



LAW WISE

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Greetings from the Kansas Bar Association (KBA).
Welcome to this edition of *Law Wise* and the first edition of the 2015-2016 school year.

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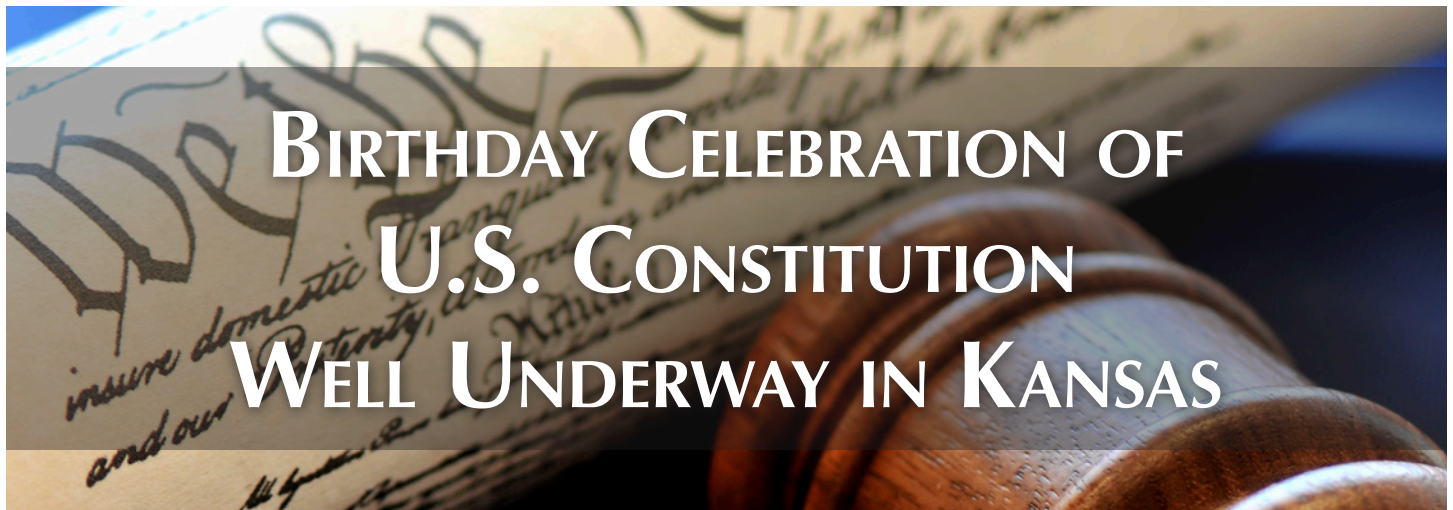
CALENDAR OF EVENTS

September 17, 2015 Constitution Day



WELCOME

Welcome to the premier edition of *Law Wise* for the 2015-16 school year! We think it significant that the timing of the newsletter's first edition coincides with the celebration of the birth of our Constitution and, thus, once again devote the majority of this space to it. So, herein you will find on-point lesson plans and the details of significant education outreach currently underway by Kansas judges, attorneys, and teachers to bring the treasured document to life in classrooms across the state. To inform our readers of this year's outreach, *Law Wise* asked Hon. G. Joseph Pierron Jr., the state's premier presenter and coordinator of these programs, to describe them first-hand, while giving a bit of a historical backdrop to the interactive sessions that now have been presented to 500 classes and 50,000 Kansas students! But first, we take this opportunity to introduce Ron Keefover, the new editor of *Law Wise*. Keefover is a longtime member of the Kansas Bar Association's Law Related Education Committee and is retired from the administrative office of the Kansas Supreme Court. He succeeds Hon. Kathryn Gardner, who turned over the publication editor's reins upon her appointment as a judge of the Kansas Court of Appeals. For more information about that transition, please see the news announcement online at <http://bit.ly/KGardCoA>. ■



BIRTHDAY CELEBRATION OF U.S. CONSTITUTION WELL UNDERWAY IN KANSAS

Public opinion polls have shown that Americans would like to know more about our judicial system and our constitutional rights. When given the option, they would prefer hearing about them and having their questions answered by judges and lawyers from their own communities. It is a source of concern, although sometimes humor, to find out that we the people know more about the Three Stooges and Snow White's seven dwarves than we do about the three branches of our government and members of the U. S. Supreme Court.

