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Keynote Speaker
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Having agreed to the request of KBA President Glenn Braun to write an article for the Journal, I pondered on just about what I could write. After all, I am an octogenarian. There are many of us still around who maintain an active interest in Bar activities. But then I reflected back on a time when lawyers underwent a metamorphosis and became lawyers of a different kind. Here’s how:

The usual heat and humidity ushered in the Lawrence spring, along with the blooming flowers, shrubs, and trees. The heat exacerbated by dark robes they wore was abated to a certain degree by the invention by an aspiring engineer, clandestinely sold under authority granted by the 1949 legislature authorizing beer sales. The cooling elixir consisted of a small 32-ounce tank to store the beer, kept cool by a miniature cooler. Suction was created by inhaling on a straw attached to the belt and cooler. The device was a great relief to many graduates and also seemed to add conviviality to the proceedings.

Most of the graduates and their guests had departed Lawrence for their home cities. But the vestiges of the professional schools, law and medicine, remained. Enrollment for both schools was scheduled to commence at 9 a.m. on Monday.

Monday brought a cooler day than the graduation day before. A relief because the law school, as well as most other buildings on the campus, was without any type of cooling equipment. The long-range weather forecast was not available and conditions existed which forebode any chance of comfortable weather. The aspiring law student was thus relegated to studying at night. Many gentlemen students removed shirts only to open access to little green bugs enjoying a meal.

Entry into the law school was not by LSAT but by the mere application of the prospective student to the law school. If one could survey the entry of these law students into the world of law, one could conclude that the applicants were generally older than usual applicants and also bore the scars of war from which they had come. The damage inflicted to a great number of these applicants by the war was obvious, and evidence of the sacrifice made.

The group assembled between classes with the usual exchange of ideas concerning the answers to the questions presented by the law professor.

Arguments were presented with strong adherence to learn what was being studied and certainly what was right. It was important that the lesson be well learned for it would be a tool to be used in their coming performance in a courtroom. An appropriate grade was also required to maintain a grade point average high enough to meet the strict requirements and remain in law school.

Law school was tough for these applicants and students, many of whom had been away from an academic environment. Some, on the first day, were not aware that assignments were placed on a bulletin board to enable the student to do his studying in advance. One could be embarrassed for not checking the board in advance. The requirements for study were imposing; the required intensity was so much greater than undergraduate school.

The law school had lost members of its student body because potential lawyers were granted no exemption from the draft. On the other hand, the medical school was usually able to obtain exemptions for its applicants otherwise qualified to enter medical school.

Women had not entered into the mix yet, but that day was not far away. Although not seeking a path to a professional career – that would come later. They supported their husbands by working outside the home at several jobs, contributing significantly to the family largely by earning their PHT (putting husband through) degree.

These difficulties created a strong camaraderie among these lawyers-to-be. The camaraderie survived graduation and carried over to the practice of law. A phenomenon, not understood by the public, was the survival of this camaraderie even after a hotly contested litigation. The camaraderie exemplified the ability of the lawyers to strongly advocate their position and remain friends.

This was the creation that brought about strong relationships and made law a fun thing to practice.

Those events that brought lawyers together socially were well attended. Judges modified their dockets to accommodate these events. Reservations for hotel accommodations went fast. These lawyers had become excellent practitioners of the law. Camaraderie was a key to this condition.

The practitioner recognized the need for ethical practice and honor before the court. The high degree of respect earned by the profession added to the joy of practice. Indeed, it was fun to practice law. In this period of metamorphosis, actions in our U.S. Supreme Court propelled the change. The Court ruled that the profession’s use of minimum fee schedules violated applicable anti-trust and restraint of trade laws, and the attempt by the Virginia Bar to restrict advertising by the

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The Importance of Bar Leadership

By Melissa R. Doeblin, Kansas Corporation Commission, Topeka, melissadoeblin@gmail.com

One big reward I am granted in my year as president of the Young Lawyers Section (YLS) is the opportunity to meet and work with other leaders of bar associations. These leaders range from the hardworking board of directors of the YLS to the knowledgeable members of the Board of Governors of the KBA. I have also been fortunate to meet leaders of the local bar associations in our state, as well as a wide variety of leaders from other state and local bar associations across the country. I have attended meetings and conferences of the American Bar Association's Young Lawyers Division (ABA YLD) and have acquired a great deal of information about what other young lawyers groups are doing in their home states. I have discussed with these other leaders ways to recruit and retain bar association members, what other groups are doing in the way of fundraising, which public and membership service projects have been successful, if the groups have monitored or proposed legislation, and how law students are involved in the bar association.

A central theme that always arises during these discussions is how the leaders of bar associations can better serve and deliver value to members. Usually these discussions begin with how each individual became interested in taking a leadership role in their association. I have often heard comments from fellow young lawyer leaders about how they got involved. Comments ranged from desires to network amongst other members, to gain knowledge about their practice and the professionalism of the bar, to meet members of the judicial branch, to learn about the crucial role the courts play in our system of justice, and to educate members about their role in terms of informing the public about the justice system and the practice of law.

