (1) not instructing jury on voluntary manslaughter as Johnson requested, and in not instructing jury on unintentional second-degree murder and reckless involuntary manslaughter; (2) excluding testimony that shooting happened in a high crime area; (3) denying Johnson's latest request for continuance to allow a fourth attorney time to prepare for trial; (3) denying Johnson's motion for new trial based on ineffective assistance of trial attorney for spending inordinate time trying to persuade Johnson to accept plea bargain rather than prepare for trial, and refusing to introduce telephone conversations between Griffin and Johnson that could question Griffin's credibility; (4) denying a fair trial due to cumulative errors; and (5) using Johnson's prior convictions for sentencing purposes without the convictions

Appellate Practice Reminders . . .

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being proven to a jury.

ISSUES: (1) jury instructions, (2) exclusion of evidence, (3) request for continuance, (4) motion for new trial, (5) cumulative error, (6) sentencing

HELD: There was no error in denying request for voluntary manslaughter instruction which was not factually appropriate where shooting death occurred because of Johnson's orchestrated actions. Johnson's jealousy and intense emotional argument with Griffin may have provided motive for killing Hill, but it did not provide sufficient provocation for shooting to be in heat of passion. Also, there was no clear error in not instructing jury on unintentional second-degree murder and involuntary manslaughter, which were not factually appropriate under facts of case.

Similarity to State v. Burnett, 300 Kan. 419 (2014), and State v. Knox, 301 Kan. 671 (2015), was noted. District court did not abuse its discretion by excluding high crime evidence which had little probative value for establishing that someone other than Johnson shot Hill. There was no violation of Johnson's right to present his defense.


Trial preparation claim was not argued in appellate brief, and is deemed abandoned. Under facts of case, defense attorney's decision not to introduce telephone recordings containing information potentially harmful to Johnson, and to address Griffin's credibility through other means, was a sound strategic decision. Even if deficient performance could be assumed, Johnson was unable to show constitutional prejudice.

No errors support the cumulative error claim.


STATUTES: K.S.A. 2015 Supp. 21-5103(d), -5202, -5202(c), 22-3601(b)(3), -3601(b)(4); K.S.A. 21-3107(2) (a), -3201(c), -3401(a), -3402(b), -3403(a), -3404(a), -3716, 22-3401, -3414(3), 60-401(b)

APPEALS STATE V. SMITH
SEDGWICK DISTRICT COURT - REVERSED AND REMANDED
NO. 110,061 - AUGUST 5, 2016

FACTS: Smith was convicted as adult in 1993 on plea of nolo contendere to first-degree felony murder, aggravated kidnapping, aggravated robbery, and possession of firearm by a minor. Smith asserts he told defense counsel to file appeal, but counsel failed to do so after motion to modify sentence was denied. Almost 20 years later, Smith filed pro se notice of appeal and motion for out-of-time appeal, and argued that the third exception in State v. Ortiz, 230 Kan. 733 (1982), applied. Kansas Supreme Court remanded to district court to rule on Smith's motion for out-of-time appeal and an Ortiz hearing if necessary. Smith's trial attorney died in 2009. Only evidence on remand was Smith's testimony that he asked attorney to file an appeal, and that Smith and family made repeated attempts without success thereafter to contact the attorney about the appeal. Citing State v. Cole, (Kan. App. 2012)(unpublished), State argued that Smith waived right to bring an untimely appeal by waiting so long. District court agreed and denied Smith's motion. Smith appealed.

ISSUE: Passage of time as waiver of an Ortiz exception

HELD: Lapse of time between the defendant's directive to counsel to file an appeal and the defendant's attempt to use the third Ortiz exception to file an out-of-time appeal, standing alone, is not a threshold bar to the untimely appeal as a matter of law. Here, district court failed to conduct the analysis required under State v. Patton, 287 Kan. 200 (2008). Case was remanded to district court for express purpose of determining whether Smith's testimony was credible to establish deficient performance, which would allow an out-of-time appeal under the third Ortiz exception.


CRIMINAL: APPEALS - CONSTITUTION - CRIMINAL PROCEDURE - EVIDENCE
STATE V. KEENAN
JOHNSON DISTRICT COURT - AFFIRMED; COURT OF APPEALS - AFFIRMED
NO. 108550 - AUGUST 19, 2016

FACTS: Officers confronted Keenan at his home based on informant's report that Keenan was driving his four-year-old grandson home while alcohol impaired, and officers' belief that Keenan was in violation of a protection from abuse order (PFA). When Keenan entered home to put grandson to bed, officers asked to follow. Keenan said "no," but officers entered the home, arrested Keenan, and searched his car. Alleging an unlawful warrantless entry of his home, Keenan filed motion to suppress. District court denied the motion, finding exigent circumstances and officers having reasonable suspicion to investigate drunk driving. Keenan convicted of felony third-time DUI and refusing a preliminary breath test, and fined for transporting an open container. He appealed. State argued Keenan failed to preserve the suppression issue. Court of Appeals rejected State's preservation claim and affirmed the convictions, holding there was probable cause before officers' entry into house to arrest Keenan for violation of PFA and drunk driving, and warrantless entry to the house was supported by exigent circumstances including hot pursuit and possible loss, destruction, or concealment of evidence. 50 Kan.App.2d 358 (2014). Keenan's petition for review granted.

