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With Respect and Love
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Summer Reading List
by Shelby L. Lopez
Executive Director, KBA & KBF

As the song goes, “Summertime...and the livin’ is easy.” What could be better than a warm summer day and a good book?

According to a New York Times article published August 3, 2016, people who read books live longer! The article cites a study of 3,634 people over 50 who answered questions about reading. The study found that, compared with those who did not read books, those who read for up to three and a half hours a week were 17 percent less likely to die over 12 years of follow-up, and those who read more than that were 23 percent less likely to die. Book readers lived an average of almost two years longer than those who did not read at all.

Well this is good news indeed. I am well on my way to a long life surrounded by piles and piles of books. And this Summer, as my first Summer in 20 years not traveling across the state to watch my boys play baseball, the books are piling up so I thought I’d share a few of my favorites with you.

“Tales of Two Americas: Stories of Inequality in a Divided Nation” by John Freeman. I recently accompanied my youngest son to his freshman orientation at KU. This book was given to all the freshman students as the 2019-2020 KU Common Book. I was intrigued by the title and picked up a copy in hopes of engaging my son in conversation and dialogue around the complex issues explored in the book. If you’re like...
me, you may be reading two or three books at the same time, each with a different purpose. This book goes in the category of “Change My Perspective,” and it delivers on that account. While I enjoy the diversity of the topics and genres, it’s not a book that I am reading for pleasure. It’s a provocative collection of 36 stories, essays and poems that highlight class, socioeconomic and racial inequity in today’s society. Many of the stories offer an eye-opening glimpse into life through the eyes of another and lead the reader to the inevitable conclusion that America is broken and there is no one “right” solution. I’m still waiting for my son to dig into the book (first day of class is still more than a month away) but I am looking forward to hearing his perspective on this important topic.

“Leaders Who Ask: Building Fearless Cultures by Telling Less and Asking More” by Corrinne Armour falls into the “Expand Knowledge” category. I’ll admit to being drawn to the title as it reminded me of the line in a “Hamilton” song in which Aaron Burr reminds Alexander Hamilton to “Talk less, smile more.” Asking questions helps us gain a deeper understanding and develop innovative solutions, but as we get older and move up in our careers, too often we stop asking questions. Maybe we fear looking weak or unsure, but in this book the author reminds us that if we keep asking powerful questions, we will keep finding better answers. The book is a great handbook for enhancing your skills in asking probing questions in a manner that builds engagement and boosts productivity.

“Eleanor Oliphant is Completely Fine” by Gail Honeyman. This one is just a good poolside companion that gets filed in the “Reduce Stress” category. It’s a bit of a dark comedy with an unexpected beauty and a tender love story. Eleanor is the endearing and eccentric title character who is heart-breakingly lonely and longs for even the tiniest of human interaction. She lacks social skills or any sort of filter, which leads to her being blunt in a way that many of us wish we could be sometimes; when asked by a potential suitor if he could buy her a drink Eleanor responds, “No thank you, I don’t want to accept a drink from you, because then I would be obliged to purchase one for you in return, and I’m afraid I’m simply not interested in spending two drinks’ worth of time with you.” As the story unfolds, the reader learns of Eleanor’s dismal childhood which has undoubtedly contributed to her somewhat distorted view of the world and difficulty in understanding human emotions. Despite her quirks and flaws, she will steal your heart and you will fall in love with Eleanor from page one.

What are you reading?
The 2nd Annual KBA Photography Contest

Photos & signed release to be submitted to: editor@ksbar.org
All entries MUST be in by midnight, Sunday, Sept. 29, 2019

Theme:
What a Wonderful World

Requirements:
- Open to KBA member attorneys only
- Photos must have been taken in the 2019 calendar year
- MUST be submitted in digital, hi-resolution format (300 dpi or better)
- Photographers MUST complete personal info sheet AND sign and submit a release for photos submitted.
- A maximum of one photo per category may be entered
- Photographer will determine the category in which each photo will be judged.

Categories:
Amazing Animals - pets, domestic, indigenous or exotic, any kind, anywhere
Spectacular Structures - buildings, bridges, towers, macro or micro, anything man-made
Lavish Landscapes - at home or abroad, land, sea or city, the sweeping sights that make you gasp
Memorable Moments - from the gaze of a grandchild to a family graduation or wedding to a celebrity encounter or any moment that moved you
Arts and Athletics - bring to life your favorite sport, capture a breathtaking sculpture or dance, share your own achievements in sports and the arts

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The 2nd Annual KBA Photography Contest

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A Few Good Lawyers

By Mira Mdivani

As I am beginning to serve this year as your President, I have been reflecting on the legal profession and how lucky we are to have each other as friends and colleagues.

Bad lawyer jokes?
I don’t know what they are talking about.

Maybe it is just my luck, but lawyers who are my colleagues and friends are hands down awesome: intellectual, caring, and kind. Bad jokes about lawyers abound, yet the very person who tells them will usually comment about her own lawyer: “My lawyer is actually great.” This is because most of the time personal experience with lawyers is very positive. My experience with lawyers is that they are amazing. Lawyers ensure that we live in a civilized country with due process; lawyers are volunteers and leaders in our communities, and they are great at supporting colleagues in good and bad times.

Lawyers Ensure We Live in a Civilized Country with Due Process

What do tyrants do when they want to do away with due process? First, they “kill all the lawyers.” This is because lawyers understand and uphold the law. Private lawyers, judges, government lawyers, public defenders, in-house counsel are all officers of the court. Whether we hold office or do private work on behalf of a specific client, lawyers ensure there is less chaos in our unpredictable lives. Lawyers protect citizens from government abuse, ensure we can freely speak our mind, and work hard to ensure justice prevails for everyone.
Lawyers Lead, Volunteer, and Care for Their Communities

Twenty-six out of 45 Presidents of the United States are lawyers. ...If you would like to increase your chances of becoming a U.S. President, get a law degree! Not everyone can be or wants to be President, but an overwhelming majority of lawyers do feel a calling to support and care for our communities in other ways. Lawyers often serve on boards of non-profit organizations and provide pro bono services that make our communities better. My lawyer colleagues serve on boards of local shelters for survivors of domestic violence, CASA boards, college and school boards, local chambers of commerce, and many community and art organizations. You probably have served on a few boards yourself, or know other lawyers in your community who volunteer and lead. We are uniquely situated to be supportive of our neighbors, and we show up to do it.

Are We Our Colleagues’ Keepers?

Our need to always be involved and advocate, our relentless schedules, overtime hours, pressure to win and to perform miracles for our clients while taking care of our families and dealing with personal setbacks or health issues ... sometimes it is just too much. We can make mistakes and have really bad days. While lawyers score off the charts on I.Q. and autonomy—which is great for our clients because we get things done—as a group, we are extremely low on sociability and resilience. Throw in a bit of perfectionism and high expectations imposed on us by society, clients, and ourselves, and the combination sometimes becomes a perfect recipe for mental health disasters. Lawyers sometimes catastrophize and internalize professional setbacks, and they don’t talk about it.

It is because of this that I strongly believe we are our colleagues’ keepers. I have learned from my service on the Kansas Board for Discipline of Attorneys that most lawyers who get in trouble are not bad people or bad lawyers. They need help and are not reaching for it. There is perceived stigma about getting professional help, even though more and more lawyers are open about seeing therapists lately. Remember that we are all in the same boat. We belong to the Kansas Bar Association because we are interested in and care about our colleagues. We are here for each other in good and bad times. If you see someone is down, do make time to slow down and listen to your colleague. Take them to lunch, invite them to share a meal with your family or to the ballgame. Invite them for a run or a walk and just talk. Share a number for KALAP or a local therapist. If you are the one who is down, reach out for support to your professional brothers and sisters. I have done this in the past couple of years while dealing with personal setbacks. The amazing lawyers at my firm and the bar have helped me see the light at the end of the tunnel, keep my head above water and get really strong again. I am back to doing what lawyers do best: taking care of our clients, volunteering in my community, and protecting due process. And also, taking care of my colleagues. Because we are each other’s keepers.

Mira Mdivani
practices business immigration law in Overland Park. Mira is thankful to her colleagues at the Mdivani Corporate Immigration Law Firm, including Danielle Atchison, Leyla McMullen, and Mason Ellis, for supporting her ability to serve as 2019-2020 President of the Kansas Bar Association.

Mira loves art, music, dancing, running, volunteering to help others, and she loves lawyers, all of which help her stay away from depression and have a meaningful life.

mmdivani@uslgalimmigration.com

About the KBA President

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KALAP KANSAS LAWYERS ASSISTANCE PROGRAM
Re-establishing Our Purpose, Re-engaging Our Members

By Mitch Biebighauser

I am honored to serve as the President of the Young Lawyers Section. Over the several years I have worked with the YLS, I have watched my own work and the work of my colleagues build strong institutions.

Every year, our section selects law students to work with judges across the state in a summer internship program. Our summer internship program has received stellar reviews from judges and participants. We aim to provide judges with a reliable, eager resource—and an outlet for their many years of sharable wisdom. We aim to provide law students a window into the process and evolution of law on the ground across the state of Kansas, as it happens—far removed from the gilded halls of the fine law schools of our state. For several years, the program was managed by our now President-Elect Kate Marples-Simpson; I am excited that the program will be picked up this year by new board member Crystal Ellison.

Every year, our section hosts the KBA YLS High School Mock Trial Program. Our program places high school students in mock jury trials. The trial issues are complex, including true evidentiary conundrums, factual discrepancies and legal ambiguity. Each year, we watch as one school eliminates a dozen or more competing schools to advance by elimination competition in Topeka and travel to the National High School Mock Trial competition. For the last few years, our program was run by the incredibly dedicated Casey Walker and Bill Walberg; it is now in the hands of Stephen Netherton, who assisted with the program last year.

Every year, our section hosts a CLE event at Sporting KC. The event offers a unique CLE opportunity and provides discount tickets to a legal community block of seats at the Sporting KC match following the program. New board member Lauren Bryne will coordinate the match-and-learn this year.

Every year, we build contacts with our colleagues across the nation. Our board seats an ABA liaison position, a member who travels to national ABA programing and has traditionally served as our statewide delegate to the ABA YLD. Our previous liaison and delegate, Rick Davis, who now serves as our secretary/treasurer, launched a resolution to modernize the make-up of the YLD by expanding eligibility to members with diverse backgrounds. Our incoming liaison, Joshua Decker worked closely with Rick over the past year to build contacts and connections before stepping into the role this year.

We regularly communicate with our membership by written journal. Over the last year, returning board members Sarah Stula and Lauren Hughes worked hard to blaze a new format for our newsletter, and we are excited to offer a new platform to our readers over the course of the coming board year. Communication is key to engaging our membership, and we look forward to reaching them in a whole new way.

Last year, our pro-bono liaison, Christine Campbell, undertook a massive project to update the disaster response program for the state of Kansas. Administratively, the duty of coordinating the legal response to disasters across our state, via the ABA, falls to our ABA YLD delegate. Because that delegate sits on our board, Christine, with the help of a vast legal network, has led the state in preparing to teach Kansas lawyers how to respond in times of crisis—between this year’s tornadoes and flooding, her seemingly remote work could not have
come at a better time. Our incoming liaison, Pablo Mose, is eager to help finalize the program and spread the word and materials.

Last year, we launched a brand new statewide mentorship program. We nearly simultaneously held multiple breakfast meetings across the state to interface leading attorneys with Kansas YLS members. This year, bold new social programs will fall on the shoulders of new board member Sarah Balders. I am very proud of the KBA YLS accomplishments. The state of our leadership and programming is as strong as I have ever known it. However, I turn to this year with a critical eye. Although our board has worked hard to build our programs, I am left asking why. What is the purpose of our section? If it is to serve our membership, it’s not clear the bedrock programs of our section do so. Our mock trial program offers a unique opportunity to high school students, but not our members. Our externship program offers a unique opportunity to law students, but not our members. We work hard to communicate with our KBA Journal, but only have one CLE to advertise each year. For that reason, this year I hope to critically reevaluate our purpose.

If you read our website (which you can only do if you’re already a member), you would think:

If you’re interested in networking with other Kansas lawyers - new and experienced, the YLS welcomes you. If you want to advance your career with access to programming designed for new attorneys, networks that connect you across the state, and services that grow your practice, the YLS welcomes you. And if you want to influence the KBA’s policies and programs for new practitioners, the YLS welcomes you.

However, we offer few KBA facilitated social programs, so it’s not clear that our section offers networking with other Kansas lawyers. We offer one non-practice-focused CLE a year, so it’s not clear that we offer programming to advance careers or offer services to grow our members’ practices. Attending the KBA Annual Meeting, I saw very few of my section colleagues and even fewer who were not on the YLS board, so it’s not clear that the YLS does influence the policies and programs of the KBA.

The measurables should be clear. At the KBA Annual Meeting, the young lawyer turn-out at the only young lawyer sponsored event (which offered the hallmark draws of free beer and “networking opportunities”), by official presidential headcount, was six – six YLS members attended the premier YLS social event at the KBA annual meeting. That should be unacceptable to the YLS and unacceptable to the KBA. The YLS is nearly the size of all other sections combined. It is three times larger than the next largest section and fifty times larger than the smallest. However anecdotal my view may be, our active membership is nearly nil.

Yet, it appears we do little to determine numbers. Historically, we’re not tracking any statistics on whether law student interns in our judicial placement program become dues-paying members. We’re not tracking statistics to determine if we’re putting YLS members in the room with district court judges to revel in the advocacy skills of high school mock advocates. We’re not tracking our active journal readership. We’re not tracking whether YLS members attend the Sporting KC CLE.

That is to say, we’re not tracking why. The YLS should be investing its volunteer resources and member dues in programs because they serve our membership. If our membership is not showing up, then I am left to wonder.

Part of our membership is illusory—that is to say, every newly admitted Kansas attorney is offered a KBA YLS membership for free. By the end of their free year, every newly admitted Kansas attorney should be eager to renew their membership in the KBA. The KBA YLS mission must be to offer something of unique value to every KBA YLS member in their first year that brings them back, that engages them with the KBA, and makes them a partner in the leading statewide bar association. I do not know, as I begin this year of critical reflection, whether our programs are doing that.

There are several ways to find out. This year, I will launch programs designed to get into the heads of our YLS membership. We’ll track our membership engagement by the numbers. We’ll offer surveys to learn what our membership is seeking. We’ll interview our members to engage them in the process. We’ll press KBA leaders to bring YLS members to the table. We’ll identify deliverables—concrete benefits we can offer members. The KBA YLS offers strong programs and has dedicated volunteer leaders, but I don’t know that I could tell you why to be a member of the KBA YLS. I suspect that if someone as dense as I am can answer that question for themselves by this time next year, then there won’t be much doubt.

About the Author

Mitch Biebighauser is an Assistant Federal Defender for the District of Kansas in Wichita, where he practices criminal defense of indigent individuals charged with crimes by the federal government. He was previously in private practice at Bath & Edmonds, P.A., in Overland Park, where he practiced local, state, and federal criminal defense.

mitch_biebighauser@fd.org
I am handling serious injury cases across the state, many of which come from other lawyers. I appreciate your confidence and friendship and would be happy to discuss any truck, car or significant injury case. Let’s work together, I pay referral fees where appropriate.

DAVID REBEIN
Kansas Trial Lawyer
by Susan Saidian

Deeply Honored to Serve

Karen Couch standing before the map on which she tracks what countries Catholic Charities of Northern Kansas’s clients are from each year!

It is a great honor to be the new president of the Kansas Bar Foundation, and I look forward to letting you know the many ways the foundation you support impacts the lives of Kansans. The mission of the KBF is

...to serve the citizens of Kansas and the legal profession through funding charitable and educational projects that foster the welfare, honor and integrity of the legal system by improving its accessibility, equality and uniformity, by enhancing public opinion of the role of lawyers in our society.

Consistent with that mission, the IOLTA grant program provides opportunities for organizations who provide legal services to underserved populations through grants. One notably underserved population is comprised of those who need legal services in connection with immigration matters—particularly those who are qualified for legal status but find themselves unable to or afraid to move forward with an application to adjust status.

Language barriers and the inability to secure stable employment or safe housing are just some of the barriers faced by immigrants who qualify for legal status but who must first complete paperwork and initiate an application with the United States Citizenship and Immigration Services. But that is not a simple task.

First, there are myths and misconceptions about the immigration process in general. With the current political climate, immigrants who do qualify for legal status are afraid to start the process.

Second, immigrants who do not have legal status are at risk of being taken advantage of by various groups. We have all seen media reports of employers whose workforces are raided in which the immigrant employees have been paid less than those with legal status, or worse, forced to work in unhealthy and dangerous conditions. Immigrants who do not have legal status also risk being scammed by individuals who claim to have expertise and/or authority to assist in completing USCIS forms, only to be strung along and having to keep paying and paying for the promise of legal status that does not materialize.
Another barrier is simply the sheer volume of information required for an application to adjust status, the length of the forms and the complexity of the accompanying instructions. Like tax forms (for those of us who assiduously avoid them when we can), the language is often “legalese” and might as well be Greek to some for whom English is a second language.

Catholic Charities of Northern Kansas’s social policy is to welcome the immigrant, to help the vulnerable and to reduce poverty. It received a $5,000 grant from the IOLTA program for the 2018-2019 grant year.

The immigration program administered by CCNK was started by the Sisters of St. Joseph in 1995. The program assists immigrants in obtaining Lawful Permanent Residence (LPR) status and becoming U.S. Citizens. The organization is accredited by the Board of Immigration Appeals and has offices in Salina, Manhattan and Hays. The service area includes 31 counties, roughly the area north of I-70 and west of Manhattan.

Through the years, it has helped thousands of individuals obtain legal status and obtain legal status for family members. Karen Couch, the attorney who heads up CCNK’s immigration program, holds 20-30 client meetings each month to:

1) determine eligibility for adjustment of status,
2) explain the process,
3) advise clients regarding completion of forms, and
4) review documentation.

Ms. Couch assists in the completion of applications for individuals or families for at least 18 different processes, from reviewing documentation regarding asylum claims and helping assemble the documents needed by Homeland Security, to preparing clients for citizenship interviews. Typically, it can take from six to 24 months for an immediate relative of a U.S. citizen to achieve Lawful Permanent Status. The citizenship process, from filing the application to participating in the swearing-in ceremony, usually takes 11-12 months.

In 2018, CCNK helped approximately 284 households from 38 countries apply for adjustment of status and other immigration-related services with the result that households with successful petitions face a more certain and positive future.

The grant CCNK received from IOLTA was used to provide additional training for staff, purchase software to enable the office to become more efficient, and fund scholarships for applicants to participate in English as a Second Language programs. Such programs allow applicants to become proficient in English in order to take the U.S. Citizenship test. Ms. Couch expressed gratitude to the KBF for the grant, saying that it improved her office’s ability to facilitate that vulnerable population in obtaining immigration status that allows them to continue being productive, valued residents of Kansas.

Those services fit squarely within the mission of the Kansas Bar Foundation to provide legal services to underserved and vulnerable populations. I look forward to sharing more about the programs supported by the KBF in the upcoming year.

About the Author

Susan Saidian attended Millsaps College and Washburn University, obtaining her bachelor’s degree in 1982. She graduated from Washburn University School of Law in 1988. She spent most of her years in private practice in the area of bankruptcy, working for both consumer and business debtors, creditors and although she found all areas rewarding, she particularly enjoyed her work for consumer debtors. She is a member of the American Bar Association, Kansas Bar Association, Wichita Bar Association, Kansas Women Attorneys Association, and has served on the board of CASA of Sedgwick County. She has also served on the Kansas Bar Foundation’s IOLTA Committee. She is now in-house counsel at Line Medical, and lives in Wichita with her husband, David.

sgsaidian@gmail.com
Mandatory Technology CLE—Yes or No?
by Larry Zimmerman

Florida and North Carolina now require lawyers to complete mandatory technology CLE each reporting period. Florida requires three hours per three-year reporting period and North Carolina requires one hour per year. More states are expected to join over the coming years, and the idea is even circulating in Kansas.

There is no debate that technology plays a significant role in the practice of law. Further, there is no reasonable debate that technological competence is important to advancing and protecting client interests and firm profitability and longevity. There is, however, some rational debate over whether mandating one or more CLE hours will serve to increase technological competence. Following are some arguments culled from that debate:

Proponent—Mandatory Technology CLE

The Rules Require Competence

In 2014, the Kansas Supreme Court adopted changes to the Kansas Rules of Professional Conduct which incorporated clarified and expanded duties of lawyers to develop and maintain technological competence. The broadest of these changes is in Comment 8 to Rule 1.1 requiring lawyers to “…keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology….”

Because the Rules require technological competence, mandating technology CLE would be a logical next step. Just as mandatory ethics CLE exposes lawyers to cases, hypotheticals, and opinions they might not willingly investigate on their own, mandatory technology CLE would help drag the Luddites into the digital era and expose them to coursework they might not choose voluntarily. Mandating ethics CLE is, in fact, something we have done before.

Competence Helps Clients

There is legitimate concern about the prevalence of self-represented litigants and unassisted parties in our legal system. Those individuals are usually overwhelmed and often make decisions that impair the full realization of their rights. Additionally, other actors in the legal system—and tax-payers, more broadly—often have to underwrite those individuals’ on-the-job learning of the law.

This self-represented issue is often linked to the costs of legal representation. One theory asserts that technological competence helps lawyers cut the cost of providing legal services and, therefore, reduces the lawyers’ costs to clients. If this theory is correct, then technological competence from lawyers would be one low-cost means of addressing the self-represented party issue.