In 1995 Judges Bob Gernon, Kay Royse, and Joe Pierron of the Kansas Court of Appeals began giving programs on these topics to student and adult groups. Taking advantage of the fact that their court is a traveling court the programs were given in different parts of the state. One morning when Judges Gernon and Pierron were doing an early program at Lawrence High School they noticed the students were drowsy and not interested in the lecture-style presentation. In desperation they started to involve the students in the program, making them respond as if they were judges or lawyers involved in the case. The students and the teacher responded well.

Thereafter the programs were presented in a highly interactive fashion with audience members helping to present them. The programs established a good reputation, especially in schools. With some modifications, programs were given even to very young students.

Over the past 20 years there have been about 500 presentations made statewide to almost 50,000 students and adults. The Kansas Humanities Council adopted the program as one of their suggested programs and advertised it in their publications. They also suggested that the program's name be changed from the somewhat staid "The United States Supreme Court in Review" to "You Be The Judge," which was adopted.

The program is often asked back by satisfied teachers and others. For example, it has been presented to Boys' State and Girls' State every year since 1997 and at a number of schools, such as Topeka Seaman, practically every year. Adult education programs, such as the Osher Lifelong Learning Institute at the University of Kansas have been asking for versions of it.

Many of the programs are given around Constitution Day, September 17, but many are given at other parts of the year. The U. S. Congress mandated some years ago that public institutions do something to observe Constitution Day/Week. "You Be The Judge" is an excellent way to meet that mandate. Mid-

September turned out to be a very good time to do "You Be The Judge" in schools as teachers indicate they are teaching about the separation of powers, checks, and balances and the U.S. Constitution, around that time.

The program has won many awards from legal and educational organizations, including the ABA's Burnham (Hod) Greeley Award for its contribution to promoting public awareness of the importance of a fair, impartial, and independent judiciary.

While the program has been presented all over the state, the judges and lawyers in the Topeka area, especially the Women Attorneys Association of Topeka, have been especially active in doing the program in many of the local schools from kindergarten through the 12th grade. One judge, whose name will not be revealed (David Bruns), was described by the students as a "super star." Judge Karen Arnold-Berger has been very successful at crafting programs for very young students.

The KBA Law Related Education Committee has assembled a great deal of materials, including videos to aid those who might want to be a presenter. These materials are available for free. Of course, many presenters have their own ideas about what makes a good program. The only consistent aspect of the successful programs is audience participation—Even by K through 3rd graders. They love the robes, gavels, and other props.

The most programs yet will be presented in Topeka and other places this fall. The programs not only help to increase the knowledge of our government and the U.S. Constitution but they give lawyers and judges an opportunity to connect with people and perhaps to express their inner ham.

Interestingly, some presenters were a little nervous about appearing before crowds of students. But after a few performances they have become enthusiastic about the program.

Anyone interested in the available materials is free to request them by contacting Anne Woods at awoods@ksbar.org. This is a great way to help support our constitution and have a lot of fun. ■



Hon. G. Joseph Pierron Jr.
Kansas Court of Appeals

LESSON PLAN

COPS, CARS AND THE CONSTITUTION

Source: <http://www.streetlaw.org>

Grades: 6–12

DURATION:

1 class period

ACTIVITY:

Each of the following Fourth Amendment cases has been before the U.S. Supreme Court. Analyze each case carefully. Identify the most convincing arguments for each side. Then decide how each should be decided and give your reasons.

Scenario 1:

Gail Atwater was driving her car home from a soccer match when she was stopped by Lago Vista (Texas) police officer Bart Turek. Officer Turek observed that Atwater and her two children (ages 4 and 6) were not wearing seat belts. This was a violation of the Texas Transportation Code. Violation of this section of the code provided for a fine of between \$25 and \$50 upon conviction. Turek had stopped Atwater several weeks earlier for another traffic law violation. This time he told her she was going to jail.

Atwater was arrested for the seat belt violations, as well as for driving without a license and failing to provide proof of insurance. (Staff members from a social service agency were called to the scene and took temporary custody of the two young children.) Atwater was handcuffed and taken to the police station where she was kept in a cell for an hour before being released after posting bond before a magistrate. At trial she pleaded guilty to the seat belt offenses and paid a \$50 fine. The other two charges were dismissed when it was clear that she in fact had a license and proof of insurance (but happened not to be carrying them with her when she was stopped). Was Officer Turek's arrest (seizure) of Atwater legal?