ISSUES: (1) Preservation of issue for appellate review, (2) suppression

HELD: State did not cross-petition for review of the preservation issue, which is not considered.

District court judge applied wrong legal standard by evaluating facts for existence of reasonable suspicion. Nonetheless, officers had probable cause to arrest Keenan for DUI before they entered his home, when detailed information about Keenan's condition and behavior from an identified informant was corroborated by officers' direct, personal observations. Even if illegal entry is assumed, under facts of case the constitutional error was harmless where evidence gathered and admitted at trial as a result of the entry was superfluous
and would not have affected ultimate trial outcome. Accordingly, court does not decide whether officers’ entry into Keenan’s home was permissible because of exigent circumstances of loss, concealment, or destruction of evidence or doctrine of hot pursuit.

CONCURRENCE (Johnson, J.): Agrees that officers had probable cause to arrest Keenan before he entered his house, but given the post-entry evidence, does not agree the State met its burden of proving beyond a reasonable doubt that the erroneously admitted evidence had no reasonable possibility of affecting jury’s verdict. Would affirm lower courts because no constitutional error due to exigent circumstance, however labeled, of providing emergency aid to protect welfare of child in this unique situation.


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COURT OF APPEALS

CIVIL

STATUTORY INTERPRETATION—WORKERS COMPENSATION
BUCHANAN V. JM STAFFING
REVERSED AND REMANDED
NO. 114,502 – AUGUST 26, 2016

FACTS: JM Staffing secured Buchanan a position working at a factory. While on the job, Buchanan tripped and severely fractured her ankle. Buchanan’s ankle was slow to heal after surgery, so the treating physician recommended physical therapy. Records show that Buchanan went through physical therapy for a year after her accident. Eventually, the treating physician determined that Buchanan would be left with permanent stiffness and loss of range of motion, and that those issues would cause Buchanan to walk with a limp. By the time she was examined by her expert witness, Buchanan complained of both hip and back pain. Buchanan’s expert testified that the pain was a result of Buchanan walking with a limp, and that it would not improve as long as Buchanan continued to limp. JM’s expert testified that Buchanan was able to work, as long as standing and walking were limited to 33% of her day. The ALJ relied on JM’s expert’s testimony when finding that Buchanan’s hip and back injuries weren’t compensable because her work accident was not the prevailing factor of the injury. A majority of the Board of Appeals affirmed that finding. Buchanan appealed.

ISSUE: Whether the "secondary-injury" rule survived the 2011 statutory amendments to the Workers Compensation code

HELD: Buchanan’s ankle injury was undisputedly a compensable injury. Prior case law suggests that nothing about the 2011 amendments altered the secondary-injury rule. But after the amendments, all injuries, including secondary injuries, must be caused primarily by the work accident. In this case, the prevailing evidence proves that Buchanan’s hip and back injuries were a result of her limping, which was a result of her ankle injury.

STATUTE: K.S.A. 2015 Supp. 44-508(f)(2)(B), -508(g), -556(a), 77-621(c)(4), -621(c)(7), -621(d)

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SOVEREIGN IMMUNITY—TORT CLAIMS ACT
JONES V. KANSAS DEPARTMENT OF CORRECTIONS
LEAVENWORTH DISTRICT COURT—AFFIRMED
NO. 113,270—AUGUST 3, 2016

FACTS: Jones is a Kansas prison inmate. He previously obtained a monetary judgment in federal court against a former prison guard, but Jones was unable to collect any of the judgment, and he could not locate the former guard or any of the guard’s assets. In an attempt to collect on his judgment, Jones filed an action against the Kansas Department of Corrections, the guard’s former employer. Jones first filed the action in federal court, where it was dismissed for lack of jurisdiction; the Eleventh Amendment to the U.S. Constitution prevents a federal court from entering a monetary judgment against a State for past conduct of the state’s employees. So Jones filed his suit in state court, again attempting to collect his judgment. The claim was dismissed for lack of jurisdiction, without any elaboration. Jones appealed.

ISSUE: Whether state court may enter a monetary judgment against a state agency for conduct of a former state employee

HELD: Neither the Department of Corrections nor the State of Kansas were (or could have been) defendants in Jones’ federal court action against a former guard—the Eleventh Amendment to the U.S. Constitution precludes this. Although this action was brought in state court, Jones still cannot prevail. Mandamus is not an appropriate vehicle for action because Jones is not trying to get a public official to perform a job task. And the Kansas Tort Claims Act does not waive sovereign immunity, even if Jones would have filed his federally-based claim in state court.