Technology Helps Lawyers

There is growing understanding that lawyers are not the healthiest people. The pressures of the profession, dogged competition, and the financial demands of practice combine to expose lawyers to a range of professional dangers including burnout, depression, substance abuse and even suicide. The hopeful suggest that technological competence can help.

If a lawyer is required to attend technology CLE, two potential benefits are suggested: first, the overall fear of technology may be mitigated. Lawyers forced into a CLE may see that technology is not the dark art they feared and find their existing legal skills make them well-suited to understanding technology. Second, learning even a few technology tricks and skills here and there may be enough to take a burden off and provide a lawyer with some much need breathing room.

Opponent—Mandatory Technology CLE

Tail Wags the Dog

The technological competence requirement is a small subset of the Kansas Rules of Professional Conduct. (Technological competence is also a small subset of another small subset of the Rules—law practice management.) It is problematic from a substantive and a messaging perspective to place one small subset of the Rules on an equal compliance footing with the Rules themselves.
Technological competence may certainly arise as a component of issues of confidentiality, safekeeping, diligence, or communication, but technology is merely a backdrop to those primary duties. Keeping technological competence closely integrated with the Rules focuses the attention where it belongs—on the duty itself and not on some app or service only tangentially relevant to the Rule.

Because technological competence is a subset of the Rules, we can have technology CLE for ethics credit already. Some examples which could be taught now:

- training on encryption to protect data transmitted in email, on removable drives, and on laptops or phones (Rules 1.6 and 1.15);
- email training on creating folders, configuring rules, and implementing notifications to address client and court communications (Rules 1.4 and 1.3); and
- training in accounting software to maintain trust and operating accounts (Rule 1.15).

The opportunities for actual technology training specifically targeted to primary duties under the existing ethics rules is possible now. Additionally, technology training can be approved under the Law Practice Management programming category already in place.

**Placebo**

A one-hour CLE credit requirement for technology training underestimates the difficulty of obtaining technological competence. I once took formal classroom training in Microsoft Word. It was an all-day course for Level 1 proficiency that barely scratched the surface of what I would need to configure and use Word for the office. (And some of my knowledge “expired” with the next-released version of Word.)

Suggesting that just one hour of CLE training per year in technology will put a dent in either client access to legal services or in lawyer well-being is grossly over-optimistic. It is more likely that mandated technology training would be used to show that the profession is doing something serious without being serious at all about doing something.

The discussion about mandatory technology training is refreshing because it evidences a growing understanding that technological competence is important for overall legal competence—to too important to address unmoored from our broader duties.

**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.

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You’re gonna like the way you look....
I’ve been critiquing student writing for fourteen years now. But providing feedback to students is different from providing feedback to colleagues or junior attorneys. This column will briefly address how to give feedback on written work in an efficient and timely fashion and also how to manage the impact of that feedback.1

Managing Impact

Let’s start with the slightly easier topic — how to manage the impact of feedback so that the person receiving the feedback doesn’t feel judged and can truly hear the suggestions you offer. First, have an initial conversation to frame the feedback in advance. Depending on how well you know the person, introduce yourself and your task in reviewing their work. Explain that learning to write well is a lifelong endeavor and that the people who do well are those who can learn from the feedback they receive.

Second, assume good faith. Assume that the other person is working hard, has tried their best on this assignment and is open to your feedback.

Third, identify things that were done well. Some examples: “Your work is well researched.” “You have a lot of great ideas here.” “You understand the law and the issues, but they need to be presented in a more structured way.”

Finally, frame constructive comments positively. Instead of “This argument is weak because . . .” try: “This argument could be strengthened further if . . . .” Couch comments in terms of “the reader” — “it would help the reader understand this point if you could. . . .” or “the reader doesn’t know xyz just yet . . . .” Another useful tool is to frame positive comments in terms of the writer, that they did this particular thing well (“you drafted a strong thesis sentences here”). For less positive comments, focus on the argument or the writing or the document, but not the author (“this paragraph needs a stronger opening sentence to tie it together”).

Ultimate Goal

In terms of effectively giving feedback, you will first need to determine your ultimate goal. Are you providing feedback by giving your reaction, usually in the form of some comments for guidance, but not doing it for them? Or are you editing the document by actually making changes throughout?

Each approach has pros and cons, and you will likely want to use some combination of the two. Editing can be efficient, but the writer may not learn as much if you don’t explain why you are making certain edits.

Feedback, on the other hand, explains why. It provides a more detailed discussion about what the problem is and how it can be fixed. Feedback is more geared toward learning, but it can be less efficient. If you don’t do the edit for them, you’re likely to want to see that document again to see how the attorney implemented your feedback.

With my students, where we have the time and where it’s important pedagogically for them to do the revising work, I rely almost exclusively on feedback, and I edit only when I want to show them how to do something. I might, for example, point out that a paper has a problem with run-on sentences generally and identify or even correct one such sentence, but I wouldn’t edit every run-on sentence.

With my colleagues who are working on articles, to the extent I can, I edit and I provide an explanation of why I made

by Emily Grant
that change. It’s much more expedient, and frankly, I’m not expecting them to be learning by doing.

My guess is that you would want to employ a combination of edits coupled with feedback, but that may vary based on particular circumstances.

Triage

The next question you’ll need to consider is where you want to focus your feedback (or editing). When your day is busy, you can’t necessarily comment on everything, which would overwhelm the recipient anyway. So you’ll need to focus on the most important problems first.

Consider starting with whether the analysis is legally accurate and well-organized. For me, those two things happen at the same time. Theoretically, you can divide one from the other. But for me, I can’t review accuracy without also thinking about whether the presentation of the law follows the structure and content of the law.

Focus next on writing style and flow. Evaluate things like strong subjects and verbs, readability, conciseness. How does it hang together? Does the relationship among ideas make sense?

Finally, address mechanics like grammar, punctuation, citation, formatting, and compliance with local rules.

Triage can be difficult for me. I want to correct everything, and as an educator, I think my students need to know about all of the errors. But that can be overwhelming. And frankly, until the organization and content are in place, it’s not worth the time to edit for style, flow, or typos.

Triage is easier if you first read or skim the document without marking anything up, just taking light notes about what the issues might be. Once you’ve got a sense of the whole, then you can go back to provide feedback or edit the document.

Techniques

Finally, I have a few technical tips for giving feedback or editing. Provide specific comments. Explain why you’re making or suggesting a change, something more than “awkward” or “confusing.” This applies to good feedback too—write something more than “good” or “yes” so the writer knows what to do next time.

Organize your comments. Consider providing summary comments at the end or in a separate cover letter about the document as a whole—about legal accuracy and organization. Use margin comments for writing style and flow. Maybe use a separate color of pen for the technical edits like citation and grammar.

Lastly, consider creating a checklist if there’s a particular type of document that you review frequently; it can help you stay focused and also be attuned to common trouble spots. Providing feedback electronically with comment bubbles or highlighting can also be a time-saving technique.

Legal writing is a skill that is eminently learnable. Regular feedback and editing from colleagues can be a wonderful tool to help attorneys improve. Although time-consuming, it’s a valuable experience, and as the reviewer, you can focus your efforts to be efficient and well-received.

About the Author

Emily Grant teaches Legal Analysis, Research, and Writing at Washburn University School of Law. She is certainly open to feedback or editing on this piece or any other.
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1. With thanks to Dan Barnett, Jane Gionfriddo, Joan Blum, Joan Rocklin, and the Legal Writing Institute Critiquing Workshop.
With Respect and Love, a Tribute to My Father, a Kansas Lawyer

by Matt Keenan

Most of us have reached that stage in life when we must say goodbye to one or more of our parents. With that inevitability, we come to understand the difficulty of a singular experience that usually follows the funeral, the notes and the long ride back home.

What I’m talking about is the process of inventorying and then donating your parent’s clothes. For me, it happened on an otherwise uneventful Saturday morning in April, in Great Bend. My sisters—Kate and Beth, brothers—Marty and Tim—and I gathered in Dad’s bedroom in his home at 3616 17th Street. Our mom had predeceased Dad by 16 years. This was it.

Dad’s closet wasn’t a walk-in; here was nothing “California” about it. You would not see it featured on one of those design shows on Channel 983 on the Dish Network. It sported louvered doors that fold back horizontally. The style found in Mike Brady’s bedroom on the Brady bunch. They were wildly popular when Apollo 11 made history. The size, by contemporary standards, was very small. Yet, as we folded back the doors and surveyed the inventory, it looked enormous.

In no time, the king-sized bed was draped with Hickey Freeman suits, Brooks Brothers sport coats, Joseph Banks sweaters, Haggar slacks, Nordstrom dress shirts and Rockport shoes. The ties showed style. The best ones slipped away—those with private labels from Halls, Dillard’s, and Macy’s—now hanging in a closet that most certainly does have a California flair. Mine. But I digress.

Dad’s wardrobe made a statement. Emblematic of 65 years working his craft in a city where he loved doing what he did, every day. Where, for most of those years, he practiced with his brother, Bob, in a modest one-story brick building at 1815 Broadway—directly south of J.C. Penney, a half-a-block to the east from the courthouse square and a half-a-block west of St. Rose Church. His kingdom.

Dad was part of the Greatest Generation. And if you fought for our freedoms, you should absolutely dress like that victory
had meaning. Every single day was an opportunity to prove he was going places. I can never recall a day when he let things go. He was always clean shaven, kept his hair off his ears and always had a plan. He never, ever, in his 89 years of life, was ever seen in sandals, tank tops or jean shorts.

(He once wore a toga. But that was a costume party, and those photos were, um, lost in a fire.)

On his top shelf were fedoras and Isotoner leather gloves and those hats that Sean Connery wore in “The Untouchables.” Those accessories, to be sure, did not find their way to the charity bin.

I’ve heard some of my friends describe their Dad’s clothing as having a certain scent, like Old Spice, or in some cases cigarette smoke. Dad’s closet was free of any aromas. Not that he was antagonistic to men’s cologne. I surmise that after mom’s passing it wasn’t important to him anymore. The closet had flashlights. Bibles. Funeral cards. Several robes. And those slippers you wear to pick up the newspaper, which, once procured, allows you to sit in your Lazy Boy to read about your clients. AKA, the obituaries.

Yes, Dad was old. He was also old school.

But there was one thing we found in almost every suit and sport coat pocket.

This.

Dad had a very successful practice. Like John Houseman used to say in the Smith Barney ad, Dad made money the old fashioned way. He earned it.

Some millennials may find this success hard to understand. After all, Dad never bought TV ads during Judge Judy. He never sat on a bull with a scowl while a 1-800 number scrolled along the bottom. He never stood on top of a semi, boasting, “One call is all.” He didn’t depend on Google reviews or Yelp.

Dad worked hard. He went to every funeral, baptism and wedding in Barber and Stafford counties. Mostly among the Catholic families, but not exclusively. He was authentic. He was interested and interesting. One of his frequent haunts was the Knights of Columbus, which in Great Bend is a brick building on the southeast side of town. Back when the state’s liquor laws required private clubs, the Knights was the VIP club for the common man. That was his sweet spot.

And at his funeral, we met many of those regular people. Some we knew. Others we didn’t. “Your Dad helped me” was a refrain we heard a lot. No one said, “I was in a car accident. He got me a thousand dollars.” No one said, “He was just like the ad—a bull!”

Dad went to every KBA convention. He was a member of SOABs.

But more than anything, he was just like pretty much every other Kansas attorney I’ve known. He was a gentleman. A professional. He was wise. And modest.

So, if you see me in court or at a bar meeting and my tie catches your eye, if it’s made of silk, features dark dues in a Foulard pattern, perhaps it will spark a fond reflection of its previous owner. And, ideally, our interaction will be a more worthy tribute to him.

Larry Edwin Keenan.

Godspeed.

About the Author

Matthew Keenan has practiced with Shook, Hardy & Bacon LLP, Kansas City, Mo., since 1985.
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Gloria Farha Flentje is the Senior Vice President, Corporate Administration & Human Resources, at Spirit AeroSystems, Inc. of Wichita. She began her legal career as a staff attorney for Southwestern Bell Telephone Co. From there, she joined Foulston Siefkin LLP as an associate, practicing mainly in the Labor and Employment area, and rising to partner before becoming Chief Counsel for Boeing Company. In mid-2005, Flentje became Vice President, General Counsel & Secretary for Spirit AeroSystems, Inc. and ascended to her current position just two and a half years later. Her legal experience has extended internationally, assisting Spirit in the acquisition of manufacturing facilities in the U.K. and the establishment manufacturing facilities in France. A native of Wichita, Flentje received her undergraduate degree in Mathematics and International Relations from the University of Kansas and earned her J.D. from Southern Illinois University. Her active leadership in community and professional organizations is impressive, and in addition to the Phil Lewis Medal, she has earned many significant honors—including the Kansas Bar Association Distinguished Service Award, The President’s Award and the Howard C. Kline Distinguished Service Award from the Wichita Bar Association, the University of Kansas Women’s Hall of Fame, the Kansas Appleseed Champion of Justice. Flentje and husband Jack Focht also received the Donna Sweet Humanitarian Award. Gloria and Jack enjoy their blended family of five children and 14 grandchildren.

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. The recipient need not be a member of the legal profession nor related to it, but the recipient’s service may include responsibility and honor within the legal profession. The award is only given in those years when it is determined that there is a worthy recipient.

Professionalism Award

The Professionalism 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 as identified by the KBA Hallmarks of the Profession.

Hon. Patrick D. McAnany has served on the Kansas Court of Appeals since his appointment by Gov. Kathleen Sebelius in 2004. A graduate of Rockhurst University with a BA in philosophy, McAnany received his J.D. and his LL.M. in business litigation from the University of Missouri at Kansas City. He joined Miller & O’Laughlin in Kansas City, and then served as an assistant division attorney and antitrust counsel for Mobil Oil Corp. in New York City. McAnany returned to Kansas to join McAnany, Van Cleave & Phillips, where he was engaged in civil and business litigation and sat on the firm’s board of directors. He is licensed to practice before the Kansas Supreme Court, the Missouri Supreme Court, the U.S. District Courts for Kansas and for the Western District of Missouri; the Appellate Division, Second Department of New York; and the United States Courts of Appeals for the 10th Circuit and for the Federal Circuit. Gov. Bill Graves appointed McAnany to the Johnson County District Court in 1995, where he handled civil litigation and served two terms as chief judge. While on the district court bench, he implemented the Trial Court Performance Standards, the Judicial Academy, the Changing Lives Through Literature reading program and other innovative court and public outreach programs. McAnany has served a variety of community and law-related organizations in a leadership capacity and has received many awards for his tireless efforts. In addition to his professional and charitable activities, Judge McAnany volunteers for Topeka Meals on Wheels and is vice president of the Overland Park Orchestra in which he plays violin. He and his wife, Pinky, have two children and four grandchildren.
Richard F. Hayse grew up in Wichita and graduated from Kansas State University with a degree in radio-televison. He was a broadcast newsman with WIBW before entering Washburn Law School; he was editor-in-chief of the Washburn Law Journal his last year. After receiving his law degree, he started his legal career as an Assistant Kansas Attorney General. Later, Hayse accepted an offer to work for the U.S. Information Agency. Over the next five years, he was posted from Washington, D.C., to embassies and diplomatic missions in Brussels, London and Dakar, Senegal, on the western tip of Africa. His duties included writing news releases, hosting journalists to review military installations, publishing a magazine, hanging art exhibits, and serving as embassy press attaché.

Frustrated by government bureaucracy, Hayse and his family returned to Topeka where he entered private law practice with Eidson, Lewis, Porter & Haynes. When that firm dissolved, he was a solo practitioner until merging his practice with the Wichita firm, Morris Laing Evans Brock and Kennedy. He engaged in a general civil law practice with that firm, including litigation, estate planning, and representing small businesses and professional practices, until retirement from active law practice on December 31, 2017.

Hayse has been president of several Topeka civic organizations and was president of the Kansas Bar Association in 2005 – 2006. He is a trustee of the Kansas Bar Foundation, and continues to be actively involved with the KBA as a valued member of the KBA Board of Editors.

Hayse and his wife Linda will have been married 55 years in August 2019. They have a daughter, Adrienne; a son, Thomas; and two granddaughters, Sydney and Maya.

Sarah B. Shattuck is a life-long resident of Ashland, Kansas, except for a brief period following law school when she worked in Washington, D. C. for a law book publishing company. She graduated from Washburn University and Washburn Law School, and returned home after her father’s death to continue his law practice. Shattuck has a general practice with offices in Ashland and Greensburg. She is active in the community, having served as an elder in the Ashland Presbyterian Church, on the judicial commissions of the Presbytery of Southern Kansas and Synod of Mid-America, the board of High Plains Public Radio, the Ashland BPW, the Clark County Fair Board, the Ashland All-School Association, and as chair of the Ashland 125th Anniversary celebration. Currently, Shattuck serves on the Ashland Library Board, acts and assists with dinner theater productions to raise money for the library and teaches Sunday school. From 2001 to 2010, she served on the board of the Kansas Bar Foundation and was President for the 2008-2009 term. She has served on the Kansas Judicial Council since 2011, where she chairs the Probate Law Advisory Committee. She was the recipient of the KWAA Jennie Mitchell Kellogg award in 2013.
Christel Marquardt Trailblazer Award

The KBA’s newest award is the Christel Marquardt Trailblazer Award, honoring exceptional KBA members who break new ground, shatter glass ceilings or pave new paths for others to follow. The award is bestowed upon a member who has made innovative contributions to improve the legal profession or our communities, exhibiting courage, leadership, professional excellence, and service to the profession in a manner that makes a substantial and positive impact on all those who follow in his or her footsteps. The Trailblazer Award will be given to a KBA member in years in which there is a worthy recipient.

Hon. Christel E. Marquardt became a lawyer in a non-traditional way. After being in the work force for almost 20 years, and being a wife and the mother of four boys (ranging in ages from five to 12), she decided to go to law school. She graduated, with honors, in the top seven percent of her class from Washburn University School of Law. There were 198 students in her class; only six were women. At that time, there were very few women lawyers in the Topeka legal community, and women were not generally accepted as practicing lawyers; Judge Marquardt’s many professional achievements in the mid-1970s and 1980s are, therefore, especially significant.

Marquardt has been active in both the Kansas Bar Association and the American Bar Association. She can claim many “firsts” within these organizations, blazing the trail for other women attorneys in Kansas. In 1987, she was elected as the first female president of the KBA. She was then elected as a member of the ABA’s House of Delegates, where she served from 1988 to 2018 as a KBA delegate, state delegate and delegate-at-large. In another female “first” for Kansas, Marquardt also served as a member of the ABA’s Board of Governors.

Marquardt’s professional awards are plentiful, and include the KBA’s highest award—the Phil Lewis Medal of Distinction. Washburn University School of Law has recognized her tireless efforts on its behalf, awarding her its Distinguished Service Award in 2002 and 2004. Marquardt has been a beacon, guiding other women through the challenges of the legal profession, and encouraging young women to pursue the field of law. She was one of the founders of the Women Attorneys Association of Topeka (WAAT), to support women in the law and encourage them to apply for judgeships and positions of leadership in the community and the bar. In the early 1980s, when that organization was formed, there was great trepidation on the part of women practitioners to launch the effort. Without Marquardt’s resolve, it is doubtful that the organization would have survived, let alone flourished. In 1999, the Kansas Women Attorneys Association recognized Marquardt’s steadfast efforts on behalf of women practitioners, making her the first to receive its prestigious Attorney of Achievement Award.

Distinguished Government Service Award

The Distinguished Government Service Award gives recognition to a Kansas judge or attorney who has demonstrated an extraordinary commitment to government service.

Hon. J. Thomas Marten is a Kansas native and Washburn University alum who also received his JD from Washburn School of Law. He began his legal career as a law clerk to retired Associate Justice Tom C. Clark of the U.S. Supreme Court, then spent nearly 20 years in the private practice of law with a focus on litigation. Marten’s law practice spanned Nebraska, Minnesota, and Kansas, with 14 of those years at Bremyer & Wise, P.A. (now Wise & Reber, L.C.) in McPherson. There, he was active in several community organizations and projects, including the Chamber of Commerce, Leadership McPherson, and the Community Education Foundation.

Marten was appointed to the federal bench by President Bill Clinton. He served as Chief Judge of the District of Kansas from 2014 to 2017, when he took senior status. Since his judicial appointment, Marten has been involved in many nationwide projects dedicated to the advancement of the profession—including two committees of the Judicial Conference of the United States—the Information Technology Committee and the Rules of Evidence Advisory Committee. He is a past board member of the Federal Judges Association, serves on the Advisory Board of the Sedona Conference and is a judicial advisor to NYU School of Law’s Civil Jury Trial Project. He has taught at Harvard Law School and Wichita State University, guest lectured at the National University of Ireland (Galway), and has been a frequent speaker at conferences and seminars throughout the country on improving the civil jury process.

In 2018, Marten received an Honorary Doctorate of Law from Washburn University. He is currently involved in planning a multi-day addiction/recovery conference sponsored by the District of Kansas’s Bench-Bar Committee.

A published songwriter, Marten enjoys time with his family, playing music, attending concerts and reading. He developed and taught a workshop on legal writing with Country Music Hall of Fame songwriter Don Schlitz.
Courageous Attorney Award

The Courageous Attorney Award is given to a lawyer who has displayed exceptional courage in the face of adversity.

Hon. Robert J. Dole (U.S. Senate, ret.) serves as special counsel in Alston & Bird’s Legislative & Public Policy Group in the Washington, D.C. office. The 1996 Republican nominee for president and former U.S. Senate majority leader is one of the most sought-after advisers in the public policy arena.