Scenario 2:

The city of Indianapolis (Indiana) began operating roadway checkpoint programs through its police department in August of 1998 in order to interrupt the flow of illegal narcotics in the area. During the first four months of the program drug interdiction roadblocks were set up six times at various points in the city. Police stopped 1,161 vehicles at the roadblocks and arrested 104 motorists. About half of the arrests were for narcotics offenses while the other half were for other offenses.

The police department selected the locations, told the public when (but not where) the roadblocks would be set up, and followed the following protocol at the roadblocks: a predetermined number of vehicles are stopped and processed while other traffic continues unimpeded. After all the stopped cars are processed, they are allowed to leave, unless there is a specific reason found to hold a particular vehicle. Once those vehicles leave, the same predetermined number of vehicles is stopped again and the process repeats.

As part of the stop officers ask for license and registration and tell drivers they have been stopped at a drug checkpoint. Police look for signs of impairment and do a visual inspection of the vehicle from the outside. A drug detection dog walks around the car. If the dog alerts, police are authorized to do a warrantless search of the car. Two people who have been stopped bring a class action suit on behalf of themselves and others asking that this practice be stopped. Are these roadway checkpoint stops legal?

Scenario 3:

A Maryland state trooper stopped a speeding car. Approaching the car at the side of the road, the trooper noticed that Wilson, a passenger, was particularly nervous. The trooper ordered Wilson out of the car. As Wilson exited the car a quantity of cocaine fell to the ground. Wilson was arrested and charged with possession and intent to distribute. The trial court granted Wilson's motion to suppress the evidence, ruling that the trooper's order was an unreasonable seizure under the Fourth Amendment. Should the trial court's decision be reversed on appeal?

Scenario 4:

An Iowa police officer stopped Knowles for speeding and gave him a traffic ticket (citation) rather than arresting him. The officer then conducted a full search of the car, without either the consent of the driver or probable cause. The trooper found drugs and arrested Knowles. Knowles asked the trial court to suppress the evidence on the theory that since he had not been arrested there could be no warrantless search incident to a lawful arrest. Because an Iowa law allows officers to conduct a full-blown search of an auto and driver after issuing a citation instead of making a custodial arrest, the evidence was allowed and he was convicted. Should the conviction be overturned on appeal?

Scenario 5:

During a routine traffic stop a Wyoming Highway Patrol officer noticed a hypodermic needle in the driver's shirt pocket. The driver admitted using the needle to take illegal drugs. The officer then searched the passenger compartment for contraband, removing and searching the purse of a passenger. The officer found drugs in her purse and arrested her too. The passenger asked the trial court to suppress all evidence found in her purse, arguing that it was illegal to search the purse of a passenger for whom the police had no independent probable cause. The Wyoming courts agreed with her. Should the state supreme court's decision be overturned on appeal?

TOPEKA TEACHER ENJOYS TIME AT U.S. SUPREME COURT SUMMER INSTITUTE

Susan Sittenauer, a longtime Topeka area high school teacher with a storied career in teaching history and civil and criminal law, was selected by the Kansas Bar Association to attend this year's Supreme Court Summer Institute for Teachers at the Georgetown University Law Center in Washington, D.C.

The KBA's Law Related Education Committee sends one teacher to the prestigious institute each year through a grant from the Kansas Bar Foundation. Anne Woods, KBA public services manager, said the LRE Committee chose Sittenauer to attend the conference, as the "perfect example of a teacher who has gone above and beyond to find and use the best resources for her students." She added Sittenauer also has been an "invaluable resource" for KBA's Law Day and Celebrate Freedom Week. Sittenauer's conference fees and travel expenses for the summer institute were paid for through a grant from the Kansas Bar Foundation.

Twice named the Kansas History Day Teacher of the Year, Sittenauer works with students at Seaman High School in Topeka to create U.S. history projects. She is a member of the Kansas iCivics Committee and has served many years on the Topeka Youth Court Advisory Committee. In 2003, Sittenauer was named the National Law Related Teacher of the Year by the American Bar Association, and in 2013, she was named the Daughters of the American Revolution's Outstanding History Teacher of the Year for the state of Kansas.