STATUTES: Eleventh Amendment to the U.S. Constitution; 42 U.S.C. § 1983 (2000); K.S.A. 75-6109, -6116(g)

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GUilty Plea—Habeas Corpus—Res Judicata
WOODS V. STATE
SEDGWICK DISTRICT COURT—AFFIRMED
NO. 114,213 – SEPTEMBER 2, 2016

FACTS: Under a plea agreement, Woods agreed to plead guilty to one count of second-degree murder. After conducting the necessary inquiries, the district court asked Woods for a factual basis for the guilty plea. Woods addressed the court and said, "I shot and killed" the victim. The district court accepted the plea and found Woods guilty. Woods tried to withdraw his plea prior to sentencing but that motion was denied. That denial was upheld on appeal. Woods

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filed a K.S.A. 60-1507 motion in district court which was denied. That denial was upheld on appeal. Woods filed a second K.S.A. 60-1507 motion in district court in which he again claimed that he was given ineffective assistance of trial counsel. Woods explained that manifest injustice – a claim of actual innocence – excused the successive filing and required relief on his behalf. The district court disagreed, finding both that no manifest injustice existed and that Woods’ claims were barred by res judicata. Woods appealed.

ISSUE: Whether a successive K.S.A. 60-1507 motion is barred by res judicata and waiver

HELD: The issues raised by Woods in this K.S.A. 60-1507 motion have been raised on two prior occasions, and he is barred by case law from raising them a third time. Woods attempts to distinguish his case by claiming actual innocence. But a collateral attack may not be used to challenge a valid guilty plea.

STATUTE: K.S.A. 60-1507

LANDLORD AND TENANT—STATUTORY INTERPRETATION—SUMMARY DISPOSITION
NAUHEIM V. CITY OF TOPEKA
SHAWNEE DISTRICT COURT – REVERSED AND REMANDED
NO. 114,271 – SEPTEMBER 2, 2016

FACTS: Nauheim and another man were long-term tenants of a business property. After being approached by the City, the landlord agreed to sell the property to the City in connection with a drainage project. During purchase negotiations, the City made it clear that it needed the property to be vacant before the City acquired title, so that the City would not have to exercise its eminent domain power and, consequently, pay relocation expenses. The tenants relocated without the City exercising eminent domain power. But the tenants filed suit against the City to recover relocation expenses that were incurred when the landlord cancelled the leases on the property. The parties filed competing motions for summary judgment and the district court found in the City’s favor, concluding that the tenants failed to prove two prerequisites for recovery of relocation expenses. The tenants appeal.

ISSUES: (1) Are tenants “displaced persons” as that phrase is used in K.S.A. 2015 Supp. 26-518, (2) was the property acquired “in advance of a condemnation action”

HELD: The relevant question is whether the tenants were displaced because their relocations were a “direct result” of the City acquiring the property owned by the landlord. The uncontested facts show that the City’s purchase of the property was contingent on the property being vacant at the time of closing. The tenants’ forced relocation was a direct result of the City’s acquisition of the property, making them displaced persons. But in order to be entitled to relocation benefits, the tenants must prove that the City either threatened or took affirmative action towards condemnation. After viewing the evidence, there are genuine issues of fact as to whether the City acquired the property in advance of condemnation actions. Given the uncertainty in the record, the matter was remanded for further findings of fact.


CRIMINAL

CRIMINAL PROCEDURE—EVIDENCE—FOURTH AMENDMENT
STATE V. WISSING
RENO DISTRICT COURT—REVERSED AND REMANDED
NO. 115,235—JULY 29, 2016

FACTS: Officers arrested Wissing on outstanding warrants, then escorted him into a house to allow him to talk to his mother. While handcuffed, Wissing removed his wallet and placed it on a dresser. Officer retrieved and searched the wallet. Wissing was charged with drug offenses based on evidence found in the wallet. Wissing filed motion to suppress, arguing the search and seizure of his wallet was not incident to arrest because officers neither feared for their safety nor sought to preserve evidence of crime for which Wissing was arrested. District court granted the motion. State filed interlocutory appeal.

ISSUE: Search incident to arrest

HELD: Fourth Amendment principles apply because no Kansas statute governs scope of lawful searches incident to arrest. State did not need to prove that officers’ safety was in jeopardy, or that officers believed their safety was in jeopardy, to have authority to seize personal property within Wissing’s immediate control. As summarized in Birchfield v. North Dakota, 136 S. Ct. 2160 (2016), search-incident-to-arrest authority is strictly categorical, and is not based on a case-by-case approach. Wissing’s arrest on outstanding warrants was lawful, the search was substantially contemporaneous with Wissing’s arrest, and wallet was in an area accessible to him. No authority supports argument that intervening act of Wissing removing wallet after his arrest converted the wallet to a non-searchable object. Reversed and remanded for further proceedings.

STATUTE: None
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