A renowned statesman who spent 35 and a half years in Congress, Dole was first elected to Congress as a U.S. Representative from his home state of Kansas in 1960 and then to the U.S. Senate in 1968. He gained national prominence as chairman of the Republican National Committee from 1971 to 1973. In 1976, President Gerald Ford tapped him to be his vice presidential running mate. He served as chairman of the Senate Finance Committee from 1981 to 1985. Elected Senate majority leader in 1984, at the time of his retirement, Dole held the record as the nation’s longest-serving Republican leader—a record he held for 22 and a half years.

Dole has received national acclaim for his leadership on behalf of the disadvantaged and disabled; he championed the Americans with Disabilities Act, which passed in 1990. He is a major spokesman on issues involving veterans, hunger and nutrition, agriculture, and men’s health. He is respected on both sides of the aisle for his views on bipartisanship, deficit reduction, economic growth, and health care, and for his mastery of foreign affairs. He was a leading force and a major fund raiser for the World War II memorial in Washington D.C. that honors those who died and validates the many survivors of that titanic struggle while inspiring generations of Americans who have marveled at its structure, beauty and meaning. Dole, married to Elizabeth Hanford Dole, is also well known for his quick and sometimes acerbic wit.

Diversity Award

The Diversity Award recognizes an individual who has shown a continued commitment to diversity; 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.

Robert J. Moody is a tireless advocate for diversity in the legal profession in Kansas. He has experienced the full spectrum of roles in the profession, starting out as a runner, moving up to legal assistant and serving as a court room deputy for U.S. District Court Judge Monti Belot before ultimately choosing to attend law school.

Now an associate with Martin Pringle Law Firm in Wichita, Moody actively participates as a member of the Wichita Bar Association. He works to provide greater opportunity for others who are interested in pursuing law as a vocation. A member of the WBA’s Diversity Committee, Moody participates in the annual Judge’s Day Barbecue, bringing a diverse group of local university students to network with Wichita-area attorneys.

In addition to engaging and fostering law students, Moody makes himself available to low-income and minority families to provide legal insight, immersing himself with diverse, poor communities to give them access to legal information. He gets face-to-face with people who would otherwise have no opportunity to talk to an attorney.

Whether working with potential attorneys or with people in the community, Moody enjoys fostering opportunities to unlock the potential within each person. “I want to be a voice for the people who need it,” he says. “If I can show people how to help themselves and their families, it also helps our community.” What a great mindset for service -- to the profession and to society.
The Outstanding Young Lawyer Award is given annually to recognize the efforts of a KBA Young Lawyers Section member who has rendered meritorious service to the legal profession, the community, or the KBA.

William S. Walberg is an associate attorney at Shook, Hardy and Bacon LLP in Kansas City, Missouri. He has been a member of the KBA YLS Board for three years serving as the Mock Trial Co-Chair. Outside his practice, Walberg devotes volunteer hours to increasing awareness of diversity and inclusion issues, particularly for the LGBT community. He is a community board member for the YMCA of Greater Kansas City, and serves on the organization’s Diversity and Inclusion Council as well as its annual campaign committee. He also is a member of KC LEGAL and the Mid-America Gay & Lesbian Chamber of Commerce.

Before joining the legal profession, Bill taught middle-school math at Lincoln College Preparatory Academy, through the Teach for America program in Kansas City, Missouri. He also chaired the math department at Lincoln and initiated an after school tutoring program for mathematics and communications arts.

Walberg has worked diligently with Co-Chair Casey Walker (below) to raise the profile of the KBA’s YLS Mock Trial Program. Mock Trial had suffered from a lack of interest and participation from lawyers and judges, but past two years has enjoyed a revitalization and was a success, both from a participation and from a financial perspective.

Casey L. Walker has a civil litigation-focused practice based in Overland Park which takes her all over Kansas, Missouri, and often into many other states. Her practice focuses on the defense of health care providers in malpractice actions as well as corporate health care law.

Walker has served on the YLS Board as Mock Trial Co-Chair for the past three years, working to coordinate the regional and state competitions each year, as well as helping to ensure that the program is sustainable and continues to grow. The KBA’s YLS Mock Trial Program is the only program in the state that allows high school students to qualify for the national mock trial tournament. The competition requires a number of volunteers to judge and coordinate the event over multiple weekends in three cities in Kansas. Working with William Walberg (above), Walker has helped reinvigorate and restore mock trial as a flagship program for the KBA and for the Young Lawyers Section.

Walker is originally from Hutchinson. She obtained her law degree from the University of Kansas School of Law and remains an active alumna. Her spare time is spent enjoying community activities and being at home in Lenexa, with her husband, Matt, and their three dogs.
Outstanding Service Awards

The Outstanding Service Awards recognize service that significantly advances the administration of justice or the goals of the legal profession and/or the KBA.

Michelle Y. Ewert joined the Washburn University School of Law in 2017. Previously, she was a clinical teaching fellow at the University of Baltimore School of Law. Earlier in her legal career, Prof. Ewert worked as staff attorney and housing law supervisor at the Homeless Persons Representation Project in Baltimore. She was also staff attorney at Central California Legal Services in Visalia, Cal., and at HOPE Fair Housing in Wheaton, Ill. Ewert has represented low-income clients, including survivors of domestic violence and people experiencing homelessness, in both urban and rural settings and has been actively involved in the legal services community. Ewert initiated a program in Garden City designed to address three primary issues: providing legal services to low-income persons in rural areas, attracting high school students to law careers, and introducing law students to practice opportunities in rural communities.

Emily Grant teaches courses in legal writing and estates and trusts at Washburn University School of Law. Before coming to Washburn, she taught legal writing at her alma mater, the University of Illinois College of Law, where as a student she served as articles editor for the Law Review. Grant then joined the University of Kansas School of Law faculty as a part-time lecturer in the Lawyering Program and was later named a full-time lawyering professor while also working with students as part of the Academic Resources Program. Grant is currently co-director of the Institute for Law Teaching and Learning, with a scholarly agenda focused on pedagogical issues. She is deeply involved in the KBA, serving as Chair of the Board of Editors and as a member of the Board of Publishers. On both boards, Grant generously gives her time and expertise to edit Journal articles and books.

Hon. Larry D. Hendricks (ret.), a Great Bend native, earned his bachelor’s at Kansas State University, a master’s degree in public administration from the University of Northern Colorado, and his JD with honors from Washburn University School of Law. He served eight years in the United States Air Force. He began his 25 years of private practice as a solo practitioner and was then a partner in the Topeka law firm of Stumbo, Hanson and Hendricks. He served as city attorney for Alma, Auburn, Lecompton and Perry. Hendricks was appointed to the 3rd Judicial District Court in 2006. He retired from the bench, March 31, 2018, and almost immediately stepped up to lead the KBA as interim executive director for several months while a search was undertaken for a new E.D. The Judge and his wife Beckie have two married sons and two grandsons.

Marty M. Snyder has dedicated her life to assisting lawyers to be their best selves and assist in helping the public have confidence in the law and the profession. She has also gone above and beyond attorney work to mentor, coach and champion young attorneys. After graduating from the University of Kansas School of Law, Snyder enjoyed eight years of private practice, 19 years as an assistant attorney general in civil litigation, 10 years as a deputy disciplinary administrator and 23 as an adjunct associate professor of law. She is a charter member and past president of the Topeka Women Attorneys Association, a charter member of the KWAA, and member of the Kansas and Topeka Bar Associations (where she was involved in her tenth bar show despite what she claims is a demonstrable lack of talent.) She is a recipient of the Justice Kay McFarland Award, a previous KBA Outstanding Service Award, Outstanding Adjunct Professor Award and the Washburn Law School Association honorary life member service award. Currently, Snyder is enjoying retirement and being a grandma!

Larkin E. Walsh spent the first eight years of her legal career as a federal law clerk for Judge Carlos Murguia of the U.S. District Court, District of Kansas, and as a research attorney for Justice Carol Beier of the Kansas Supreme Court. Her recent years in private practice, most recently at the Sharp Law firm in Prairie Village, have allowed her to champion plaintiffs’ rights nationwide, litigating causes in labor and employment, antitrust, consumer protection, and civil rights/human trafficking in state, federal, and appellate courts. Involved in a number of professional organizations, Walsh was appointed by the Kansas Supreme Court to serve on the Board of Law Examiner and by the U.S. district court for the District of Kansas to serve on the Bench-Bar Committee. She serves in leadership on the Federal Court Advocates Section of the Kansas City Metropolitan Bar Assn., and spends countless hours on her role as co-chair of the KBA’s Annual Survey of Law. With Judge Steve Leben, Walsh coordinates the authors and editors of the 31 chapters of the annual publication to ensure that it is produced on time and in excellent form.
The Pro Bono Award recognize lawyers or law firms that deliver direct legal services, free of charge, to the poor or, in appropriate instances, to charitable organizations who primarily provide other services to the poor; Pro Bono Certificates are awarded to lawyers who are not employed full time by an organization that primarily provides free legal services to the poor; 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 has no resources to employ paid counsel; have voluntarily contributed a significant portion of time to provide legal services to the poor without charge; and/or lawyers whose voluntary contributions have resulted in increased access to legal services for low– and moderate–income persons.

Stephanie M. Smith practices primarily in the area of estate planning law, including wills, trusts and probate. She received a Bachelor of Science in Foreign Service from Georgetown University in 1977 and a J.D., cum laude, from the University of Michigan Law School in 1980. She is licensed to practice in both Kansas and Missouri. Ms. Smith is a member of Kansas Bar Association, the Johnson County Bar Association, The Kansas Women’s Attorney Association, and the Kansas City Estate Planning Society.

Ms. Smith was born in Manhattan, Kansas, and grew up in the Mission and Overland Park area. After practicing law in Nevada and Colorado for 17 years, she returned to Kansas in 1997 and opened the firm of Stephanie M. Smith, Chartered, in Prairie Village.

Smith has helped the Kansas Legal Services-Kansas City office with pro bono guardianship cases. In these cases, the wards were turning 18 and their mothers needed guardianship in order to continue to care for and make decisions on their behalf. Stephanie’s expertise and knowledge made it possible for those parents to receive the legal assistance they desperately needed but could not afford.

The Riley County Bar Association, along with the city prosecutor’s office and county attorney’s office, put on an expungement event in Manhattan at the Manhattan public library which resulted in 49 county expungements and 11 city expungements being granted.

This required a tremendous amount of coordination from the bar association and demonstrated great collaboration between it and the city and county offices.

Think of the number of people whose lives were impacted by those efforts!

Riley County Bar Association

Topeka Bar Association

Wichita Bar Association

The Topeka Bar Association, along with the county attorney’s office and court, put on an expungement event in Topeka on April 20, 2018, which resulted in approximately 211 expungements being granted.

This tremendous collaborative effort delivered tangible, positive results for so many individuals, through volunteers who used their knowledge and skills to make a real difference in people’s lives.

The Wichita Bar Association along with the county attorney’s office and city prosecutor’s office (as well as the court) put on an expungement drive in the fall of 2018, which resulted in some 290 expungements being granted.

Fourteen Wichita paralegals, 30 pro bono attorneys, three law students, and eight other attorneys (who helped with prescreening and document drafting) took part in this event. This was a huge effort on behalf of the bar association, demonstrating the collaborative power of working for good.
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Four Kansas lawyers were part of the 27-member inaugural class of The Heart of America Fellows Institute of The American College of Trust and Estate Counsel (ACTEC). Based on Florida’s successful program, it is designed to develop the legal profession’s future trust and estate leaders through in-depth educational presentations led by experts in each field. The inaugural class consisted of participants from Missouri, Kansas, Oklahoma, Arkansas, Iowa and Nebraska. Nominations for Class II of the Heart of America Fellows Institute will begin in early 2020. For more information, visit hoafellowsinstitute.org

The Kansans can be found in the top row of the photo, beginning ninth from the left with Ross E. Hellwig (Triplette Wollf Garretson, LLC); Joshua A. Decker (Coffman, DeFries & Nothern, P.A.); then twelfth, with Joshua C. Howard (Clark, Mize & Linville, Chartered); and Erik Rome (Spencer Fane LLP).
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The road to becoming a lawyer has a way of changing many aspects of your life. You quickly realize that your relationships with friends, family and significant others will suffer if you aren’t actively maintaining them. And even if you are trying, there is only so much you can do, especially when you’re working from a distance.

Shortly after moving four hours away from home to attend law school, I received a FaceTime call from my 2-year-old niece. We had a wonderful “conversation,” as far as conversations with 2-year-olds go, but then something happened. As we were saying our goodbyes my sister-in-law said “Say bye, you won’t see her again.” I knew she meant “You won’t see her anytime soon,” but did my niece know that? Did she think I was abandoning her? And while leaving a neurotypical child is one thing, leaving an atypical one is completely different. My family was blessed with a beautiful and wonderful nonverbal autistic little boy. Every time I leave him, I know I am making it harder for him to trust me. I know I am making it harder for him to realize that I am a “permanent” family member, and that I will always be there to take care of him when he needs me. Each time I say goodbye to either one of them to leave for law school, a part of me hurts and longs to be home with family.

It’s not just family life on which law school takes a toll. Your friendships start to change as well. I have been trying to visit my oldest friend for months, to see her new house and family, but there never seems to be a time. It was a real dagger to the heart when my best friend didn’t choose me as maid of honor because I am too busy and too far away to do what needs to be done. When I opened up the gift that read “will you be my
bridesmaid?” I felt like I had just been kicked in the stomach. Maintaining friendships in our field seems to be a struggle.

As a student, I have hours of dense reading, outlining and assignments each week (and weekend). When you tack that onto working, hours actually spent in the classroom and at required outside events, it really adds up. You realize that this prepares you for the profession because attorneys undertake work that can make a huge difference for the people they represent. They can’t take a break like most people can; even their vacations aren’t really vacations. They can’t just “take it easy” because people’s lives literally depend on them. And even the strongest friendships may suffer.

Law school also has a way of changing the way you interact with others, like your partner, the person you spend most of your “down time” with. I find that I long for conversations to be short and to the point. I can feel my eyebrows raising with each “umm” that I hear. I reply to most questions with, “It depends,” or reply to a statement with, “Well, not necessarily.” That doesn’t set the stage for an encouraging atmosphere for conversation. Who am I? Apparently, it’s called “lawyering,” and I don’t know how to make it stop. It’s easy to see that he is aware of this (rather annoying) change.

So how do we deal with these stressors? I find the best way to cope is to first realize that it’s okay. You should never blame yourself for pursuing a path that you love. Sometimes, the path will take you away from family, friends, or partners—but you’ll be back around. Next, get in front of it. Correct or point out the behavior that is worrying you. Last, always remember to give positive acknowledgement to the people you love and be with the people who lessen your desire to be perfect because the truth is, you aren’t.

When my sister-in-law says to my niece “You won’t see her for a while,” I say “Don’t worry, you’ll see me soon.” When I leave my nephew, I say “I love you. I will always be here for you.” After all, kids have no real concept of time. To fill in the time for myself, I FaceTime or call once a week. I ask for pictures and videos to cheer myself up. I remind myself that the road to becoming a lawyer and the privilege of being a lawyer is just that, a privilege. I remind myself that those kids are part of the reason I am doing this.

I make a point to remind my friends how much I care about them and how much I wish I could be more involved. One day, I will get this time management thing down. But for now, I tell them that I need them to understand that I am doing the best I can. And remember that you can only put in so much effort; they have to meet you half way.

My partner and I had some trouble adjusting. We moved to a new city, and I started a new way of life, a new way of learning, of thinking, of doing. Having a partner who fully supports you and who is genuinely proud of you seems to be the only way to make it in this field. Law students (and I imagine lawyers as well) need someone who can pick up their slack during the hectic times. When the laundry is overflowing, the dog is barking, or you forgot to put the chicken out to thaw, you know they will be there to say, “I got this.” And I remind him as often as I can how much I appreciate him. Can you imagine dating yourself? Bravo to our partners for putting up with us and all of our “lawyering.”

Kelsie Howard is a second-year law student at Washburn University School of Law. Kelsie holds a Bachelor of Science in Criminal Justice and a Master of Arts in Communication Studies from the University of Central Missouri. She is currently employed as an intern for Jones, McCoy & Lincoln, P.A. in Overland Park, Kan.

Kelsie.Howard@washburn.edu

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New Positions

Ryan Brunton has joined Stinson LLP as a partner in the Kansas City office. Brunton has significant experience representing lenders, investors, developers and community development entities with respect to the structuring of traditional and tax advantaged transactions. He also counsels on specialty finance and investment products, including state and federal new market tax credits, state and federal historic rehabilitation tax credits and opportunity zone investments. In addition to his practice, Brunton chairs the board of directors at Crittenton Children’s Center and also sits on the board of directors at St. Luke’s Hospital of Kansas City.

Dustin Curry has joined DiPasquale Moore, as the managing partner in their Topeka office located at 534 South Kansas Avenue, Suite 160, Topeka, KS 66603. His practice is devoted to personal injury law.

Pat Hughes, an attorney with the Wichita law firm of Adams Jones, addressed Neosho County Commissioners about the commission’s authority regarding regulation of the Neosho Ridge Wind Project, a proposed 139 windmill generation plan for southwest Neosho County. The county does not currently have county-wide zoning, and a developer proposed the wind energy project before regulations could be put in place.

Megan McCurdy, partner with Stinson LLP, was named to the 2019 Women Who Mean Business class by the Kansas City Business Journal. The award is to be presented at a ceremony on August 23rd in Overland Park. The award recognizes women who have made significant contributions to their business or industry, as well as their community. This is the 20th year of the program. McCurdy practices in the firm’s Business Litigation division, concentrating on financial services, contract disputes, business torts and product liability actions. Active in the KBA and her local bar association, she is also on the UMKC School of Law Alumni board and mentors young professionals in the Mid America Gay and Lesbian Chamber of Commerce.

Ivan Moya and Victoria Toothaker, first year law students from Washburn University School of Law, are serving as interns with the Ford County Attorney’s Office this summer. The internship is offered as a way of providing real-world courtroom experience for law students and to generate interest among law students in practicing law in southwest Kansas upon graduation. Toothaker is a Dodge City native who was the first Washburn student to complete the school’s Law Early Admission Program by earning her bachelor’s degree two years after graduating from high school. She is the Junior Kansas Bar Association representative for the Washburn Student Bar Association. Moya grew up in Garden City. He served as a long-term substitute teacher at Garden City High School and is now the communications director of the Washburn Student Bar Association. He is also involved in several other student law groups.

NOTE: Members in the News items are largely gleaned from newspaper articles from across the state, provided by our clipping service. If there are questions or concerns regarding information printed here, please feel free to inquire through the following email: editor@ksbar.org
Sarah Newell has joined Gibson Watson Marino LLC as an attorney, practicing in the areas of bankruptcy, divorce and child custody, and commercial litigation.

Justen Phelps has been accepted as the newest member of Gibson Watson Marino LLC law firm. Phelps’s practice encompasses the areas of medical malpractice defense, premises liability, personal injury, consumer protection, municipal law and probate. He has been with the firm since 2015.

Anna Ritchie has joined the Stinson office in Wichita. Ritchie advises clients on complex commercial litigation and employment law matters. She has experience arguing and appealing Medicare and Medicaid cases, as well as representing clients on both sides of insurance coverage cases. She also works with organizations on non-compete, non-disclosure, non-solicitation and trade secret matters.

Margaret Mary (Maggie) Selbe graduated from Duke Law School and, after taking the bar exam, will join the law firm Simpson Thatcher in its Houston office. Her practice will focus in the area of Mergers and Acquisitions.

Jason Stitt has rejoined the litigation department of Kutak Rock in Wichita as Of Counsel. Stitt has extensive experience representing companies in a variety of areas of litigation, including employment, wage and hour, class and collective actions, and commercial disputes. His practice also includes preventing lawsuits by assisting employers in drafting and revising their employee handbooks and advising employers regarding day-to-day employment issues as they arise. Stitt earned his B.A. from Wichita State University and his J.D. from the University of Texas School of Law. He is licensed to practice in Kansas and Missouri.

Christopher “C.J.” Velez was appointed as District Magistrate Judge for Hamilton County and was sworn in by Chief Judge Robert Frederick on May 31st. Velez was selected by a 12-member nominating commission from the 25th Judicial District. Velez received his J.D. from Washburn School of Law, worked in child support enforcement for Young Williams, and has been in private practice since 2013, in which he specialized in family law and estate planning.

Sarah E. Warner, Lawrence attorney and Immediate Past President of the Kansas Bar Association, was nominated by Gov. Laura Kelly and overwhelmingly approved by the Kansas Senate to serve as the new judge on the Kansas Court of Appeals. Warner, who resigned from her position with Thompson Warner, P.A., in Lawrence in mid-June, succeeds Judge Patrick McAnany who retired from the court of appeals earlier this year.

Spencer J. Webster has joined Hinkle Law Firm LLC as an associate attorney. Webster’s practice focuses on civil litigation, including insurance litigation, commercial litigation and personal injury. He will office in Overland Park. Webster’s addition brings the number of Hinkle attorneys to 44. He earned his J.D. from California Western University School of Law and is admitted to practice in both Kansas and Missouri.

New Locations and Names

The Wichita law firm long known as Foulston Siefkin is celebrating its 100th anniversary, and is rebranding itself as simply Foulston. The original partners, Robert Foulston and George Siefkin opened their practice together in 1919. Foulston’s history is inextricably tied to Wichita’s history. Now the largest Kansas-based law firm, it has grown to a staff of nearly 200, with 86 of those being lawyers serving in the firm’s offices in Wichita, Topeka and Overland Park. The firm’s motto was taken from Rudyard Kipling’s poem “The Law of the Jungle”—“for the strength of the Pack is the Wolf, and the strength of the Wolf is the Pack.”