Reflecting on her attendance at this year's Supreme Court Institute, Sittenauer said, "Students often learn best by being engaged, and the Summer Institute provided me with so many tools and diverse curriculum to enable me to provide more effective instruction about our nation's Supreme Court.

"The knowledge I gained during my time at the Institute energized me and I hope that renewed energy will translate into a greater enthusiasm within my students when learning about the U.S. Supreme Court."

An in-depth exploration of the U.S. Constitution's 14th Amendment — citizenship rights and equal protection of law — also is part of the institute's agenda, Sittenauer said, a topic she enjoys teaching because of new court cases to examine.

After 30 years of teaching history and civil and criminal law at Seaman High School, Sittenauer said she is a lifelong learner and doesn't plan to leave her chosen profession any time in the near future. The Supreme Court Summer Institute for Teachers at the Georgetown University Law Center in Washington, D.C. is a program sponsored by Street Law Inc., a nonprofit organization founded in 1972. Two lesson plans from Street Law, which Sittenauer plans to include in her teaching this semester are included in this edition of *Law Wise*. ■

THE INDEPENDENT SCHOOL OF WICHITA PLACES 37TH AT NATIONAL MOCK TRIAL COMPETITION

The Independent School of Wichita placed 37th in the National High School Mock Trial competition that was conducted in Raleigh, North Carolina, in May. The team participated under the leadership of Shawn P. Yancy, the KBA Young Lawyers Section high school mock trial state coordinator.

Besides serving as coordinator for the Kansas YLS High School Mock Trial Competition for 2014 and 2015, Yancy was elected to serve on the National High School Mock Trial board of directors at the national competition. He will serve a three-year term and begin work on committees as assigned by the competition chair. He presented a special training session for mock trial coaches last November. This year, 175 students and

80 volunteers participated in the Kansas competition. Participating in the state competition in addition to the Independent School were teams from Blue Valley Northwest, Shawnee Mission East; Sunrise Christian Academy, Shawnee Mission Northwest; and Washburn Rural High School, Topeka.

Yancy was recently promoted to the position of unemployment insurance performance and reporting manager for the Kansas Department of Labor. He is being succeeded as state mock trial coordinator by Mitch Biebighauser, Overland Park, and Lisa Brown, Topeka, who will serve as co-chairs. Look for more information about the upcoming 2016 competition in *Law Wise* later this semester, or meanwhile, visit <http://www.ksbar.org/mocktrial>. ■

COPS, CARS, AND THE CONSTITUTION

ANSWER KEY

1. A warrantless arrest for a misdemeanor does not violate the Fourth Amendment

Atwater v. Lago Vista, 532 U.S. 318 (2001)

In an unlikely split by the Court, the majority opinion, written by Justice Souter, found that Officer Turek's arrest of Atwater was not an unreasonable seizure under the Fourth Amendment. Under the Fourth Amendment, a balancing of the individual and governmental interests is not required where there is probable cause to arrest an individual. Officer Turek had probable cause to arrest Atwater for committing a crime (not wearing a seat belt). His arrest of Atwater was not conducted in an extraordinary manner, whereby her physical and privacy interests were harmed.

In coming to their decision, the Court dismissed Atwater's historical argument that the common-law rule forbidding custodial arrests for misdemeanor fine-only offenses, except in cases where there was a breach of the peace, was folded into the Fourth Amendment. The historical practice did not speak conclusively on this issue. The standard of review under the Fourth Amendment has traditionally focused on whether an officer has probable cause to arrest an individual based on the circumstances of that offense and not due to a breach-of-the-peace limitation. The Court was unwilling to create a new rule for custodial arrests based on probable cause because the conviction does not carry any jail time.

The dissent, written by Justice O'Connor and joined by Justices Stevens, Ginsberg, and Breyer, argued that the seizure of Atwater was unreasonable under the Fourth Amendment. Probable cause is only one condition that is factored in when making a determination for the warrantless arrest of fine-only offenses. The principle that guides a Fourth Amendment inquiry is the balancing of interests between the government and the individual. Where there is probable cause to believe that an individual has violated a traffic offense, there is no dispute that a traffic stop is reasonable in order to serve the state interest. However, giving law enforcement officers authorization to make a full-custodial arrest in fine-only misdemeanor situations is not compatible with the requirement that seizures must be reasonable under the Fourth Amendment. A full-custodial arrest is a large burden on the privacy and liberty interests of the individual, which is not outweighed by the state's interest especially when less intrusive means like issuing a citation or summons may serve the same purpose.