Scott M. Mann and Stephanie Tucker Muir have relocated their Family Law firm, Mann Tucker Muir, LLC, to 8700 State Line Road, Suite 395, Leawood, KS 66206.

Notables

Chief Judge Bradley Ambrosier, District Judge Laura Lewis and Kurtis Jacobs, court administrator, were reappointed to the Supreme Court’s Language Access Committee. Ambrosier serves the 26th Judicial District (Grant, Haskell, Morton, Seward, Stanton and Stevens counties); Lewis serves the 16th Judicial District (Clark, Comanche, Ford, Gray, Kiowa and Meade counties) and Jacobs is with the 25th Judicial district (Finney, Greeley, Hamilton, Kearny, Scott and Wichita counties).

Terry E. Beck was reappointed by the Shawnee County Commission to serve a second four-year term on the Washburn University Board of Regents. His term will run through June 30, 2023. Other Kansas lawyers on the board are Paul Hoferer and Jennifer Sourk.

Kelli Broers of McAnany, Van Cleave & Phillips, P.A. (MVP) was accepted into the Greater Kansas City Chamber of Commerce’s Centurions Leadership Program’s Spring class of 2021. The Centurions Leadership Program prepares a cross-section of the community’s emerging leaders for their roles in shaping the future of Kansas City. This prestigious program includes active participation in educational programs, exposure to community leaders and issues, and community service projects. Ms. Broers is an Attorney with MVP’s Employment Law Practice Group specializing in Education and Public Sector Law. Additionally, she has a personal interest in local government. She previously served on the Johnson County Northwest Consolidated Zoning Board, and she currently serves on the Miami County Economic Development Board.

Nellie Cline, a native of Larned, grew up the daughter of G. Polk Cline, a prominent Pawnee County lawyer who was
in practice at the time the courthouse was built in 1919. Nellie went on to be admitted to the state bar and served in the Kansas House of Representatives from 1921-24. According to “Larned’s Tiller & Tolar,” Cline is credited with being the first female lawyer to argue a case before the U.S. Supreme Court. A recent article quoted the following from Cline’s autobiography: “Scientists tell us that the sense of smell can bring back memories more quickly than any other of the five senses. I believe if I were blindfolded and taken into a courtroom as far away as Timbuktu, I would be able to recognize the courthouse by the peculiar odor clinging there. It is a mixture of molding leather lawbooks and documents; stale tobacco smoke; wooden chairs and fixtures; human sweat; barnyard manure with an occasional tinge of whisky breath and dust.” Recognition of Cline came as a result of the Larned community’s celebration of the Pawnee County Courthouse’s 100th anniversary.

Chief Judge Kim Cudney was recently profiled in an article in the Beloit Call that chronicled her rise “From Small Town Girl to Chief Judge.” Cudney presides over the 12th Judicial District. In addition to judicial responsibilities, a chief judge has general control over case assignments within the district, as well as general supervisory authority over the administrative and clerical functions of the court. Cudney’s district includes Cloud, Jewell, Lincoln, Mitchell, Republic and Washington counties.

Reno County Chief District Judge Patricia Macke Dick and Dickinson County Attorney was reappointed to a new three-year term on the Chief Judges Council. The seven-member council provides the Kansas Supreme Court with a ground-level perspective on issues facing Kansas Courts. Macke Dick serves the 27th Judicial District (Reno County). Also on the council is Chief Judge Joe Dickinson of the 9th Judicial District (Harvey and McPherson counties).

Foulston and its attorneys have received top-tier rankings in the London-based Chambers USA 2019 Guide. It received Band 1 ratings for its Corporate/M&A, Labor & Employment, and Litigation: General Commercial practices. The firm was also awarded a top-tier ranking for its Real Estate practice. Twenty-three Foulston attorneys were recognized in the 2019 guide, based on their legal knowledge and experience, ability, effectiveness and client service.

David Frantze and Pat Konopka of Stinson LLP were recognized by the Kansas City Metropolitan Bar Association as part of the association’s annual Bench-Bar and Boardroom Conference awards dinner in May. Frantze received the Baron of the Boardroom Award which recognizes attorneys with substantial and distinguished careers representing clients in corporate matters. The Sly James Diversity and Inclusion Award received by Konopka is conferred in partnership with the presidents of Kansas City’s diverse bar associations upon a legal professional for contributions to diversity and inclusion in the profession.

Nicholas R. Grillot, a member of Hinkle Law Firm LLC, was profiled in the July 5, 2019 edition of the Kansas City Business Journal. In addition to other information, Grillot highlighted his volunteer activities as a coach with Northeast Baseball, Southwest Boys Club and the Wichita Aeros.

Richard L. Hines of Erie, Kan., offered a proposal to the local board of education to use his passion for wildlife conservation to help the district develop a wildlife conservation area on land owned by the district that sits next to the high school. The USD #101 Board of Education accepted Hines’s offer in a unanimous vote at its June 3rd meeting. In addition to being a lawyer, Hines is the Southeast District Director for the Kansas Wildlife Federation and is actively involved in other wildlife conservation groups.

The Jackson County jail triggered outrage and protests with a new security screening system that denies access to the jail for female lawyers who wear under-wire bras that trigger the metal detector. Calling the system discriminatory, an open letter signed by 74 attorneys claimed Sheriff Darryl Forte’s unwillingness to make accommodations impacts the justice system by denying inmates “meaningful access” to legal representation. Further, it stated that “The male attorneys in our group see our female counterparts as equals and feel this security protocol… does not afford them the dignity and respect they deserve.”

Joseph Jeter, partner in Jeter Law Firm, were both reappointed to the Kansas Judicial Council; his term will now run through June 30, 2023. The 10-member council includes one member of the Kansas Supreme Court, one member of the Kansas Court of Appeals, two district court judges, and four practicing lawyers, all appointed by the chief justice. The chairs of the Kansas House and Kansas Senate judiciary committees are also members. The council can recommend changes to rules used by the courts. It can draft legislation and new rules. It produces books and manuals, publishes legal forms for use by the courts and drafts sample jury instructions. The council reviews the administration of justice in Kansas.

Keyta Kelly of the Kelly Law Office in Tonganoxie was presented a “We Kan!” award in a surprise ceremony in her office in June. Kelly was one of 10 Kansans to receive the statewide award from the Kansas Sampler Foundation, an Inman-based non-profit, to show appreciation for dedicated work in helping preserve and sustain rural culture.

Landmark Bank has received recognition from the Kansas Bar Foundation for its collaboration with lawyers and law firms on establishing IOLTA accounts. That arrangement raises funds that support access to direct legal services for low-income Kansans who have been victims of crime.

Dan Monnat of Monnat & Spurrier, Chartered, has been named one of the world’s leading business crime defense at-
Attorneys by Who’s Who Legal: Business Crime Defense 2019. The London-based Who’s Who Legal publishes 34 different guides listing top-rated lawyers and courtroom experts in various sectors of corporate, commercial law and government investigations. Monnat has practiced in Kansas for more than 40 years, handling criminal and white-collar criminal cases. He earned his J.D. from Creighton University School of Law and is a graduate of Gerry Spence’s Trial Lawyer’s College.

Chief Judge Mike Powers requested that the Dickinson County Commission consider hiring part-time guards to provide security in his Marion courtroom -- the only one in his four-county district with no security.

Paul Shipp, Managing Attorney with Kansas Legal Services, offered two presentations for older Kansans. He explained the importance of health care decisions documents and made time to answer questions, to refer those interested to attorneys who could help them with living will and power of attorney documents. The AOK (Answers for Older Kansans) presentations were made in Neosho Rapids and in Emporia.

District Magistrate Judge Dale Snyder is one of three judges appointed by the Kansas Supreme Court to the Judges Assistance Committee. The committee provides help to any Kansas judge in need due to mental or physical disability or addiction. He will complete the term of Moundridge Municipal Judge Amie Bauer, which will expire June 30, 2022.

Stinson LLP was recognized in Law360’s annual Glass Ceiling Report as one of the best law firms for female partners. The Glass Ceiling Report shows that 24.1 percent of Stinson’s equity partners identify as female, ranking ninth among firms with 300-599 attorneys. Law360 collected this attorney headcount and demographic data from more than 300 U.S. firms as of December 31, 2018. The firm has been recognized numerous times for the promotion of women into leadership roles, as well as furthering LGBTQ equality and implementing successful diversity strategies firmwide. Most recently, Stinson was recognized by the Women’s Foundation of Greater St. Louis’ Women in the Workplace as a top-scoring employer on their 2018 Employment Scorecard, and received top marks in the Human Rights Campaign’s 2019 Corporate Equality Index.

Ron Vignery was celebrated in the Goodland Star News in June for his 50 years as a licensed, practicing attorney. He’s lived in Goodland most of his life, except for four years at Pittsburg State, three years of Washburn Law School and four years in the Navy. He has practiced in Goodland since 1974, and he’s served as the city attorney for Goodland and Kanorado for 40 years. He’s been actively and extensively involved in his profession and his community. He married Judith Ann Vignery in 1966; they have four grown children and eight grandchildren.

David Waters is the newly minted mayor of the City of Westwood. A former city council and planning commission member, he reviews project proposals for the municipality. As a Lathrop Gage partner working in its transactional real estate group, Waters handles planning and zoning for company clients. Waters grew up in Leavenworth, and his father is an attorney. He attended Kansas State University, KU Law School followed, and he joined the Overland Park office of Lathrop Gage right after graduating. He and his wife have two sons and they’ve lived in Westwood since 2003. Waters says that the management at Lathrop Gage is supportive of his civic involvement.
Wright W. Crummett (6/1/2019)

Wright W. Crummett, 89, of Overland Park, Kansas died June 1, 2019. Wright was a graduate of Abilene, Kansas High School, The University of Kansas, and Washburn University School of Law. He served in the Korean War in the Naval Amphibious Force. In his early legal career, he practiced law in Topeka, Kansas, in the firm of Smith, Rees and Crummett. Later, he was general counsel of the League of Kansas Municipalities, and then, the first full-time city attorney of Overland Park, Kansas. He retired in 1991, as a senior attorney with Bayer Corporation in Kansas City, Missouri. He was preceded in death by son, Vance Ames Crummett, and stepson, William J. Heck, Jr. He is survived by his wife, Bernice; son, Blake; Grandson, Jason Heck and Granddaughter, Grace Crummett. A visitation was held Saturday, June 8, 2019, followed by Entombment at Johnson County Funeral Chapel Courtyard of Memories Indoor Mausoleum, 11200 Metcalf Ave., Overland Park, KS 66210.


Bradley E. Haddock, 64, loving husband, father, grandfather, and friend, met his Savior Jesus face-to-face on April 1, 2019, when his weary body succumbed to complications of AL Amyloidosis and Multiple Myeloma. A celebration of his life was held Friday, April 12, 2019, at First Evangelical Free Church, 1825 N. Woodlawn, Wichita, Kansas.

Brad is survived by his wife, Terri; children Austin Haddock of Wichita, and Sarah and her husband Gerard Pryor of St. Marys, KS; grandchildren William and Edward Pryor; brothers Richard (Amanda) Haddock of Wichita and David Haddock of Franklin, TN.

He was born in Wichita on Jan. 4, 1955, to Kenneth and Genevieve Haddock, both who have preceded him in death. Active in Boy Scouts, sports, music, and his church, he grew up with a strong foundation of what it meant to care for and serve others as Jesus Christ did. Nowhere was this more evident than in his career as an attorney, in his service in Scouting and church, and in his care and love of his family and friends.

Brad met Terri Hannon at the Bicentennial Meeting of the Boy Scouts of America in New York City in May 1976. They were both Kansas kids who had been selected to receive the BSA Young American Award. The romance continued back in his hometown of Wichita, where she attended Wichita State. They were married Jan. 7, 1978, while he was still in law school, earning Terri her “PHT” (Putting Hubby Through) degree.

To his children, he was a great dad! He was thrilled beyond belief when Austin and Sarah each asked Jesus to be their Savior as little children and was a role model of following Christ. They saw the country traveling to national Scouting events, meeting wonderful people everywhere! He was a proud father as Austin achieved the rank of Eagle Scout and Sarah spent five summers on Philmont Scout Ranch staff. He modeled his faith and values in his life every day for his children who are carrying on his legacy in their own lives! One of Brad’s greatest joys was being called “Grandpa Brad” by his grandsons, “Master” William and “Master” Edward.

Brad graduated from Wichita Heights High School in 1973, from Phillips University in 1977, and from Washburn School of Law in 1980. He was Executive Editor of the Washburn Law Journal, recognized with the Phillips University Distinguished Young Alumnus Award, and named a Washburn School of Law Alumni Fellow. Prior to founding Haddock Law Office, he worked as an attorney at Koch Industries for 29+ years, serving most of those years as Vice President and General Counsel of the Koch Chemical Technology Group. He achieved the Martindale-Hubble AV Preeminent Rating which recognized those with the “Highest Possible Rating in Both Legal Ability & Ethical Standards” and was a mediator with both the American Arbitration Assoc. and the International Centre for Dispute Resolutions.

Brad joined scouting as an eight-year-old Cub Scout with his service ending as BSA National Committee member, Chairman of Scouting U, and Quivira Council Executive Board member. During those 56 years, he was continuously involved in scouting locally and nationally, especially in the Order of the Arrow, the BSA’s honor society, serving as OA National Chief as a youth and as Chairman of the National OA Committee as an adult. An Eagle Scout and OA Vigil Honor member, he was recognized with Scouting’s highest volunteer honor, the Silver Buffalo Award, and with the OA Legacy of Servant Leadership Lifetime Achievement Award. His real accomplishment is the impact he had on the lives of countless youth and adults, always modeling the Scout Oath and Law in his daily life.

In addition to scouting, Brad was active in community service, having served as chairman of the Chamber’s Leadership 2000 and as a Board of Trustee member for Friends University.

He accepted Jesus Christ as his Lord and Savior as a child and lived as one who loved God and wanted others to know about his grace and truth. He was a member of GraceFirst Church, serving most recently as an Elder. He always challenged everyone with the phrase, “Armor on?” reminding believers to daily put on the full armor of God (Ephesians 6).

While it did not define his life, he lived the last 9+ years with the rare disorder AL Amyloidosis, which primarily affected his heart. He endured a stem cell transplant, years of
chemotherapy, and other treatments as he walked with God, sharing comfort and support with others facing challenges in their lives. Two years ago, he also was diagnosed with Multiple Myeloma, yet he bravely kept on ministering to others and trusting God for one more day. He was especially passionate about educating every healthcare giver he met about signs of the little-known disease amyloid. The story of his diagnosis and first days of treatment have God’s fingerprints all over them. His family and friends saw him as a great man, but he saw himself as a man serving a great God.

In lieu of flowers, memorials have been established with Quivira Council Boy Scouts of America, the National Order of the Arrow Endowment Fund, and GraceFirst Church.


Michael W. “Mike” Merriam, 66, formerly of Topeka, passed away on May 19, 2019 in Andrews, TX. He was born on November 25, 1952 in Topeka, the son of John E Merriam Jr. and Charlotte (Sawyer) Merriam.

He graduated from Topeka West High School, University of Kansas and went on to earn his Doctor of Jurisprudence degree from Washburn University School of Law. Mike was admitted to bar 1976, Kansas; also admitted to practice before U.S. District Court, District of Kansas; U.S. Court of Appeals, Tenth Circuit; U.S. Supreme Court. He was a member of the Topeka Bar Association, Kansas Bar Association, Topeka Lawyers Club, Jayhawkers Club. Mike practiced business, media, communication and First Amendment law during his 40-year career.

He married Paula Crowther on November 17, 1973, she survives. Other survivors include children, John P Merriam, Dr. Margaret Merriam & husband Dr. Carlos Molina, and Katherine Merriam; grandchildren, Sam Merriam, Parker Merriam, Elaina Merriam-Molina, Grace Merriam-Molina and Warren Merriam-Molina ; he is also survived by sisters, Linda McBride, Dianne Becket, Nancy McDonald and Sally Merriam. Mike was preceded in death by his parents; and grandparents, Grace and John E. Merriam.

No public services were held. Private burial took place at Mount Hope Cemetery, Topeka.

Penwell-Gabel Mid-Town Chapel handled arrangements.


On Monday, July 1, 2019, Ronald Sterling Reuter passed away in Kansas City, MO, at the age of 75. Ron was born in Kansas City, Missouri on February 6, 1944 to Karl A. Reuter and Irene D. (Cutlip) Reuter. After graduating from Wyandotte High School in 1962, he then attended Kansas University for both his undergraduate and graduate degrees earning his law degree in 1969.

He then enlisted in the U.S. Army Reserve and served for six years, rising in rank from private to sergeant first class. An accomplished attorney, Ron practiced law in Johnson County for 44 years. In addition to private practice, Ron served as city attorney for various municipalities in Kansas. He was a lifelong member of the Johnson County Bar Association, the Kansas Bar Association and the City Attorneys Association of Kansas. He served on the boards of various community organizations for a number of years.

In his youth, Ron was proud to be an Eagle Scout and continued his dedication to scouting by serving as a scout leader when his children were scouts. He was also a talented athlete, participating in a variety of team sports at various points during his high school and college career, as well as later in life. He also enjoyed water skiing, fishing, and upland game bird hunting.

Ron fostered academic excellence and athletic participation in all of his children and is survived by his five children: Adam (Lesley), David (Lainie), and Michael (Katie) by his first wife, Susan Geiger; Aaron and Jon by his second wife, Elizabeth De-Priest; and five grandsons: Nolan, Blake, Miles, Barrett, and Brooks. A Celebration of Ron’s life was held at Old Mission United Methodist Church, on Monday, July 8, in Fairway, KS. Memorial donations in memory of Ron can be made to the Boy Scouts of America Heart of America Council (https://donations.scouting.org/#/council/307/appeal/579).

John H. Shaffer (4/2/1927 - 6/24/2019)

John H. Shaffer, 92, of Hutchinson, died June 24, 2019, at Hospice House, Hutchinson. He was born April 2, 1927, in Wichita, the son of Don and Mabel (Jones) Shaffer. John was a 1945 graduate of Hutchinson High School, a 1948 graduate of Hutchinson Community College, a 1950 graduate of the University of Kansas, and a 1954 graduate of Washburn University School of Law. He was a World War II veteran, serving in the United States Coast Guard. John was a member of Grace Episcopal Church, Hutchinson.

On August 17, 1951, John married Lorene Frank in Hutchinson.

Upon graduating from Washburn Law School, John joined the law firm of Weinlood, Cole, Ehling & Oswalt as an associate on March 1, 1954. John became a partner in the law firm January 1, 1958, at which time the firm’s name was changed to Weinlood, Cole, Ehling, Oswalt & Shaffer. The firm’s name changed several times over the years, and on October 1, 1990, the firm of Weinlood, Cole, Shaffer, Lee & Meisenheimer merged with the law firm of Martindell, Swearer, Cabbage, Ricksecker, Hertach, Swearer & Patterson, and the name of the firm was changed to Martindell, Swearer & Shaffer LLP. The name of the firm today is Martindell, Swearer, Shaffer, Ridenour LLP.
John is survived by his wife of almost 68 years, Lorene; sons, Scott A. of Aurora, CO, Jeff M. and wife Marcia of Houston, TX, Mark T. of Dallas, TX; and two grandsons, John Michael Shaffer and Luke William Shaffer.

He was preceded in death by his parents and daughter-in-law, Cindi Shaffer.

A memorial service was held Friday, June 28, 2019, at Grace Episcopal Church, 2 Hyde Park Drive, officiated by the Reverend Dr. J. Ted Blakley, with military honors conducted by the United States Navy Honor Guard. Inurnment followed in the church columbarium. The family received friends Thursday at Elliott Mortuary.

In lieu of flowers, memorial gifts may be made to the HCC Endowment Association or Delos V. Smith Senior Citizens Foundation, both in care of Elliott Mortuary, 1219 N. Main, Hutchinson, KS 67501.

**Steven R. Smith (11/18/1948 - 1/21/2019)**


Steve is survived by his son, Robert Brady (Tanya) Smith; grandchildren, Robert Cameron (Shae) Smith, Haley Danielle Smith and Adam Cole Smith; his brother, William (Paula) Smith; sister, Sue (Menzie) Brown; and his beloved dog, Mattie. He was preceded in death by his father, R.C. Smith, and mother Hazel Smith.

A Memorial Service was held Saturday, February 2, at Johnson County Funeral Chapel and Memorial Gardens, 11200 Metcalf Avenue, Overland Park, KS, 66210. A reception followed at the same location.

In lieu of flowers, the family suggested donations to the KA-LAP Foundation, c/o The Kansas Lawyers Assistance Program, 515 South Kansas Avenue, Suite 202, Topeka, KS 66603.

**Thomas B. Sullivan III (5/25/2019)**

Thomas B. Sullivan III ‘Tis Himself has moved on. The legend of Tom Sullivan will only grow as the stories continue to be told. Our world will be a little less colorful and a tad more boring without him. He was 79 when he passed away on May 25, 2019 during his fight against cancer. His last weeks were spent with family, telling stories, playing cards, cracking jokes, listening to music, enjoying outdoor fires, watching favorite movies, bragging about his grandchildren and continuing to charm each new person he met on his journey. Tom was born in Kansas City, Missouri to Vera Emma Huber and Thomas Bernard Sullivan II, and lived here his entire life. He attended St Therese Little Flower grade school, Rockhurst High School, and graduated from Rockhurst College in 1961 going on to UMKC law school graduating in 1964 to become a trial lawyer. Tom was one of three lawyers in Missouri to win a prestigious award recognizing Missouri trial lawyers under 30 by the Missouri Bar Foundation. “Sully” was an exceptional athlete excelling in any sport he participated in. He played football and ran track in high school, and in college he played baseball and was an intimidating guard on the basketball team. He went on to be captain of the Rockhurst College basketball team and eventually coach the team after graduation. Tom’s batting average his senior year was .455 which earned him seventh place in the N.A.I.A. rankings of the nations’ hitters, and he was even offered an opportunity to play in the majors. Tom passed on his love of sports by being one of the most memorable coaches at Visitation Elementary School for many years. The vastness of his accomplishments are only rivaled by his stories, he would always add a bit of color for the benefit of those who would listen. Though there were plenty of road trips to Chicago and St Louis when his kids were young, Tom didn’t discover his true love for travelling and adventures until later in life. From road trips crossing both sides of the United States with his daughter visiting historic landmarks and climbing some of the highest points in the states on the route, to touring beautiful Ireland, Scotland and England with his son in Europe. Tom was always up for one more castle, one more hike and what was around the bend on the map. One of the best travelling companions a person could hope for. He enchanted all who met him with his quick wit and wide grin. Tom read more books in a week than many read in a lifetime. He had a great memory for detail, and a love of history. He enjoyed trivia and playing cards and was very fond of telling stories and jokes. He volunteered at the Seton Center for close to 15 years, and was always available to help out a friend in need. The people he leaves behind are his son Ted Sullivan and wife Emily; daughter Jessica Mitchell and husband Ben; sister Kathleen Greer and husband Norris; sister Donna Sullivan; his four beloved grandchildren Coley Sullivan, Ivy Mitchell, Oliver Mitchell and Izola Sullivan as well as many loving nieces, nephews, cousins and friends. A celebration of Tom Sullivan’s life was held on June 16th. We also encourage you to share fond memories and stories at www.mcgilley-midtownchapel.com, where Memorial contributions can be directed to Benilde Hall 3220 East 23rd Street, Kansas City, Missouri 64127.
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**ATTORNEY DISCIPLINE**

**ORDER OF SUSPENSION**

**IN RE GREGORY V. BLMUE**

NO. 119,027—JUNE 28, 2019

FACTS: A hearing panel determined that Blume violated KRPC 3.1 (meritorious claims and contentions); 3.3(a)(1) (candor toward tribunal); 3.4(d) (compliance with discovery request); 4.4(a) (respect for rights of third persons); 8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation); and 8.4(d) (conduct prejudicial to the administration of justice). One incident involved an allegedly inadequate response to a discovery request, two involved rude words and gestures directed at a deposition witness, and one arose out of a motion to set aside an earlier agreed judgment. Blume’s actions regarding discovery resulted in the dismissal of his client’s case, after the district court found that Blume’s conduct was calculated and intentional.

HEARING PANEL: The hearing panel found adequate evidence to support all of the complaints levied against Blume. When considering aggravating factors, the panel noted that Blume’s conduct was motivated by dishonesty and was part of a pattern of failing to show respect for other people. The disciplinary administrator recommended a one-year suspension. Blume asked for a one-year suspension but asked that it be suspended while he served a probationary term. However, the panel found that Blume’s probation plan was wholly inadequate and that his misconduct could not be corrected by probation. The hearing panel agreed with the disciplinary administrator and recommended discipline of a one-year suspension.

HELD: Blume filed numerous exceptions to the hearing panel’s report. Most of the exceptions were not supported by evidence that was considered by the hearing panel. At the hearing before the court, Blume explained that he planned to retire within six months. He asked that discipline be limited to a requirement that he apologize to the deposition witness. The court found Blume’s objections to the findings of fact incoherent and inconsistent, and all of the hearing panel’s findings of fact and conclusions of law were adopted. The court found that Blume failed to understand the nature of his mistakes and did not acknowledge the seriousness of his misconduct. Because of the serious nature of his misconduct and his failure to take responsibility, the court determined that a severe sanction was warranted. It imposed an indefinite suspension from the practice of law.

**INDEFINITE SUSPENSION**

**IN RE THOMAS CALEB BOONE**

NO. 120,744—JUNE 7, 2019

FACTS: A hearing panel determined that Boone violated KRPC 1.1 (competence); 1.3 (diligence); 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation); and 8.4(d) (engaging in conduct prejudicial to the administration of justice). Boone also stipulated to a violation of 3.4(d) (failure to comply with a discovery request). The allegations arose after Boone twice failed to prosecute a civil action, missing multiple deadlines and failing to comply with district court orders. Boone appealed the dismissal of one action but the court of appeals affirmed the district court, finding that Boone’s appellate brief failed to comply with a discovery request. The allegations arose after Boone twice failed to prosecute a civil action, missing multiple deadlines and failing to comply with district court orders. Boone appealed the dismissal of one action but the court of appeals affirmed the district court, finding that Boone’s appellate brief failed to comply with court rules.

HEARING PANEL: The hearing panel found evidence to support the allegations made in the complaint. When considering discipline, the panel noted Boone’s prior history of discipline, the pattern of misconduct, and the number of rule violations. In mitigation, the panel acknowledged the illness and death of Boone’s father and Boone’s genuine remorse for his actions. The disciplinary administrator recommended that Boone’s license be indefinitely suspended. Boone asked that he be placed on probation, but because some of his conduct involved dishonesty, the panel determined that probation was not appropriate. The hearing panel agreed with the disciplinary administrator that indefinite suspension was the appropriate discipline.

HELD: There were no exceptions filed to the hearing panel’s report, so it was deemed admitted. The court denied Boone’s request for probation, finding that the misconduct was not amenable to probation. The court adopted the recommendation of the hearing panel and ordered that Boone’s license be indefinitely suspended.
ORDER OF DISBARMENT  
IN RE MATTHEW EDGAR HULT  
NO. 24,854—JUNE 6, 2019

FACTS: Hult’s law license was indefinitely suspended in February 2018. Since that time, four additional complaints have been filed alleging additional violations of the KRPC. In a letter, Hult voluntarily surrendered his license to practice law in Kansas.

HELD: The court accepts the surrender of Hult’s license, and he is disbarred.

ORDER OF DISBARMENT  
IN THE MATTER OF PAMELA J. THOMPSON  
NO. 120,818—MAY 31, 2019

FACTS: A hearing panel found that Thompson violated KRPC 1.15 (safekeeping property); 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit or misrepresentation); 8.4(d) (engaging in conduct prejudicial to the administration of justice). The allegations arose after Thompson hired Qualified Plan Solutions to provide administrative services for 401(k) retirement accounts for Thompson and her employees. Thompson was the plan’s administrator and trustee. Beginning in January 2016, Thompson withheld funds from her paychecks and her employees’ paychecks. But except on one occasion, she did not deposit the funds as required by the plan. It was not until February 2017 that Thompson’s employees noticed that their 401(k) accounts were underfunded. Thompson worked with QPS to get the accounts current, including both salary deferrals and earned interest. It was alleged that Thompson got the money to make these deposits by converting money from estate cases without being given approval by the court.

HEARING PANEL: Thompson stipulated to the violations. The hearing panel noted several aggravating factors, including a dishonest or selfish motive and a pattern of misconduct. The misconduct was somewhat mitigated by Thompson’s personal and emotional problems, but the panel did not believe that Thompson’s stress and anxiety excused the misconduct. The disciplinary administrator recommended that Thompson be disbarred. Thompson asked that discipline be limited to a one-year suspension. A majority of the hearing panel recommended that Thompson be indefinitely suspended.

HELD: Thompson did not file exceptions to the report and the findings were deemed admitted. After considering the facts, the court agreed with the disciplinary administrator and ordered disbarment. The court found that Thompson’s misconduct was too serious to justify a lesser sanction.

CITY ORDINANCE—HOME RULE  
DWAGFS MANUFACTURING, INC. V. CITY OF TOPEKA  
SHAWNEE DISTRICT COURT—REVERSED  
NO. 119,269—JUNE 28, 2019

FACTS: The City of Topeka passed Ordinance 20099, which made it unlawful to sell cigarettes to persons under age 21, and persons under age 21 were forbidden to buy tobacco. Prior to the ordinance taking effect, a store sued the City of Topeka seeking to prevent enforcement of the ordinance as unconstitutional under the Kansas Constitution. The district court agreed, finding conflicts between the ordinance and state law. The district court both temporarily and permanently enjoined enforcement of the ordinance. The City appealed, and the case was transferred to the Supreme Court.

ISSUE: (1) Statutory preemption

HELD: There is overlap between the ordinance and state statute regarding the subject matter, and the state statute is a uniform law applicable to all cities. But the Kansas Cigarette and Tobacco Products Act does not contain an express statement of preemption, and the act’s “comprehensive scheme” of regulation is inadequate to show an intent to preempt city action. There is also no conflict between the language of the act and the ordinance. The act does not expressly authorize the sale or purchase of tobacco products to those ages 18-20. The ordinance is a constitutional exercise of the city’s home rule power, and the district court is reversed.

STATUTE: Kansas Constitution, Article 12, §5(b), §5(d)

CONSTITUTIONAL ISSUES—DAMAGES  
HILBURN V. ENERPIPE LTD.  
SEDGWICK DISTRICT COURT—  
DISTRICT COURT—REVERSED AND REMANDED  
COURT OF APPEALS—REVERSED  
NO. 112,765—JUNE 14, 2019

FACTS: Hilburn was injured when her car was rear-ended by a semi owned by Enerpipe Ltd. Hilburn sued, claiming that the driver’s negligence caused the accident, and that Enerpipe was vicariously liable for the driver’s actions. Enerpipe admitted to both of these facts, and a trial was held only on the issue of damages. A jury awarded Hilburn $335,000 which included $33,490.86 for medical expenses and $301,509.14 for noneconomic losses. Defense counsel prepared a verdict form with a total award of $283,490.86 which represented the jury’s total award with the amount adjusted to reflect the $250,000 cap of K.S.A. 60-19a02(d). Hilburn objected, claiming the statutory cap was unconstitutional under sections 1, 5, and 18 of the Kansas Constitution Bill of Rights. The district court affirmed the lesser award and Hilburn appealed. The court of appeals affirmed, believed itself to be bound by prior Supreme Court decisions. Hilburn’s petition for review was granted.

ISSUES: (1) Issue preservation; (2) quid pro quo test for section 5 claims; (3) facts versus policy
Held: The version of Supreme Court rule 8.03 in effect at the time Hilburn filed her petition for review allows the court to address a plain error not presented. The issue of whether the quid pro quo test applies to Hilburn’s section 5 claim was properly preserved under the old rule because Hilburn preserved it in the district court and it was addressed by the court of appeals. Section 5 of the Kansas Constitution Bill of Rights preserves the jury trial right as it historically existed at common law. This protection extends to a determination of noneconomic damages. K.S.A. 60-19a02 infringes on this constitutional right. In the past, this infringement has been excused by the two-part quid pro quo test applied through a section 18 analysis. However, continued application of the prior decision in Miller, relying on stare decisis, cannot withstand scrutiny. The section 5 right to jury trial is completely distinct from the section 18 right to remedy. A statutory cap substitutes the legislature’s nonspecific judgment for a jury’s specific judgment. This runs afoul of the constitution’s grant of an “inviolate” right to a jury. The cap on damages imposed by K.S.A. 60-19a02 is facially unconstitutional because it violates section 5 of the Kansas Constitution Bill of Rights.

Concurrence: (Stegall, J.) Justice Stegall agrees that the quid pro quo test should be reversed in favor of an application of the plain and original public meaning of section 5. He first considers whether K.S.A. 60-19a02 even implicates section 5 and concludes that it does, since K.S.A. 60-19a02 is a procedural measure affecting who decides a particular question.

Dissent: (Luckert, J. joined by Biles, J.) She would continue to apply stare decisis and follow Miller, analyzing this issue under the quid pro quo test. She believes Hilburn did not properly preserve this issue in her petition for review. And even if the issue is analyzed on the merits, she believes that mandatory motor carrier liability insurance provides an adequate substitute remedy for litigants.

Statutes: Kansas Constitution Bill of Rights Sections 1, 5, and 18; K.S.A. 60-19a02, -19a02(d)

Conservatorship—factfinding guardianship
In re Guardianship and Conservatorship of B.H.
Wilson District Court—remanded
Court of Appeals—reversed
No. 118,188—June 7, 2019

Facts: Biological mother and father relinquished custody of their children to relatives through a legal guardianship. Once that placement was made, the state terminated child-in-need-of-care proceedings that were pending against the parents. Both parents spent time in prison, neither paid the child support that was ordered, and father left the state after he completed his prison term. After some time passed, mother and father sought to terminate the guardianship, citing a constitutional right to parent. After hearing evidence, the district court denied the motion, citing clear and convincing evidence that the guardianship was in the children’s best interests. The parents appealed and the court of appeals reversed, finding that the district court erred by considering the best interests of the children. That court believed that the district court should have applied the parental preference doctrine because there had never been a finding of parental unfitness. The guardians’ petition for review was granted.

Issue: (1) Termination of guardianship

Held: The purposes of the Code for Care of Children were circumvented by the shift from a CINC proceeding to a guardianship action. Normally, voluntary guardianships are voluntary and may be terminated at any time for any reason. Under ordinary circumstances, parental preference rights would require termination of the guardianship. In this case, though, the voluntary guardianship stopped a final CINC determination and put the CINC action in limbo. There have never been parental fitness findings made in this case, and it is unclear whether the district court attempted to make those findings when refusing to terminate the guardianship. Because the record is unclear, this case is remanded to the district court for additional findings of fact and conclusions of law. If extraordinary circumstances exist to justify the continuation of the guardianship, those findings must be clearly made.

Statutes: K.S.A. 2018 Supp. 38-2201(a), -2203(a), -2203(c), -2255, -2255(e), -2255(f), -2264, -2272, -2272(a)(1), -2272(b), -2272(h); K.S.A. 59-3091, -3091(h)

DUI—field sobriety tests—search and seizure
Casper v. Kansas Department of Revenue
Sedgwick District Court—Court of Appeals is reversed
District Court is affirmed
No. 115,352—June 14, 2019

Facts: Casper’s driving privileges were suspended after she was arrested and refused to take a blood alcohol test. An officer saw Casper make a wide turn. He followed her and did not notice any other indicators of impairment, but he still initiated a stop. The officer testified that Casper was initially cooperative but later claimed that she failed her field sobriety tests: a horizontal gaze nystagmus test, a walk-and-turn test, and a balance-on-one-foot test. After these failures, Casper was arrested. She refused to take a breathalyzer test. Based on her refusal to take a blood test, Casper’s driving privileges were suspended. She appealed, but the decision was affirmed after the hearing officer found that law enforcement had reasonable grounds to believe that Casper was under the influence. The district court disagreed, holding that Casper showed that the officer lacked reasonable grounds for believing that she was driving under the influence. The Department of Revenue appealed and the court of appeals reversed the district court, finding that there were adequate grounds for the stop and arrest. Casper’s petition for review was granted.

Issue: (1) Factual grounds for a stop

Held: Casper’s license could only be suspended if the initial arrest was lawful. And in order to have a lawful arrest, there must have been probable cause to justify the arrest.
There was no evidence that Casper’s breath bore a strong odor of alcohol. The district court correctly heard all of the testimony and reviewed the recordings. The evidence before the district court was substantial and competent and the court made reasonable inferences from that evidence. The court of appeals improperly discounted those findings and should have given more deference to the district court as fact-finder. The district court’s reversal of the hearing officer was supported by substantial competent evidence and should be affirmed.


ADVERSE POSSESSION—MINERAL RIGHTS
OXY USA V. RED WING OIL
HASKELL DISTRICT COURT—REVERSED AND REMANDED
COURT OF APPEALS—AFFIRMED
NO. 111,973—JUNE 7, 2019

FACTS: Oxy USA, Inc. developed a productive oil and gas well on a unitized production unit of land. The unitized area included a quarter section of land which is the subject of this dispute. The well is not located on the property in question, but the owner of the minerals under that property can receive royalties from the production under the unitization agreement. However, Oxy was unable to determine which party owned a disputed one-half interest in the minerals under the property. To resolve that question, Oxy filed this interpleader and quiet title action to determine the rightful owner of the minerals under the property. Alice La Velle King owns the surface rights and an undisputed half interest in the minerals rights, and she claims the other half interest also belongs to her. Opposing her are 41 different people or groups all claiming ownership. The district court granted summary judgment to the other property owners, finding that King’s claim to the royalties was barred by the statute of limitations. The court of appeals reversed on adverse possession grounds. The petition for review was granted.

ISSUE: (1) Can the surface owner of land enforce a reversionary interest in minerals at a later date, or is she barred by the statute of limitations or adverse possession?

HELD: The misappropriation of royalties, standing alone, does not establish adverse possession of a mineral interest. It doesn’t matter whether King knew about royalty payments being made to the other landowners. The surface owner is the legal owner of the minerals located underground. Title to the mineral rights quiets in her favor.

STATUTE: K.S.A. 60-503, -507

SCHOOL FINANCE
GANNON V. STATE
SHAWNEE DISTRICT COURT—PROPOSED REMEDY SUBSTANTIALLY COMPLIES
NO. 113,267—JUNE 14, 2019

FACTS: In June 2018, the court acknowledged that almost all issues in the long-running school finance litigation had been resolved. The court found that the equity piece was satisfied, and although the adequacy piece was not yet met, the court recognized an “intent to comply.” The mandate was stayed until the end of the fiscal year in order to give the State more time to make financial adjustments and reach constitutional compliance for adequacy. The legislature’s proposed remedy was through passage of 2019 House Substitute for Senate Bill 16, which was passed and signed by the governor in April 2019. The bill attempts to cover inflation with additional funding, completing the safe harbor remediation plan. Senate Bill 16 now comes to the court for review.

ISSUE: (1) Compliance with safe harbor plan and accounting for inflation

HELD: The “safe harbor” plan involves the State returning to the basic funding plan approved in 2009-10, with adjustments made for inflation. These 2009-10 calculations included adjustments for virtual state aid. S.B. 16 accounts for inflation by increasing the specific base aid figure for each of the remaining four years of the remediation plan. S.B. 16 substantially complies with prior court decisions and adequately funds education. The court retains jurisdiction to ensure continued implementation of the scheduled funding.

STATUTES: Article 6, § 6(b) of the Kansas Constitution; K.S.A. 72-5132(a)

CRIMINAL

CONSTITUTIONAL LAW—FOURTH AMENDMENT—MOTIONS—SEARCH AND SEIZURE
STATE V. ANDRADE-REYES
JOHNSON DISTRICT COURT—REVERSED AND REMANDED
COURT OF APPEALS—REVERSED
NO. 115,044—JUNE 7, 2019

FACTS: Two officers approached both sides of a car lawfully parked in dark area of an apartment complex lot, shined flashlights on the 2 individuals in the front seat, and repeatedly asked passenger (Andrade-Reyes) to open his hands. Once he did, the baggie dropped and retrieved tested positive for cocaine. Andrade-Reyes charged with possession of cocaine. He filed motion to suppress evidence obtained through an unlawful seizure. District court denied the motion, finding the encounter was voluntary, or in the alternative, the detention was justified for officer safety.

ISSUE: (1) Unlawful seizure

HELD: Andrade-Reyes was unlawfully seized. The encounter was not voluntary. Under totality of the circumstances a reasonable person would not have felt free to terminate the encounter. And prior to Andrade-Reyes dropping the white substance, the officers lacked reasonable suspicion to detain him. Officer safety concerns alone do not justify an investigatory detention. State v. Reiss, 299 Kan. 291 (2014), is distinguished. All evidence obtained as a result of the unlawful seizure must be suppressed. Reversed and remanded.

DISSENT (Luckert, J.): Agrees with majority’s synthesis of
the applicable law, but disagrees with its application of the law to facts in this case. Would hold that once officers initiated the encounter, a reasonably prudent officer would have been warranted in believing, because of specific and articulable facts, that Andrade-Reyes was armed and posed an immediate danger. Because of this belief, it was reasonable for officers to demand that he open his hand. This limited intrusion was reasonable and appropriate for officer safety purposes.

STATUTE: K.S.A. 20-3018(b), 22-2402

ATTORNEY AND CLIENT—CRIMINAL PROCEDURE—MOTIONS
STATE V. BACON
SEDGWICK DISTRICT COURT—AFFIRMED
COURT OF APPEALS—AFFIRMED
NO. 114,951—JUNE 28, 2019

FACTS: Bacon was charged with aggravated human trafficking. After appointed public defender continued the preliminary hearing seven times, Bacon filed pro se “Motion for Diligence” with copy of KRPC 1.3. No action taken on this and subsequent similar motions. Appointed counsel continued the preliminary hearing three more times, and continued trial three times. Bacon then retained private counsel. State amended the complaint and jury found Bacon guilty of commercial sexual exploitation of a child. Motion for new trial filed, based in part on district court’s failure to inquire into Bacon’s pro se motions voicing dissatisfaction with appointed counsel. Bacon appealed the district court’s denial of that motion. Court of appeals affirmed the conviction, finding in part the pro se motions did not allege dissatisfaction with appointed counsel. Review granted on this issue.

ISSUE: District court’s duty to inquire

HELD: It is assumed without deciding that Bacon’s pro se motions were sufficient to trigger the district court’s duty to inquire into a potential conflict with his trial attorney, but on facts in case, remand to district court is unnecessary because Bacon retained a new attorney for trial; he does not claim his trial attorney was ineffective; and he does not otherwise identify any prejudice flowing from district court’s failure to inquire.