2. Drug roadblock stops are illegal under the Fourth Amendment

Indianapolis v. Edmond, 531 U.S. 32 (2000)

In the case of *Indianapolis v. Edmond*, the Supreme Court held that the law enforcement practice of operating roadblock checkpoint programs to interrupt the flow of illegal narcotics violates the Fourth Amendment. The Fourth Amendment recognizes limited exceptions to the rule that a stop and search requires individualized suspicion in order to be reasonable. In these cases (i.e., Border Patrol checkpoints designed to inter-

cept illegal immigrants, sobriety checkpoints, or verifying license and registration for highway safety), there is a specific purpose, not detection of ordinary criminal activity, attached to the law enforcement practice that makes the search and seizure reasonable. The purpose of the roadblock practice by the city of Indianapolis was to detect evidence of ordinary criminal activity. The Court found the Fourth Amendment does not justify a law enforcement practice that allows for interrogation and inspection of motorists without individualized suspicion to ascertain whether they have committed some crime.

Chief Justice Rehnquist, joined by Justices Thomas and Scalia, dissented. The dissent argued that the proper inquiry under the Fourth Amendment is "weighing the gravity of the public concerns served by the seizure, the degree to which the seizure advances the public interest, and the severity of the interference with individual liberty." Based on this "balancing of interests" analysis, the roadblocks are constitutional under the Fourth Amendment. The roadblocks are an effective means to the accomplishing the state's interest in preventing the flow of illegal narcotics into the state. The practice involves a minimal intrusion on the privacy of the individual, two to three minutes at the most.

3. An officer making a traffic stop may order passengers to step out of the car.

Maryland v. Wilson, 519 U.S. 408 (1997)

The Supreme Court in *Maryland v. Wilson* held that the *Mimms* rule (*Pennsylvania v. Mimms*), where an officer may order the driver of a lawfully stopped car to step out of the car, also extends to passengers of that car. In coming to their conclusion, the Court performed a balancing test under the Fourth Amendment between the public's interest and the individual's right to privacy. On the public interest's side, there is a strong need to protect the safety of law enforcement officers. Their safety is more at stake during stops where other passengers are in the vehicle. On the side of the individual's right to privacy, the Court recognized that a passenger's liberty interest are stronger than the driver's because there is no probable cause to believe the passenger committed the vehicle offense resulting in the stop. In weighing these two interests, however, the Court concluded that the additional intrusion on the passenger is minimal at best because a matter related to the driver of the vehicle has already stopped the passengers. This small inconvenience for the passenger is found to be reasonable when weighed against the public safety interest of the officer.

Justice Stevens filed a dissenting opinion, in which Justice Kennedy joined. The dissent departed from the majority on the grounds that their ruling extended too far away from protecting the liberty interest of innocent individuals. The rule set out by the majority allows law enforcement officers to ask passengers to step out of the car in cases of minor traffic stops, even though there might not be any evidence of threat or potential harm to the officer's safety. The dissent argues that the majority's ruling is too broad and that it will have the adverse

effect of unreasonably seizing individuals because “they have the misfortune to be seated in a car whose driver has committed a minor traffic offense.”

4. Conducting a full-blown search subsequent to a speeding citation violates the Fourth Amendment

Iowa v. Knowles, 525 U.S. 113 (1998)

In *Iowa v. Knowles*, the Supreme Court unanimously held that conducting a full-blown search of the driver and car after issuing a citation in lieu of an arrest constitutes an unreasonable search under the Fourth Amendment. Relying on *U.S. v. Robinson*, the Court found that the search in this case did not fall within the two rationales permissible under the “search incident to arrest” exception.

The first step is to determine whether there is a need to disarm the driver in order to take him into custody. The officer in this situation made the decision to issue a citation instead of making an arrest. The routine traffic stop amounted to a brief encounter, which did not have the same level of safety concern as a formal arrest. With routine stops, the concern for an officer’s safety may be alleviated with less intrusive practices than a full-blown search, such as ordering the passenger out of the car or performing a pat down if there is reasonable suspicion to believe the individual may be armed and dangerous. The second rationale for the search, to discover and preserve evidence, is not an issue in this situation. The officer’s reason for stopping Knowles was speeding. Once he was stopped and issued a citation, the inquiry ended. Conducting a full-blown search of Knowles and the vehicle was not going to provide further evidence of excessive speed.