CONSTITUTIONAL LAW—CRIMINAL LAW—CRIMINAL PROCEDURE—FOURTH AMENDMENT
JURY INSTRUCTIONS—MOTIONS
SIXTH AMENDMENT—STATUTES
STATE V. BACON
RILEY DISTRICT COURT—AFFIRMED IN PART, REVERSED IN PART, AND REMANDED
COURT OF APPEALS—AFFIRMED IN PART AND REVERSED IN PART
NO. 113,767—JUNE 7, 2019

FACTS: Darrah and two co-conspirators were implicated in the kidnapping and murder of an associate. He pled no contest and the parties made a sentencing recommendation. Before sentencing, Darrah asked the district court to impose concurrent rather than consecutive sentences, claiming that his culpability was less than his coconspirators’ and that concurrent sentencing would make his sentence commensurate with his level of involvement in the crime. At sentencing, the State requested both the aggravated number for the kidnapping charge and that the sentence run consecutive to the murder sentence. Darrah asked for mitigated numbers with concurrent sentencing. The district court imposed a hard 25

question for jury was whether Barrett’s mental condition prevented him from forming a culpable mental state. On appeal, he claimed reversible error in district court’s failure to deny a requested instruction on imperfect self-defense voluntary manslaughter. In unpublished opinion, court of appeals affirmed, finding instructional error but the error was harmless under the “skip rule.” Panel also rejected Barrett’s claim that his mental illness made his post-Miranda statements involuntary under Blackburn v. Alabama, 361 U.S. 199 (1960), and claim that State’s failure to force him to take his antipsychotic medication for four years violated the Kansas speedy trial statute. Review granted on all claims.

ISSUES: (1) Jury instructions—skip rule; (2) motion to suppress; (3) speedy trial

HELD: District court committed reversible error when it failed to give an imperfect self-defense voluntary manslaughter instruction. “Skip rule” is revisited, clarified, and corrected. The “skip rule” is a logical deduction that may support a finding of harmless error when it reasonably applies, but it does not replace long-standing harmless tests. Instead, the logical deduction inherent in the skip rule is one factor, among many, to be considered as part of the applicable harmless test. In this case, failure to give the imperfect self-defense voluntary manslaughter instruction was reversible error because jury could have reasonably convicted Barrett of voluntary manslaughter. Reversed and remanded for a new trial.

Blackburn is distinguished. Colorado v. Connelly, 379 U.S. 157 (1968), is controlling, holding that coercive police activity is a necessary predicate to finding a confession is not voluntary within the meaning of the Due Process Clause of the Fourteenth Amendment. District court found no evidence of coercive police activity in this case, and correctly dismissed Barrett’s motion to dismiss.

Denial of Barrett’s motion to dismiss on speedy trial grounds is affirmed. Sixth Amendment did not require State to force-medicate Barrett with potentially life-threatening medication to maintain his competency to stand trial.

STATUTE: K.S.A. 21-3403(b), 22-3220, 60-261

CONSECUTIVE SENTENCES
STATE V. DARRAH
MCPHERSON DISTRICT COURT—AFFIRMED
NO. 117,461—JUNE 21, 2019

FACTS: Barrett convicted of reckless second degree murder and sentenced for the killing of an exterminator who had entered Barrett’s apartment to kill bugs. Trial delayed over six years until Barrett was competent to stand trial. Key question for jury was whether Barrett’s mental condition prevented him from forming a culpable mental state. On appeal, he claimed reversible error in district court’s failure to deny a requested instruction on imperfect self-defense voluntary manslaughter. In unpublished opinion, court of appeals affirmed, finding instructional error but the error was harmless under the “skip rule.” Panel also rejected Barrett’s claim that his mental illness made his post-Miranda statements involuntary under Blackburn v. Alabama, 361 U.S. 199 (1960), and claim that State’s failure to force him to take his antipsychotic medication for four years violated the Kansas speedy trial statute. Review granted on all claims.

ISSUES: (1) Jury instructions—skip rule; (2) motion to suppress; (3) speedy trial

HELD: District court committed reversible error when it failed to give an imperfect self-defense voluntary manslaughter instruction. “Skip rule” is revisited, clarified, and corrected. The “skip rule” is a logical deduction that may support a finding of harmless error when it reasonably applies, but it does not replace long-standing harmless tests. Instead, the logical deduction inherent in the skip rule is one factor, among many, to be considered as part of the applicable harmless test. In this case, failure to give the imperfect self-defense voluntary manslaughter instruction was reversible error because jury could have reasonably convicted Barrett of voluntary manslaughter. Reversed and remanded for a new trial.

Blackburn is distinguished. Colorado v. Connelly, 379 U.S. 157 (1986), is controlling, holding that coercive police activity is a necessary predicate to finding a confession is not voluntary within the meaning of the Due Process Clause of the Fourteenth Amendment. District court found no evidence of coercive police activity in this case, and correctly dismissed Barrett’s motion to dismiss.

Denial of Barrett’s motion to dismiss on speedy trial grounds is affirmed. Sixth Amendment did not require State to force-medicate Barrett with potentially life-threatening medication to maintain his competency to stand trial.

STATUTE: K.S.A. 21-3403(b), 22-3220, 60-261

CONSECUTIVE SENTENCES
STATE V. DARRAH
MCPHERSON DISTRICT COURT—AFFIRMED
NO. 117,461—JUNE 21, 2019

FACTS: Darrah and two co-conspirators were implicated in the kidnapping and murder of an associate. He pled no contest and the parties made a sentencing recommendation. Before sentencing, Darrah asked the district court to impose concurrent rather than consecutive sentences, claiming that his culpability was less than his coconspirators’ and that concurrent sentencing would make his sentence commensurate with his level of involvement in the crime. At sentencing, the State requested both the aggravated number for the kidnapping charge and that the sentence run consecutive to the murder sentence. Darrah asked for mitigated numbers with concurrent sentencing. The district court imposed a hard 25
for the murder charge and the aggravated sentence for kidnap - napping, to run consecutive to the murder sentence. Darrah appealed.

ISSUE: (1) Abuse of discretion with sentencing

HELD: The facts presented at trial show that Darrah was central to the conspiracy and acted as a leader in committing the crimes. A reasonable person could have concluded that the sentence imposed was proportionate to the harm and culpability associated with Darrah’s actions. For these reasons, the sentence imposed by the district court was not an abuse of discretion.

STATUTE: K.S.A. 2018 Supp. 21-6815(c)(2)(H), -6819(b)

APPEALS—CRIMINAL PROCEDURE—MOTIONS
STATE V. DOUGLAS
RENO DISTRICT COURT—REVERSED AND REMANDED
COURT OF APPEALS—AFFIRMED
NO. 119,170—MAY 31, 2019

FACTS: During traffic stop, officer observed a capsule sticking out of Douglas’ pants pocket. Capsule was retrieved and tested positive for methamphetamine. Douglas filed motion to suppress, arguing violation of constitutional rights. District court agreed, stating no description of the capsule was provided to the court, thus no basis to find the detention was based on a reasonable and articulable suspicion. State appealed, citing officer’s testimony about the capsule. Court of appeals reversed and remanded with directions to deny the motion to suppress. Dissenting judge agreed to the reversal, but would remand for district judge to reevaluate findings based on evidence the officer in fact described the capsule observed in Douglas’ pocket. Douglas’ petition for review granted.

ISSUE: (1) Ruling on motion to suppress—reversal and remand

HELD: When a district court judge’s ruling in favor of defense motion to suppress is infected with an obviously incorrect assessment of State’s evidence that is equivalent to an arbitrary disregard of a portion of that evidence, an appellate court cannot be certain if the district judge, once the error was pointed out, would arrive at the same or a different conclusion. In such circumstances, wisest course for appellate court is to reverse and give district judge another chance to review the record. Panel majority’s reversal and remand with directions to draw an opposite conclusion of law short-circuits that chance. Reversed and remanded for further proceedings. Panel’s decision is affirmed but its instructions to the district court are modified.

STATUTE: K.S.A. 22-3216(2)

CRIMINAL PROCEDURE—MOTIONS—SENTENCES
STATUTES
STATE V. DUBRY
SHAWNEE DISTRICT COURT—AFFIRMED
COURT OF APPEALS—AFFIRMED
NO. 114,050—JUNE 28, 2019

FACTS: Dubry was convicted of kidnapping. Years later he moved to correct his 2011 sentence, arguing the sentencing court improperly scored a prior Wyoming conviction as a person crime. District court denied the motion. Dubry appealed, arguing the Wyoming statute is broader than the counterpart Kansas offense. Court of appeals affirmed in unpublished opinion. Dubry’s petition for review granted, and parties were ordered to explain whether panel’s decision should be summarily vacated and case remanded to district court in light of State v. Wetrich, 307 Kan. 552 (2018). Dubry argues Wetrich should apply.

ISSUE: (1) Classification of out-of-state crime

HELD: Affirmed based on State v. Murdock, 309 Kan. 585 (2019)(Murdock II). Legality of a sentence under K.S.A. 2018 Supp. 22-3504 is controlled by the law in effect at the time the sentence was pronounced. Thus a sentence that was legal when pronounced does not become illegal if the law subsequently changes. Since Wetrich announced a change in the law and Dubry was sentenced before Wetrich was decided, application of Wetrich to Dubry’s motion to correct his sentence is barred by Murdock II.

STATUTES: K.S.A. 2018 Supp. 22-3504; K.S.A. 20-3018(b), 21-3503, -4701 et seq., -4711, 60-2101

CONSTITUTIONAL LAW—EVIDENCE—FIFTH AMENDMENT—FOURTH AMENDMENT—MOTIONS
STATE V. GUEIN
JOHNSON DISTRICT COURT—REVERSED AND REMANDED
COURT OF APPEALS—AFFIRMED IN PART AND REVERSED IN PART
NO. 115,426—JUNE 28, 2019

FACTS: Police observed a suspected drug deal involving car parked in a closed Burger King lot. Officers approached the car, patted down occupants and retrieved a bag of marijuana Guein admitted was in his underwear. After arrest, Guein admitted additional marijuana in the car. Search of the car disclosed handgun, loose marijuana, and drug paraphernalia. Guein filed a motion to suppress his statements and the evidence obtained as a result of search of his person and his car. District court: refused to suppress Guein’s statement of discovery Guein had voluntarily waived his rights; and denied suppression of the physical evidence. Guein was convicted of felony distribution of marijuana and misdemeanor possession of paraphernalia. A divided court of appeals reversed in part and affirmed in part the district court’s decision on the motion to suppress.

STATUTE: K.S.A. 2018 Supp. 21-6815(c)(2)(H), -6819(b)
false.
FACTS: Johnson entered a no contest plea to charges of felony murder, aggravated kidnapping, aggravated assault, and criminal possession of firearm. Sentencing included: inconsistent references as to whether the life sentence for felony murder included possibility of parole after 25 years or required lifetime postrelease supervision; ambiguity about what sentences were to run concurrent or consecutive; and journal entry stating that restitution was “to be determined (TBD).” Johnson appealed on sentencing claims.

ISSUES: (1) Lack of preservation of consecutive sentencing issue; (2) jurisdiction to impose restitution; (3) illegal sentence aspects requiring correction without remand

HELD: Merits of Johnson’s claim—that district court relied on facts outside the record in sentencing consecutive terms on felony murder and aggravated kidnapping convictions—is not considered. Johnson failed to raise this issue in district court, and does not explain why issue should be considered for first time on appeal.


State concedes that judge’s inconsistent statements about parole eligibility after 25 years, not lifetime postrelease supervision, made this aspect of Johnson’s sentence illegal. The lifetime postrelease supervision term imposed at sentencing is vacated. Also, on face of record that clearly shows judge’s intention, no further action is required to correct the criminal possession sentence to make it concurrent with the other three sentences.

STATUTE: K.S.A. 2018 Supp. 21-6620(b)(1), -6820(i), 22-3504(1), -3504(3), -3717(b)(2)

CONSTITUTIONAL LAW—CRIMINAL LAW—EVIDENCE JURY INSTRUCTIONS—STATUTES

STATE V. MACOMBER

SHAWNEE DISTRICT COURT—AFFIRMED COURT OF APPEALS—AFFIRMED ON ISSUES SUBJECT TO REVIEW

NO. 113,869—MAY 17, 2019

FACTS: Macomber was charged with first-degree murder for fatally shooting an unarmed man in the victim’s driveway. He filed motion to dismiss the case, asserting self-defense immunity under K.S.A. 2018 Supp. 21-5231. District court denied the motion, finding State presented sufficient evidence to establish probable cause that deadly force was not statutorily justified. Jury found Macomber guilty of involuntary man-slaughter, a conviction the court of appeals affirmed in unpublished opinion, finding in part that any error was harmless in district court’s denial of the request for an instruction on self-defense presumption of reasonable belief that deadly force is necessary. Macomber’s petition for review granted on two issues: (1) whether district court erred by denying the pretrial motion to dismiss on self-defense immunity grounds; and (2) whether district court’s failure to instruct jury on presumption of reasonableness violated Macomber’s due process rights to a fair trial.

ISSUES: (1) Self-defense immunity; (2) presumption instruction

HELD: There was probable case that Macomber’s use of deadly force was not statutorily justified. Disputed facts supporting the district court’s findings are itemized. District court’s probable cause determination was correct based on substantial competent evidence supporting the district court’s factual findings.

Kansas Supreme Court has never addressed whether jury must be instructed on the presumption, and no suggestion by parties or Kansas caselaw that the requested instruction was not legally appropriate. Because failing to instruct on presumption in this case would not have affected burden of proof—i.e. State’s duty to disprove the affirmative defense—any error in failing to give the instruction at issue would be classified as a state-law error. Statutory presumptions for and against the accused are discussed and compared. While evidence is inconclusive whether Macomber acted in self-defense, his own statements strongly undercut any claim that he subjectively believed deadly force was necessary to prevent harm to himself. Panel’s finding of harmless error is affirmed.

CONCURRENCE and DISSENT (Johnson, J.(joined by Nuss, C.J., and Luckert, J.): Agrees with majority opinion until majority improperly engages in evidence-weighing and credibility-assessment by ignoring contradictory evidence and relying on selected statements by Macomber that support its conclusion that he did not actually believe deadly force was necessary. Believes the conflicting testimony could not, as a matter of law, definitively rebut the statutory presumption that self-defense was necessary. Because evidence is not viewed in light most favorable to the State in this circumstance, would hold that State did not meet its burden to show that withholding an instruction on the presumption was harmless.

STATUTES: K.S.A. 2018 Supp. 17-7207(a)-(c), 21-5222, -5224, -5224(b), -5231, 23-2208(b), 44-501(b)(1)(C); K.S.A. 20-3018(b), 60-2101(b)

ISSUE: (1) Criminal history calculation

HEL D: Resolution of this appeal does not resolve parties' arguments regarding Wetrich. Instead, following State v. Murdock, 309 Kan. 585 (2019)(Murdock II), Newton's 1977 California robbery conviction was properly classified as a person felony under Kansas caselaw in 2008 when his sentence in the Kansas case became final.

STATUTES: K.S.A. 2018 Supp. 22-3504, -3504(3); K.S.A. 2017 Supp. 21-6811(e)(3); K.S.A. 20-3018(b), 21-4710 et seq., -4711(e), 60-2101(b)

CONSTITUTIONAL LAW—CRIMINAL PROCEDURE—EVIDENCE—SENTENCING—STATUTES
STATE V. OBREGON
GEARY DISTRICT COURT—REVERSED, SENTENCES VACATED AND REMANDED
COURT OF APPEALS—AFFIRMED IN PART AND REVISED IN PART
NO. 117,422—JUNE 28, 2019

FACTS: Obregon entered no contest pleas to possession of drugs with intent to distribute. District court accepted the pleas, and in sentencing, applied the statutory firearm enhancement. Obregon appealed, challenging whether district court should have classified a prior Florida battery conviction as a person felony without knowing which version of the Florida crime he committed. He also claimed his no contest pleas to the base drug offenses did not include any facts upon which the enhancement could be grounded. Court of appeals concluded the district court properly calculated Obregon's criminal history score, but held Obregon's waiver of his right to jury trial on the firearm enhancement was invalid. Panel vacated the enhancement and remanded case to district court for proper waiver or for jury to make factual findings required by K.S.A. 2015 Supp. 21-6805(g)(1) regarding the firearm. Obregon's petition for review granted.

ISSUES: (1) Florida battery conviction; (2) firearm enhancement

HEL D: Pursuant to State v. Murdock, 309 Kan. 585 (2019) (Murdock II), Obregon is entitled to application of State v. Wetrich, 307 Kan. 552 (2018), but variation to the Wetrich analysis is presented because the Kansas and out-of-state offenses are both what Kansas law refers to as “alternative means crimes.” When the crime in question is an out-of-state offense with alternative means—some of which would not be comparable to Kansas person crimes—the State bears the burden of establishing the defendant committed a version of the offense supporting the person classification. On record in this case, district court's finding that Obregon committed a Florida offense with a comparable Kansas person crime is not supported by substantial competent evidence. Because the Florida offense on its face is broader than the Kansas comparator, it should not have been classified as a person offense under Wetrich. Sentence is vacated and case is remanded for district court to reconsider the Florida conviction's person-crime classification.

CONCURRENCE AND DISSENT (Johnson, J.): Agrees the district court must resentence Obregon without the enhancement. Also agrees the State failed to present sufficient evidence to support classification of the Florida battery conviction as a person felony, but that insufficiency of the evidence should result in vacating the sentence and remanding for resentencing of criminal history score with the Florida conviction classified as nonperson.

STATUTES: K.S.A. 2018 Supp. 21-5413(a), -5413(a)(1), -5413(a)(2), -5413(g), -6801 et seq., -6805(g)(1), -6805(g)(2), -6809, -6814, -6814(b), -6814(c); K.S.A. 2015 Supp. 21-6805(g)(1), -6811(e); K.S.A. 2013 Supp. 21-6817(b)(2); K.S.A. 20-3018(b), 21-3715, -3715(a), 60-2101(b)

CONSTITUTIONAL LAW—FIFTH AMENDMENT MOTIONS—VENUE
STATE V. PALACIO
SALINE DISTRICT COURT—AFFIRMED
NO. 116,899—JUNE 7, 2019

FACTS: Palacio fired shots into a truck, killing the passenger. Palacio filed motion for change of venue, arguing significant pretrial publicity made it impossible to receive an impartial jury. District court denied the motion. Palacio also filed motion to suppress his confession because officers continued to interrogate him after he asked for a lawyer, or alternatively, the officers used coercive tactics. District court suppressed statements Palacio made in-between time he asked for a lawyer and the time he told officers he wanted to say something. Jury convicted Palacio of first-degree murder under theories of premadication and felony murder, attempted first-degree
murder, criminal discharge of a firearm at an occupied vehicle, and conspiracy to commit aggravated battery. On appeal he claimed the district court’s refusal to change venue violated K.S.A. 22-2616. He also claimed the officers violated his Fifth Amendment rights, or alternatively, his confession was involuntary.

ISSUES: (1) Change of venue statute; (2) motion to suppress confession

HELD: District court’s weighing of factors in K.S.A. 22-2616 is reviewed and upheld, including the slight favor of prejudice attributed to the severity of Palacio’s crimes that included a homicide. Same factor compared to weight of prejudice in cases involving more severe crimes of capital murder and rape.

Kansas Supreme Court has never directly addressed whether explicit questioning is always interrogation, but cases have indicated it is not. Court now confirms that an officer’s words or actions, including explicit questions, is interrogation only if the officer should have known that the questioning was reasonably likely to elicit an incriminating response from the suspect. In this case, the officers’ comments and questions were not interrogation and did not violate Fifth Amendment. Palacio thus was free to waive his previously invoked right, and knowingly and intelligently did so. Under facts in this case, district court did not err in finding the officers did not threaten, coerce, or engage in deceptive practices, and in concluding Palacio’s confession was voluntary.

CONCURRENCE (Johnson, J.): Concurs in the result.

STATUTE: K.S.A. 22-2616, -2616(1)

APPEALS—CRIMINAL LAW—EVIDENCE
STATE V. RUCKER
WYANDOTTE DISTRICT COURT—AFFIRMED
NO. 117,143—JUNE 7, 2019

FACTS: Rucker was convicted of first-degree felony murder. He appealed, challenging the sufficiency of the evidence supporting that conviction. He also claimed the district court erred in admitting gruesome photographs of the victim that had no probative value on issues in dispute at trial, and that only inflamed passions of the jury.

ISSUES: (1) Sufficiency of the evidence; (2) admission of photographs

HELD: State alleged the victim was killed while Rucker was “in the commission of” or “attempt to commit” one or more of four inherently dangerous felonies: robbery, rape, aggravated kidnapping, and aggravated burglary. Rucker’s challenge to the sufficiency of the evidence supporting this alternative means crime fails because the evidence considered in the light most favorable to the state supports a jury finding that Rucker committed the four underlying felonies.

At trial, Rucker did not object to the admission of any of the photographs, and stipulated to their admission. Rucker did not preserve this issue for appeal, and merits of his argument are not reached.

STATUTE: K.S.A. 21-3401(b), -3426, -3436(a)(2), (3), (5), (10), -3716 (Furse)

CRIMINAL PROCEDURE—MOOTNESS—MOTIONS—SENTENCING—STATUTES
STATE V. RUSS
SEDGWICK DISTRICT COURT—AFFIRMED
Court of Appeals—Affirmed
NO. 115,111—JUNE 28, 2019

FACTS: Russ was found guilty of attempted second-degree murder. His prior convictions included six Wichita municipal violations classified as person misdemeanors, five of which were eligible for conversion to a felony. Russ appealed sentencing court’s classification of prior municipal ordinance convictions as person offenses to calculate Russ’ criminal history score, arguing in part the domestic battery municipal ordinances were broader than the counterpart Kansas domestic battery statute. Court of appeals affirmed in unpublished opinion. Russ petitioned for review claiming the panel erred by: (1) looking beyond the most comparable Kansas offense of domestic battery to analyze his municipal ordinance domestic battery convictions, and (2) declining to address as moot an issue concerning his prior conviction of failure to comply with bond restrictions.

ISSUES: (1) Classifying the domestic battery municipal ordinance violations; (2) mootness

HELD: Applying State v. Wetrich, 307 Kan. 552 (2018), the panel correctly held Russ’ domestic battery ordinance violations were person offenses. Only difference between the ordinances and the Kansas domestic battery statute is the specific requirement of the relationship between the batterer and the battered, which makes the scope of the ordinance’s proscribed acts narrower, not broader.

Panel correctly declined to address the classification of Russ’ prior conviction for failure to comply with bond restrictions. Regardless of classification of this prior conviction, Russ’ criminal history score is unchanged since three prior domestic battery municipal ordinance violations were properly scored as person misdemeanors.

STATUTES: K.S.A. 2018 Supp. 21-5413(a), -5413(g)(l), -6801 et seq., -6810(a), -5811(a); K.S.A. 2017 Supp. 21-6811(e) (3); K.S.A. 2016 Supp. 21-6804(a), -6809, -6811(a); K.S.A. 2014 Supp. 21-5414(a); K.S.A. 20-3018(a), 60-2101(b)
CRIMINAL LAW—CRIMINAL PROCEDURE
SENTENCES—STATUTES
STATE V. SMITH
JOHNSON DISTRICT COURT—VACATED
AND REMANDED
COURT OF APPEALS—AFFIRMED
NO. 116,586—MAY 17, 2019

FACTS: Smith was convicted of trafficking contraband in a jail. In calculating criminal history, sentencing court included Smith’s Missouri municipal ordinance violation for endangering welfare of a child as a person misdemeanor. Smith appealed, arguing her criminal history should not have included this out-of-state ordinance violation. Court of appeals agreed in unpublished opinion, holding the rule of leniency applied because sentencing guidelines were silent about how to classify an out-of-state ordinance violation when the convicting jurisdiction does not consider an ordinance violation to be a crime. State’s petition for review granted.

ISSUE: (1) Classification of an out-of-state municipal ordinance violation

HELD: Panel’s decision is affirmed on different reasoning. It is undisputed that Smith’s ordinance violation is not a crime under Missouri state law or the city’s Municipal Code. Plain language of K.S.A. 2015 Supp. 21-6811(e)(2) precludes a sentencing court from scoring a municipal ordinance violation when the convicting jurisdiction’s municipal code fails to designate that violation as either a felony or misdemeanor or while it uses those designations for other violations. The court cannot delete vital portions from a statute or supply vital omissions. No matter what the Legislature may have intended to do, if it did not in fact do so under any reasonable interpretation of the language used, the defect is one the Legislature alone can correct.

STATUTES: K.S.A. 2018 Supp. 21-5601(a), -5601(c)(1); K.S.A. 2015 Supp. 21-6602(a), -6801, -6803(c), -6809, -6810, -6811, -6811(a), -6811(e)(2); K.S.A. 20-3018(b), 60-2101(b)

CRIMINAL LAW—CRIMINAL PROCEDURE—JURISDICTION—MOTIONS—SENTENCES—STATUTES
STATE V. SMITH
SEDGWICK DISTRICT COURT—AFFIRMED
COURT OF APPEALS—AFFIRMED
NO. 113,828—MAY 31, 2019

FACTS: Smith was convicted in 1984 on a guilty plea to charges of burglary and theft. Jail credit not addressed at sentencing or in final journal entry. No appeal from subsequent revocation of probation in the 1984 case. Smith filed 2014 motion for jail credit for time spent in county jail and residential facility. District court denied the motion, finding any jail credit issue had been waived. Smith appealed, arguing broad interpretation of his pro se motion as one filed under K.S.A. 60-1507, or under K.S.A. 22-3504 citing State v. Guzman, 279 Kan. 812 (2005). Court of appeals affirmed in unpublished opinion. Smith petitioned for review, seeking resolution of conflict in court of appeals’ opinions regarding district court’s jurisdiction to review post-conviction jail credit motions.

ISSUES: (1) Jurisdiction; (2) clerical error

HELD: Smith’s failure to raise issue of jail credit on direct appeal does not foreclose a motion under the nun pro tunc provision in K.S.A. 22-3504(2) to review clerical errors in judgments. The words “at any time” in that subsection means Kansas courts, with some exception, have jurisdiction to determine whether a clerical error occurred even after the time for an appeal has passed. Contrary holdings are disapproved in unpublished panel opinions in this case, State v. Muldrow (No. 107291), State v. Blazier (No. 110070), State v. Olson (No. 102226), State v. Burnett (No. 112681), State v. Brown (No. 111052), State v. Arculeo (No. 110974), State v. Lakin (No. 111060), State v. Walker (No. 109309), and any other court of appeals decision holding that a criminal defendant cannot move for correction of jail credit if the defendant failed to raise the issue in a direct appeal.

Summary dismissal of Smith’s motion was warranted. Smith requested 18 months of jail credit, but identified no clerical error. Instead, Smith makes conclusory statements, presents no evidentiary support and provides nothing in the record warranting relief.

CONCURRENCE AND DISSENT (Luckert, J.): Agrees that Smith’s failure to raise issue of jail credit on direct appeal did not result in waiver of the issue if relief is sought under K.S.A. 22-3504(2). Disagrees with majority’s conclusion that district court can be affirmed because Smith failed to allege a jurisdictional basis for his motion. Reasons cited for why the merits of Smith’s motion cannot be evaluated at this time, including whether standard for “clerical error” stated in State v. Storer, 53 Kan. App. 2d 1 (2016), should be adopted. Would remand to allow parties to develop their procedural, factual and legal arguments about whether a clerical error occurred.


CRIMINAL LAW—CRIMINAL PROCEDURE—JURISDICTION—SENTENCING
STATE V. WEBER
SEDGWICK DISTRICT COURT—
COURT OF APPEALS IS AFFIRMED
DISTRICT COURT IS AFFIRMED
NO. 113,472—JUNE 14, 2019

FACTS: Weber pled guilty to attempted robbery. The plea agreement assumed that his criminal history score would be C. A presentence investigation report revealed two Michigan convictions which, if scored as person felonies, would increase his criminal history score to B. The district court imposed sentence using the B score. Weber did not directly appeal his conviction or sentence. Some years later, Weber filed a motion to correct illegal sentence based on the State v. Murdock holding; he argued that because Kansas statutes did not use the person/nonperson designations at the time of his conviction, his out-of-state convictions should be designated as nonper-
son felonies. The district court denied his motion and Weber appealed. The court of appeals affirmed, citing *Keel* and *Murdoch II* and noting that the test was to look for comparable offenses. Weber’s petition for review was granted.

**ISSUES:** (1) Letter of additional authority; (2) sentencing authority

**HELD:** The State could not use a Rule 6.09(b) letter as a substitute for a responsive brief. The statutory changes and case law updates occurred well before the State’s briefing deadline would have passed. *Wetrich* was a change in the law. Under the law at the time of Weber’s sentencing, offenses had to be comparable but not identical. Because Weber’s Michigan offense was comparable to a Kansas offense, his sentence was not illegal.

**STATUTES:** K.S.A. 2018 Supp. 21-6811(e), -6811(e)(3); 22-3504(3); K.S.A. 21-4711(e)

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**KANSAS COURT OF APPEALS**

**CIVIL**

**DISCOVERY**

**FLAHERTY V. CNH INDUSTRIAL AMERICA**

**SALINE DISTRICT COURT—AFFIRMED**

**NO. 119,704—JUNE 28, 2019**

**FACTS:** Flaherty purchased a sprayer manufactured by CNH in early 2014. Later that year, Flaherty took it back to the dealer for maintenance and a hose adjustment. The dealer knew that there were also potential issues with one of the drive hoses at the engine starter. While the sprayer was at the dealer, it caught on fire and was completely destroyed. During the investigation, a fire investigator with the fire department accompanied law enforcement on the scene. It was his opinion that the fire was caused by an electrical issue. Neither of Flaherty’s experts could definitively determine the fire’s cause. Robert Hawken, a product safety specialist at CNH, investigated the sprayer in anticipation of litigation. Flaherty sued both CNH and the dealer. During discovery, Flaherty provided notice of his intent to depose Hawken. CNH filed a motion to quash and asked the court to quash the subpoena. The district court granted that motion and Hawken was not deposed. After hearing more evidence, the district court granted CNH’s motion for summary judgment on all claims and Flaherty appealed.

**ISSUES:** (1) Denial of discovery request; (2) express warranty claims; (3) implied warranty claims

**HELD:** Hawken examined the sprayer over a month after the fire, and he only gave his findings to CNH’s legal department and outside counsel. The dealer told Flaherty that Hawken believed the fire started in the sprayer’s starter area. Hawken's opinions were protected by work-product privilege as far as the subpoena duces tecum was concerned. Hawken was also protected by non-testifying expert privilege as an in-house expert. Flaherty failed to prove that Hawken waived his privilege, and much of the privilege belonged to CNH, and Hawken has no power to waive it on the company’s behalf. The warranty agreement between Flaherty and CNH disclaimed any express warranty created by descriptions of the sprayer on its website or by statements made by salespeople. And Flaherty failed to identify any specific descriptions of the sprayer on which he relied. In addition, the warranty agreement required Flaherty to prove that the sprayer had a defect in material or workmanship, which he failed to do. Any implied warranty claim had a similar requirement that Flaherty prove the existence of a defect. In addition, Flaherty failed to prove that the sprayer was defective when it left CNH’s control.


**INTERMEDIATE SANCTIONS**

**STATE V. DURAN**

**SEDGWICK DISTRICT COURT—REVERSED AND REMANDED**

**NO. 119,303 AND 119,304—JUNE 21, 2019**

**FACTS:** Guadalupe Duran was sentenced to probation in two cases. For each case, there was a lengthy underlying sentence. Duran stipulated to violating his probation. Both Court Services and the State asked the district court to impose Duran’s underlying sentence. Instead of imposing a graduated, intermediate sanction the district court found that “public safety” would be negatively impacted by reinstatement, and it ordered Duran to serve his underlying sentences. Duran appealed.

**ISSUE:** (1) Failure to impose intermediate sanctions

**HELD:** A district court is given statutory authority to bypass intermediate sanctions only in limited circumstances. In order to make that bypass, the district court must establish with particularity the reasons for finding that public safety will be negatively affected or that the offender’s welfare will not be served by the intermediate sanction. Those particularized findings must be more than a general finding that the offender is not amenable to probation. Here, the district court’s findings were based on speculation and generalized predictions without connection to the particular facts of Duran’s case. The district court abused its discretion by revoking pro-
bation without setting forth with particularity reasons which justified the refusal to impose an intermediate sanction.

STATUTE: K.S.A. 2018 Supp. 22-3716(c)(1), -3716(c)(9)(A)

RACE-BASED POLICING
STATE V. GILL
RENO DISTRICT COURT—AFFIRMED
NO. 119,986—JUNE 21, 2019

FACTS: Law enforcement went to an apartment complex to investigate a reported theft. There was no suspect description and the officer was not looking for anyone in particular. The officer spotted Gill and a passenger in an SUV; both men were African-American. When Gill attempted to leave, the officer told him that he was not free to go. Despite no evidence of wrongdoings, the officer asked for Gill’s driver’s license and proof of insurance. Eventually, officers searched Gill’s vehicle and discovered evidence of drug activity. After he was charged, Gill moved to suppress the evidence from his vehicle, alleging that the officer unreasonably used race-based policing when initiating the encounter with Gill. The district court agreed and suppressed the evidence. The State appealed.

ISSUE: (1) Admissibility of evidence in light of race-based policing

HELD: This case does not involve normal Fourth Amendment inquiries; exclusion was granted because the district court found that law enforcement violated K.S.A. 2018 Supp. 22-4609. The district court correctly determined that approaching two African-American men because they are “staring hard at you” unreasonably used race when deciding to initiate an enforcement action. The contact between the officer and Gill was completely unrelated to the initial theft report. And the district court’s finding that the officer could not have determined whether a marijuana smell was coming from Gill’s vehicle is an unreviewable credibility determination. The district court correctly concluded that the officer unreasonably used race to initiate an enforcement action and, as a result, suppressed evidence found in Gill’s vehicle.

DISSENT: (Powell, J.) Body camera video showed no evidence of racial animus. Absent that, the district court erred by suppressing the evidence.

STATUTES: K.S.A. 2018 Supp. 22-4604(d), -4606(d), -4609; K.S.A. 22-3216(l)

EXHAUSTION OF ADMINISTRATIVE REMEDIES—UNEMPLOYMENT
LUCKETT V. KANSAS EMPLOYMENT SECURITY
BOARD OF REVIEW
GEARY DISTRICT COURT—REVERSED AND REMANDED
NO. 119,717—MAY 31, 2019

FACTS: After losing her job, Luckett filed for weekly unemployment insurance benefit claims with the Kansas Department of Labor. Although some of her claims were denied, Luckett was awarded unemployment benefits for a certain period of time. In a letter dated more than 60 days after the last decision was rendered, Luckett sought payment of the benefits that were awarded as well as reconsideration of another decision. The referee who received Luckett’s letter construed it as a motion to reconsider and denied it on grounds that it was untimely and failed to establish excusable neglect for a late appeal from a denial. The referee did not address Luckett’s claim that she had not yet been paid the benefits that were awarded to her. Luckett again sent a letter clarifying that she wanted to be paid the benefits that she was awarded. Luckett filed a petition for judicial review. The district court ultimately granted KDOL’s motion to dismiss, finding that Luckett’s appeals were untimely. She appealed.

 ISSUES: (1) Correct standard; (2) finding of excusable neglect; (3) motion to amend

HELD: Luckett’s appeal was based on the KJRA. For that reason, a summary judgment standard is inappropriate. It is undisputed that Luckett’s November 2017 letter was filed beyond the 16-day time limit established by statute. But that letter was not an appeal of an adverse decision. And the examiner’s original decision allowed for reconsideration within one year assuming that Luckett provided some necessary information. That was what Luckett was attempting to do. The KDOL erred by construing Luckett’s letter as an appeal. Luckett’s filings were not untimely, and she was not required to exhaust administrative remedies before receiving relief. Luckett had claims consistent with a mandamus action. It was error to dismiss Luckett’s petition for review without considering her motion to amend.

STATUTES: K.S.A. 2018 SUPP. 44-703(D), -709(B)(2), -709(B)(3), -709(I), 60-215(A)(2), 77-603(A), -621(A)(1), -621(C)(4), -621(C)(7), -621(D); K.S.A. 60-

ADMINISTRATIVE REMEDIES
BURCH V. KECK
PAWNEE DISTRICT COURT—REVERSED AND REMANDED
NO. 119,813—MAY 24, 2019

FACTS: Burch is a resident of the Sexual Predator Treatment Program in Larned. He filed a § 1983 action claiming that SPTP officials violated his constitutional rights by seizing his property without due process. The Kansas Department for Aging and Disability Services moved to dismiss, claiming that Burch failed to exhaust administrative remedies before filing suit. The district court agreed and the case was dismissed. Burch appealed.

ISSUE: (1) Duty to exhaust administrative remedies

HELD: Section 1983 does not contain a requirement that movants exhaust administrative remedies before bringing an action under the statute. K.S.A. 2018 Supp. 59-29a24 does require participants in SPTP to exhaust administrative remedies before filing suit. The district court agreed and the case was dismissed. Burch appealed.


appellate decisions
FACTS: Traig Manson executed a voluntary acknowledgement of paternity (VAP) acknowledging that he was C.M.’s father. When Manson was asked to pay child support, he produced genetic testing results which allegedly showed that he was not C.M.’s biological father. He also claimed that he had no relationship with the child and that the child referred to another man as “Dad.” The district court conducted a Ross hearing to determine whether official genetic testing was in two year old C.M.’s best interests. At the hearing, Manson explained that he allowed his name to go on C.M.’s birth certificate to help out the biological mother, but that he had never really had a true paternal relationship with C.M. In an effort to obtain support for C.M., DCF produced the VAP that Manson signed and noted that he did not rescind the signature within one year. The district court ruled that genetic testing was not in C.M.’s best interests and Manson appealed.

ISSUE: (1) Effect of VAP

HELD: Because Manson did not rescind his acknowledgement of paternity within one year, he remains C.M.’s father. Even if testing revealed that Manson was not C.M.’s father, he would still be required to pay child support because of the VAP. For that reason, the district court correctly refused to order genetic testing.

STATUTE: K.S.A. 2018 Supp. 23-2204, -2204(b)(1)

NEGLIGENCE—STATUTE OF REPOSE
DETERS V. NEMAH-MARSHALL ELECTRIC COOPERATIVE ASSOCIATION
NEMAH DISTRICT COURT—AFFIRMED
NO. 119,200—MAY 24, 2019

FACTS: In 1994, the Deterses purchased from Nemaha-Marshall a GTS, a device which allowed them to safely connect a generator to household wiring. The GTS was installed by Nemaha-Marshall on the Deterses’ electric pole. In 2000, the Deterses transferred all of their electricity—including the GTS—to a new house, shop, and implement shed on their property. Over the course of a year, the Deterses had to replace multiple appliances due to malfunctions. The Deterses sued Nemaha-Marshall for damages related to replacement appliances. Nemaha-Marshall moved for summary judgment on statute of repose grounds, since it had been at least 10 years since the GTS was connected to the Deterses’ property. Alliance also moved for summary judgment, citing a lack of coverage in the Deterses’ insurance policy. Both motions were granted and the Deterses appeal.

ISSUES: (1) Statute of repose; (2) insurance coverage; (3) bad faith investigation

HELD: The statute of repose clock begins running on the last act giving rise to the cause of action, not the last contact between the parties. Plaintiffs must bring their negligence action within 10 years of the original wrongful act. In this case, that act occurred in 2000 and the Deterses’ claim is barred by the statute of repose. Much of the Deterses’ argument is waived due to the failure to adequately brief the argument. To the extent that issues have been preserved, the district court correctly found that the homeowners’ insurance policy provided no coverage for low voltage events. Alliance investigated this claim appropriately, especially since the Deterses proposed two different causes for the damage.

STATUTE: K.S.A. 60-513, -513(a)(4), -513(b)

DUE PROCESS—PARENTAL RIGHTS
IN RE M.S.
SHAWNEE DISTRICT COURT—AFFIRMED
NO. 119,797—JUNE 21, 2019

FACTS: The State filed a child in need of care petition alleging that Mother’s children were not being properly cared for in her home. The children were removed from her home and placed in DCF custody. Ultimately, the State sought to terminate Mother’s parental rights. At the beginning of trial, Mother told the district court that she might need to leave early to help her mother home from a hospital. Mother finished the day but did not appear for the second day of trial. Mother told counsel that she was having transportation issues and intended to participate, but she failed to appear on either the second or third days of trial. The district court found her in “default”, heard a proffer by the State, reviewed the evidence, and terminated Mother’s parental rights. Mother appeals.

ISSUES: (1) Due process; (2) sufficiency of the evidence; (3) best interests of the children

HELD: Mother had a constitutionally protected, fundamental liberty interest in her relationship with her children. Mother was able to present her case-in-chief on the first day of trial. She had additional opportunities to be heard again on other days of the trial, but she chose not to attend. No evidence was presented on days that Mother was not present in court. The State had an interest in concluding the proceedings quickly so that the children had finality as soon as possible. The State had a justifiable interest in concluding the proceedings even in Mother’s absence. K.S.A. 2018 Supp. 38-2269(b)(7) requires that reasonable—not effective—efforts be made towards rehabilitation. Efforts made towards rehabilitation were reasonable in this case. There was clear and convincing evidence that Mother was unfit and that her unfitness was unlikely to change in the foreseeable future. The district court did not abuse its discretion by finding that termination of Mother’s parental rights was in the children’s best interests.

CONCURRENCE: (Atcheson, J.) Mother chose not to appear at the last two days of her termination hearing. The State did not impede her ability to participate. Under these circumstances, Mother has no legal basis to complain about
a denial of due process rights—she received all of the process she was due.

STATUTE: K.S.A. 2018 Supp. 38-2246, -2267(a), -2269(a), -2269(b), -2269(b)(7) -2269(b)(8), -2269(c), -2269(g)(1), -2271

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**CRIMINAL**

**CRIMINAL LAW—STATUTES**

**STATE V. GONZALEZ**

**SUMNER DISTRICT COURT—AFFIRMED**

**NO. 120,098—JUNE 7, 2019**

**FACTS:** Gonzalez pleaded guilty to criminal charges in 2018 Supp. 21-5807(a). Published and unpublished opinions in court of appeals are reviewed as seeming to read into the burglary statute a definition of building or structure that hinges, in part, on whether an individual or entity is renting or leasing a space within the main building. But under plain language of the statute which the Legislature has not modified for 19 years, the sacristy was nothing more than a room within the church building. District court’s dismissal of the burglary charge is affirmed.