5. Law enforcement officers may lawfully search the belongings of all passengers in a car where there is probable cause to believe there is evidence of criminal activity

Wyoming v. Houghton, 526 U.S. 295 (1999)

In *Wyoming v. Houghton*, the Supreme Court held that when an officer has probable cause to search a car, this inspection also includes the belongings of passengers in the car because they may contain the suspected items the officer has reason to believe are in the car. The Court based its decision on the earlier case of *U.S. v. Ross*, which held that the warrantless search of the defendant’s belongings in his trunk by an officer was reasonable under the Fourth Amendment.

In *Ross*, the police received a tip by an informant that the driver of the vehicle had just completed a drug sale. Upon pulling the driver over, police officer found a bullet in the front seat and a gun in the glove compartment. Having probable cause to arrest the driver, the police subsequently searched the trunk and found a closed paper bag containing a white powder. The ruling in *Ross* did not set out limitations as to whether the belongings had to be exclusively those of the driver. Without any distinction carved out as to ownership, the Court in this case concluded that “when there is probable cause to search for contraband in a car, it is reasonable for police officers ... to examine packages and containers without a showing of individualized probable cause for each one.” The Court also stated that there is a reduced expectation of privacy with passengers and their belongings when they transport them in the public.

In a dissenting opinion by Justice Stevens, and joined by Justices Souter and Ginsberg, the dissent disagreed with the majority’s conclusions. The dissent argued that the need for law enforcement officers to effectively combat crime and ensure their safety does not outweigh the individual’s privacy interests. Under the Fourth Amendment, the “object of the search and the places in which there is probable cause to believe that it may be found” is with the misconduct of the driver, which can not be extended to the passengers. In order to preserve the passenger’s liberty interest, at the very least, the officer is limited to searching the belongings of the driver of the vehicle, unless the officer has probable cause to believe that the passengers’ belongings also contain contraband. ■

TERRIFIC TECHNOLOGY FOR TEACHERS

Need a quick lesson in liberty? The Center for Civic Education presents a 60-second civics daily podcast that provides a quick and convenient way for listeners to learn about our nation’s government, the Constitution, and our history. The podcast explores themes related to civics and government, the constitutional issues behind the headlines, and the people and ideas that formed our nation’s history and government. And it’s free! Get the scoop here:
<http://www.civiced.org/60-second-civics>

Been to the Library of Congress lately? Check out their searchable primary source holdings relevant to Kansas teaching standards (or any other state for that matter) by grade level—a wealth of primary sources, lesson plans, and other teaching aids linked to the standards.
<http://loc.gov/teachers>

Civics Renewal Network: This is a consortium of nonpartisan, nonprofit organizations committed to strengthening civic life in the United States by increasing the quality of civics education in our nation’s schools and by improving accessibility to high-quality, no-cost learning materials. On this site, a teacher can find the best resources of these organizations, searchable by subject, grade, resource type, standards, and teaching strategy.
<http://www.civicsrenewalnetwork.org/>

DEAR READERS,

Law Wise is provided as a public service and is a publication funded by the KBA Law Related Education Committee through a grant from the Kansas Bar Foundation.

We are interested in your thoughts, ideas, and suggestions about current and future issues. In an effort to provide a format for subscribers to share information, we have created a new way to register and to receive *Law Wise*. If you do not currently receive *Law Wise* via your inbox but would like to, we need for you to let us know. Here are some simple instructions to do that.

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FAQs

We have a list of FAQs available on the *Law Wise* webpage at <http://www.ksbar.org/LWFAQ>.

The Kansas Bar Foundation, with Interest on Lawyers' Trust Accounts funding, provides support for this publication. *Law Wise* provides general information about law-related matters of interest to teachers, students, and the public in Kansas, but does not provide any legal advice, so readers should consult their own lawyers for legal advice. For further information about any projects or articles, contact Ron Keefover at ronkeefover@gmail.com; or Anne Woods, public services manager, (785) 234-5696. *Law Wise* is published by the Kansas Bar Association, 1200 SW Harrison St., Topeka, KS 66612-1806, during the school year.