**STATUTE: K.S.A. 2018 Supp. 21-5807(a)(2)**

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**CRIMINAL PROCEDURE—MOTIONS—SENTENCES**

**STATE V. GONZALEZ**

**SEDGWICK DISTRICT COURT—AFFIRMED**

**NO. 119,311—MAY 31, 2019**

**FACTS:** Glover entered unlocked church and entered locked sacristy where he stole items from a locked cabinet. State charged him with burglary. District court dismissed the charge, reasoning the State did not prove Glover entered the building without authorization because church was open to the public. State appealed, arguing the sacristy can be considered a building or structure under the Kansas burglary statute.

**ISSUE:** (1) Kansas burglary statute—building or structure

**HELD:** A locked sacristy inside an unlocked church is not a building or structure as the terms are used in K.S.A. 2018 Supp. 21-5807(a). Published and unpublished opinions in court of appeals are reviewed as seeming to read into the burglary statute a definition of building or structure that hinges, in part, on whether an individual or entity is renting or leasing a space within the main building. But under plain language of the statute which the Legislature has not modified for 19 years, the sacristy was nothing more than a room within the church building. District court’s dismissal of the burglary charge is affirmed.

**STATUTE: K.S.A. 2018 Supp. 21-5807(a)(2)**

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**CRIMINAL LAW—CRIMINAL LAW—FOURTH AMENDMENT—PROBATION—SENTENCES—STATUTES**

**STATE V. HINNENKAMP**

**SEDGWICK DISTRICT COURT—AFFIRMED**

**NO. 119,125—JULY 5, 2019**

**FACTS:** District court ordered Hinnenkamp to submit to random drug and alcohol testing as a condition of probation for her aggravated escape from custody conviction. Hinnenkamp appealed, arguing K.S.A. 2018 Supp. 21-6607(c)(6), which requires district courts to impose random drug and alcohol testing as a condition of probation, violates her federal and state constitutional right against unlawful search and seizure. State responds on merits of this argument, and also claims this issue is improperly raised for first time on appeal, jurisdiction is lacking because the issue is not ripe for consideration, and Hinnenkamp waived the issue by inadequate briefing.

**ISSUES:** (1) Threshold issues—preservation, ripeness, waiver; (2) constitutionality of K.S.A. 2018 Supp. 21-6607(c) (6)

**HELD:** Hinnenkamp is asserting her constitutional claim for first time on appeal, but her facial challenge to the constitutionality of the statute is considered. Her facial challenge to the statute is ripe for appeal, and she has not waived or abandoned her constitutional claim based on inadequate briefing.

**K.S.A. 2018 Supp. 21-6607(c)(6),** which subjects probationers to suspicionless drug and alcohol testing, does not, on its face, violate the Fourth Amendment of U.S. Constitution or §15 of Kansas Bill of Rights. This mandatory statutory condition of probation is exempt from Fourth Amendment’s general warrant requirement because (1) special needs of the probation system make the warrant and probable cause requirement impracticable, and (2) the primary purpose of random drug and alcohol testing for probationers is distinguishable from State’s general interest in crime control. Weighing a probationer’s diminished expectation of privacy against State’s interest in promoting rehabilitation and probation compliance, and considering the efficacy of random suspicionless drug and alcohol testing, it is reasonable to permit a court services officer or community correctional services officer to order a probationer to submit to random drug and alcohol testing, even without any suspicion of wrongdoing. Two recent unpublished Court of Appeals opinions upholding the constitutionality of K.S.A. 2018 Supp. 21-6607(c)(6) in similar cases are cited and reviewed.

**STATUTES: K.S.A. 2018 Supp. 21-6607(c)(5), -6607(c) (6), 22-3717(k)(2); K.S.A. 2014 Supp. 8-1025**
FACTS: Johnson worked as a paraprofessional educator. K.E. was a student in the district and was ordered to attend school at the facility where Johnson worked. K.E. and Johnson started flirting outside of school through social media. The relationship progressed, and the two had sexual intercourse one time. K.E. eventually told his father about the relationship, and he contacted law enforcement. After being questioned, Johnson admitted her actions to law enforcement. A jury convicted Johnson of unlawful sexual relations, one count of sexual exploitation of a child, and one count of promoting obscenity to a minor. She appealed.

ISSUES: (1) Constitutionality of K.S.A. 2015 Supp. 21-5512(a)(9); (2) sufficiency of the evidence; (3) alternative means; (4) transmission of obscene material

HELD: K.S.A. 2015 Supp. 21-5512(a)(9) prohibits consensual sexual activity when the offender is a teacher “or other person in a position of authority” employed at a school where the child is enrolled. The phrase “or other person in a position of authority” is not unconstitutionally vague; it has meaning that can be clearly understood through common understanding and practice. There was sufficient evidence to show that Johnson was in a position of authority at K.E.’s school, and he was a student enrolled at the facility. Sexual exploitation of a child is not an alternative means crime, so the State was not required to prove all of the listed means beyond a reasonable doubt. There was sufficient evidence to prove that Johnson promoted K.E.’s sexually explicit performance to arouse sexual desires. The photos and videos that Johnson sent to K.E. were “obscene material” as used in the statute. There is no requirement that the material be tangible, and digital photographs are allowable.

STATUTE: K.S.A. 2015 Supp. 21-5510(a)(1), -5510(d), -5510(2)(B) -5512(a)(9), -5512(d)(9)

CRIMINAL LAW—RESTITUTION
SENTENCES—STATUTES
STATE V. SMITH
SHAWNEE DISTRICT COURT—AFFIRMED
NO. 119,356—MAY 24, 2019

FACTS: Smith was convicted of possession of stolen property: a motorcycle that was damaged; and a scooter the Highway Patrol had towed, and then the towing company sold the scooter without first contacting the owner. Restitution order included $1365.77 for motorcycle repair, and $2141.93 for motorcycle. He also claimed that given the actions of law enforcement and the towing company there was no direct causal link between his crime and loss of the scooter, and argued the scooter owner should have been awarded fair market value rather than replacement cost.

ISSUES: (1) Restitution—sufficiency of the evidence; (2) restitution—causal link; (3) restitution—replacement value

HELD: District court found the motorcycle owner’s testimony about the condition of the motorcycle before and after it was stolen, and the need for the estimated repairs, was uncontested. Substantial competent evidence supported the amount of damage to the motorcycle. He also claimed that given the actions of law enforcement and the towing company there was no direct causal link between his crime and loss of the scooter, and argued the scooter owner should have been awarded fair market value rather than replacement cost.

STATE V. ARNETT
DOUGLAS COUNTY COURT—AFFIRMED
NO. 118,380—JUNE 21, 2019

FACTS: Sheppard was convicted in 2006 of second-degree murder and criminal possession of a firearm. Convictions were affirmed in 2009. Sheppard filed in 2017 a pro se motion to dismiss, reiterating the claim in his unsuccessful 2011 K.S.A. 60-1507 motion that he was arrested without probable cause because affidavit facts were false. District court denied Sheppard’s motion for leave to file the motion to dismiss out of time, finding no showing of excusable neglect. Sheppard appealed. He then filed a pro se motion to correct an illegal sentence, arguing that under the 2016 amendments to K.S.A. 21-6810, the district court improperly included a decayed 1994 Missouri juvenile adjudication in calculating criminal history. District court denied the motion. Sheppard appealed. Appeals consolidated.

ISSUES: (1) Excusable neglect; (2) motion to correct illegal sentence—decayed juvenile adjudications

HELD: A showing of excusable neglect under different statutes, cases and administrative regulations is discussed. Under facts in this case and circumstances surrounding the untimely filing, the appellate court found no abuse of the district court’s discretion in finding Sheppard failed to establish excusable neglect.

The 2016 amendments to K.S.A. 21-6810 do not apply to Sheppard’s case. Court of appeals panels have consistently held the 2016 amendments to the juvenile decay rules are substantive in nature, and the legislature has included no clear language that intended the 2016 amendments to operate retroactively. District court correctly included Sheppard’s 1994 juvenile residential burglary adjudication in the criminal history score.

replacement costs as restitution, and Smith agreed that the scooter owner’s loss exceeded $2000.

STATUTES: K.S.A. 2018 Supp. 21-6604(b)(1); K.S.A. 2015 Supp. 21-5801, -5801(a)(4); K.S.A. 21-6604(b)(1)

CRIMINAL PROCEDURE—MOTIONS—SENTENCES—STATUTES
STATE V. YOUNG
SEDGWICK DISTRICT COURT—APPEAL DISMISSED
NO. 119,265—MAY 17, 2019

FACTS: Young was convicted in 1999 of aggravated indecent liberties with a child. Sentence imposed included life-time registration under Kansas Offender Registration Act (KORA). In 2017, Young entered a guilty plea to a fourth KORA violation which occurred while on probation for his third KORA violation with an underlying 61-month guideline sentence. In a combined hearing, district court revoked probation for the third KORA violation and ordered service of the underlying 61-month sentence. For the fourth KORA violation, district court rejected Young’s request for a concurrent downward departure sentence, and imposed the minimum 89-month guideline sentence under the Kansas Sentencing Guidelines Act (KSGA) with consecutive service of the sentences. Young appealed, arguing the district court abused its discretion in failing to make a special finding that manifest injustice would occur by allowing his KORA violation sentence to run consecutive rather than concurrent to sentence in his prior criminal case. State contends there is no jurisdiction to appeal the presumptive guideline sentence.

ISSUE: (1) K.S.A. 2018 Supp. 21-6819(a)—manifest injustice

HELD: Under K.S.A. 2018 Supp. 21-6819(a) which is part of the Kansas sentencing guidelines, the consecutive sentence called for in K.S.A. 2018 Supp. 21-6606(c) when a defendant commits a crime while on probation for a previous felony conviction is not required if imposition of such a sentence would be manifestly unjust. Here, the district court considered whether a consecutive sentence would be manifestly unjust and determined that it would not. District court did not depart from sentencing guidelines by imposing a guidelines sentence with consecutive service. Appeal is dismissed because an appellate court has no jurisdiction to entertain challenges to imposition of consecutive guideline sentences.

DISSENT (Arnold-Burger, J.): Dissents from the majority’s conclusion that there is no jurisdiction to hear this appeal. Issue is whether Young can appeal a ruling on the existence of manifest injustice under K.S.A. 2018 Supp. 21-6819(a). Statute is clear and unambiguous. Under K.S.A. 2018 Supp. 21-6819(a) a court has discretion to determine whether manifest injustice exists to override the mandatory non-KSGA sentencing rule in K.S.A. 2018 Supp. 21-6606(c). Such a decision is distinctly different than whether to impose consecutive or concurrent presumptive KSGA sentences. On facts in this case, would affirm on the merits because the district judge did not abuse its discretion in denying Young’s request for concurrent sentences.

STATUTES: K.S.A. 2018 Supp. 21-6606(c), -6801 et seq., -6803(f), -6803(i), -6803(q), -6819(a), -6819(b), -6820(a), -6820(c), -6820(c)(1), 22-4901 et seq., -4903(a), -4903(c)(1) (C), -4905(g); K.S.A. 21-4721(c)(1)
Appellate Practice Reminders
From the Appellate Court Clerk's Office

I Just Want to be Heard!
(and other gnarly tales of unconstitutionality)

Back in 2016, the Kansas Legislature crafted K.S.A. 75-764 to declare the public policy of the State of Kansas to be that the Attorney General, as the state’s chief legal officer, should have notice and the opportunity to appear and be fully heard before any statute or constitutional provision of this state is determined by the judicial branch to be invalid as violating the constitution of the State of Kansas, the United States Constitution or any other provision of federal law.

For those of us in the interstellar world of appellate practice, the Kansas Supreme Court quickly followed suit by adopting Supreme Court Rule 11.01 to provide that in any matter before the Kansas Supreme Court or the Kansas Court of Appeals, or any justice or judge thereof, a party that files a pleading, brief, written motion, or other filing or paper contesting or calling into doubt the validity of any Kansas statute or constitutional provision on grounds that the law violates the state constitution, federal constitution, or any provision of federal law must serve the filing on the Attorney General of Kansas, accompanied by a notice stating that the Attorney General is being served under K.S.A. 75-764. For comparable requirements in the district court, see Supreme Court Rules 147 and 148. The ball is then in the Attorney General’s court.

It appeared we had shaken out nearly all the cases that challenged the constitutionality of a statute that were pending at the time of the adoption of K.S.A. 75-764 in 2016. However, every once in a while, we see an attorney—who probably has not done much appellate work—have a last-second epiphany regarding unconstitutionality who fails to serve the Attorney General or comply with Rule 11.01(b) by not putting the words, “Served on the attorney general as required by K.S.A. 75-764” under the case caption on the first page. Bottom line: if you are claiming that a statute is unconstitutional—either as applied or on its face—put the proper notice on the cover of your filing, serve the attorney general, and include a certificate of service relating your service. If there is no certificate showing service to the Attorney General included with your filing, don’t be surprised when the “order to show cause police” come a knockin’ at your door.

For questions about these or other appellate procedures and practices,
Call the Office of the Clerk of the Appellate Courts, (785) 296-3229
Douglas T. Shima, Clerk.
Positions Available

Advocate – Disability Crime Victims Unit Help obtain justice for victims of crime with disabilities. Advocate sought by Disability Rights Center of Kansas to advocate for crime victims with disabilities. 40 hour a week position, yearly pay is approx $32K, but depends on experience. Paralegals encouraged to apply. Great benefits. Employer-paid BCBS health insurance, KPERS retirement, etc. Questions? Need an alternative format? Contact DRC: 1-877-776-1541 for info@drckansas.org. Get the full job description & application at www.drckansas.org/about-us/jobapp

Attorney Position Available. Arn, Mullins, Unruh, Kuhn & Wilson LLP, established Wichita law firm seeks associate and/or lateral hire. Minimum two (2) years experience in Civil, Family, Litigation and General Practice. Attractive benefits, including health insurance, 401(k), disability/life insurance. Please forward resume, introductory letter and writing sample(s) to: Kris J. Kuhn (kkuhn@arnmullins.com).

Attorney Position Available. Young, Bogle, McCausland, Wells & Blanchard, a downtown Wichita law firm seeks associate or lateral hire. At least three years’ experience in civil litigation/general practice and must be admitted to the Kansas Bar. Equal opportunity employer. Competitive benefits, including health insurance. Email resume, introductory letter, writing sample, and salary requirements to Paul McCausland, p.mccausland@youngboglelaw.com.

Litigation attorney position available at a small, downtown Wichita firm with colorful personalities and fun working environment. Requirements: minimum 2 years civil litigation experience, Kansas license, strong customer service skills, and excellent research and writing ability. Preference will be given to attorneys with additional experience in bankruptcy, business or transactional matters. We offer a very competitive salary and full benefits package. Applicants should send a resume, cover letter, salary history, list of references, and writing sample to laura@eronlaw.net. All inquiries will be held in confidence, except for contacting listed references.

Crow & Associates, Leavenworth, seeks associate attorney. Benefits include health/dental insurance. Salary negotiable. Send resume to mikecrow@crowlegal.com

Evans & Dixon, LLC seeks to hire an attorney with strong transactional expertise for our Overland Park office. We offer a rewarding work environment with a commitment to creating long-term relationships with our clients by providing excellent service. Email cover letter and resume to lhauft-vitale@evans-dixon.com

Overland Park/Corporate Woods Law Firm. Jones & McCoy, P.A. seeking experienced associate attorney with 3+ years of civil litigation experience in business, estates and trust, family law, personal injury and other civil matters. Must have Kansas and Missouri licenses. Great opportunity for the right person to learn and grow their practice. Please send cover letter and resume to brant@jones-mccoy.com.

Part-Time Legal Assistant. A private law firm in Topeka has an immediate opening for a qualified Legal Assistant processing collections. Experience in general office administration required and legal office experience is preferred. Only applicants meeting specific criteria will be considered: please contact for duties and requirements. Please send resume and cover letter for consideration to the attn. of Alisia at info@probasco-law.com or via fax (785) 233-2384.

Wanted. Lawyer with a minimum of 3 years’ experience practice in estate and business law with a desire to become the owner of a central Kansas firm that has a very predictable gross revenue. The firm limits its practice to estate planning, probate, trust settlement and business planning. Please send your resume to kslawyerrecruit2019@gmail.com.

Wichita Law Firm Seeks Associate Attorney Downtown Wichita law firm seeks to hire an associate attorney to work on all aspects of family law cases. The associate may be given an opportunity to develop a practice outside of the family law area. Interested candidates are asked to send their resume and cover letter to tlegrand@dlwl.com.

Workers Compensation Administrative Law Judge. The Kansas Department of Labor is accepting applications for a Workers Compensation Administrative Law Judge position in Topeka. Applicants are required to be an attorney regularly admitted to practice law in the State of Kansas, have at least 5 years’ experience as an attorney and must have at least one year of experience practicing law in the area of workers compensation. To apply, please go to www.jobs.ks.gov Job ID Number 193714.

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sponses. Quality work; flexible. Experience includes litigation, wills/trusts, probate, debt collection, bankruptcy, contracts, domestic. Contact me at m-ksmolaw@outlook.com to discuss.

QDRO Drafting. I am a Kansas attorney and former pension plan administrator with years of experience in employee benefit law. My services are available to draft your QDROs, communicate with the retirement plans, and assist with qualification of your DROs or other retirement plan matters. Let me help you and your client through this technically difficult process. For more information call Curtis G. Barnhill at (785) 856-1628 or email cgb@barnhillatlaw.com.

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Social Security Disability Services. Your clients that are dealing with serious injuries or illness may have a claim for Social Security disability. We have lots of experience, get good results, and we are ready to help and to augment your reputation. If you have questions, let’s talk. Our practice is limited to Social Security disability. We can travel anywhere in Kansas, Missouri, Nebraska or Colorado. Contact: Pat Donahue at Western Law (785) 832-8521 or phd@wpa-legal.org.

Veterans Services. Do you want to better serve your veteran clients without going to the trouble of dealing with the VA? I am a VA-accredited attorney with extensive experience applying for various VA benefits, including Improved Pension. I regularly consult with attorneys (and their clients) about the various services attorneys can offer their clients to help qualify veterans and their families for various VA programs. As soon as a client is in position to qualify, I can further assist by handling the entire application to the VA for you. For more information about my various consultation and application services, please contact the Law Office of Scott W. Sexton P.A. at (785) 409-5228.

Office Space Available
Large Office Space now available at One Halfbrook Place in Leawood, KS. Two conference rooms, kitchen, high-speed internet, postage services, copier/fax all included. For more information or to schedule a viewing, contact Bryson Cloon at (913) 323-4500.

Leawood Law Office. Two partner-size offices and interior office available for sub-lease. Conference room, phone system, internet, high-speed copier/printer, and lunchroom also available. Plenty of surface parking. In a great area in south Leawood—bright and modern space on second floor of bank building. Also willing to consider work-sharing arrangements. Contact Paul Snyder (913) 685-3900 or psnyder@snyderlawfirmllc.com.

Manhattan Office Space for Rent. Located in the Colony Square office building in downtown Manhattan. One minute from the Riley County Courthouse. The available space consists of two offices and an area for a secretary/paralegal. Large reception area and kitchen. High speed internet. Open to either office sharing or “Of Counsel” arrangement. For more information, all 785-539-9300 or email to office@jrlclaw.com

Office Space Available on Ward Parkway in south Kansas City, Missouri. This is a great location for attorneys licensed in MO & KS. Large suite with 12 offices with two conference rooms. There are 3 available offices. Full services provided, including phones answered, internet, supplies, and copier. Contact Kevin Hoop at 816-519-9600 or k hoop@kevinhooplaw.com.

Office for Lease, Corporate Woods. Approximately 300 sf office space available within a working law firm. Convenient location to meet with clients, with access to conference rooms if needed. Comes with all the amenities of a working law firm; witnesses, notaries, fax/copy machine, internet, phone, etc. On the top floor of a building with a fantastic view. Please contact Tim Winkler at 913-890-4428 or tim@kcelderlaw.com.

Ottawa, KS Office Space for Rent- 950 sq. ft. for business office. Reception area, conference room, 4 private rooms, loft area for storage, kitchenette, back storage area, rest room. $600/month Please call (785) 893-0494 for more information. The location is 110 W 3rd St, Ottawa, Kansas. Pictures available upon request.

OVERLAND PARK- Offices for Rent. Law offices located in Old Downtown Overland Park, in remodeled historic building. Includes: free parking, reception area, kitchen, conference room, fax, scanner, copier, phones, voicemail, and high speed internet access. The offices are in walking distance of coffee shops, restaurants and retail stores. More than fifteen highly respected attorneys in an office-sharing/networking arrangement. For more information contact James Shetlar at 913-648-3220.

Professional Office Space for lease. The available space consists of one to two offices and an administrative staff bay, in a larger office building. No cost use of reception area, conference rooms, and high-speed internet. Located in southwest Topeka. Competitive rent. For more information, call 785-235-5367 or write Law Office, PO. Box 67689, Topeka, KS 66667.

Seeking Office Space: Bilingual Immigration attorney with over 10 years of experience, looking to rent a conference room or office once or twice a month in Garden City, Kansas. No services needed other than a place to meet clients. We have served the immigrant community in Western Kansas for 9 years and have an ample client base. Our office is a great source of referrals for a family or criminal attorney as we only practice immigration. Please reply to: erika.jurado@gmail.com.

WYCO Office Suite Available at 134 N. Nettleton, Bonner Springs, KS  66012. 1100-2000 sf. Waiting area, receptionist area, break room, conference room, large and small offices, private parking, ADA Accessible. 1.25/sf/mo. Utilities included. For more information, call (913) 422-1620.

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