For me, becoming involved in YLS leadership was never a question. Right out of law school, I was given the opportunity to participate on the YLS board of directors and never looked back. I served in a variety of positions on the board, including CLE liaison, social chair, and legislative liaison, before I thought I would “go for it” as the YLS president-elect last year. The many attorneys I have met along the way through my leadership positions with the YLS have helped me grow as a lawyer because meeting other leaders across the state and country has provided me with many varied views on our practice as attorneys and the challenges we face.

There are a number of ways that you can become involved and be a leader within the bar association, and I strongly urge you to pursue a leadership position. First, there are a number of committees that are hard at work to sustain and provide for membership, to provide CLE seminars that are of benefit to members, and to give the KBA a voice on legislative issues. Second, there are several sections that are always looking for new leaders to examine the same types of issues, with a focus more on various substantive areas of the law.

While I know there are a number of other important obligations, such as family, your career, and various hobbies, which may take a front seat to being involved in the bar association, I can say firsthand that once you become involved, your life and career will be more personally and professionally enriched. I urge you to join a section and stay up-to-date with the section’s newsletter, attend a CLE on substantive issues put on by the association, or seek a leadership position. In particular, the YLS is currently accepting applications from its membership for various leadership positions on its board of directors, which includes CLE liaison, social chair, legislative liaison, editor of the YLS Forum, secretary-treasurer, and president-elect.

If you are a member of the YLS, please consider leading the section and the association. You can access the YLS board application at http://www.ksbar.org/pdf/section_members/yls/board_app.pdf. Also, please feel free to contact me at melissadoeblin@gmail.com or at (785) 271-3186, if you would like to obtain more information about the positions available and the time commitments.

Being a leader in the KBA YLS is a great way to start building your resume and a solid networking forum where you can seek advice from and commiserate with your fellow bar members. Leadership in the bar also provides you the chance to better serve the needs of your fellow attorneys by providing opportunities to identify and discuss substantive trends that affect attorneys across the nation. You can help set the tone of the KBA by becoming involved as a leader.

About the Author

Melissa R. Doeblin graduated from Washburn University School of Law in 2005 and received a certificate in Natural Resources Law. She currently serves as advisory counsel for the Kansas Corporation Commission in Topeka.
Stepping Up

By Jim Oliver, Foulston Siefkin LLP, Kansas Bar Foundation president, joliver@foulston.com

The Kansas Bar Foundation recognizes contributors for their generosity each time they achieve certain milestones of giving. We acknowledge them at a banquet, we give them mementos, and publicly recognize their accomplishments.

Fellow: $1,000
Fellow Silver: $1,001‒$5,000
Fellow Gold: $5,000 ‒ $9,999
Fellow Diamond: $10,000 ‒ $14,999
Pillar of the Foundation: $15,000 ‒ $49,999

When our wise staff liaison, Meg Wickham, suggested I write a column encouraging next-level giving, my first reaction was: who cares? In the value system to which I claim to subscribe, generosity becomes hypocrisy if the motive is personal recognition or public approval. But after thinking about it, I believe we should care. Here’s why:

Heroes and Values. Every organization has values that represent what it considers good and admirable. Its heroes are defined by its values (and vice versa). They are the people we respect and admire. Heroes are people who have done something that isn’t easy that is an example for others – something that others aspire to do.

When you look at the names of Kansas lawyers who have contributed at the higher levels, you see people who are great examples. They have not only contributed generously, but also earned the money they gave by being brilliant, hard-working lawyers. These Fellows set the highest standard among their peers by taking an active role in meeting the critical need of our fellow citizens for legal assistance. To put it in common vernacular, heroes save other people’s butts. They pick up where the rest of us fail. They make us all look better, and they make real-world help available for people who can’t help themselves. It is fitting and necessary to honor, thank, and emulate such people.

Goals and Priorities. Our goals and priorities affect what we do with our careers and our income. And they affect how we think of ourselves and our profession. When I looked at the different levels of Fellow, I had to ask myself some questions. If I really share their beliefs and commitment, do I show it? What should I be doing if I really believe in justice for all? What image of my profession am I conveying? Can I accomplish something of significance in which I can legitimately take pride? Making it a goal to become Fellow Gold or Diamond, or one of the few Pillars of the Foundation, could change your career and your personal satisfaction.

The purpose of the Kansas Bar Foundation 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. This is a worthy goal and you can make it a priority to give something every year. And especially when you have a good year, when you occasionally hit a home run (I’m hoping you all do), please remember the profession, and all the people of Kansas we ask to trust us, by stepping up a level as a Fellow of the Kansas Bar Foundation.

About the Author

James D. Oliver is the partner-in-charge at the Overland Park office of Foulston Siefkin LLP. He serves as the firm’s lead partner for the appellate practice team. Oliver received his Bachelor of Science from Northwest Missouri State University in 1971 and his Juris Doctor, cum laude, in 1975 from Washburn University School of Law, where he served as an editor of the Washburn Law Journal.

He is admitted to practice in Kansas, Missouri, the U.S. Courts for the District of Kansas and Western District of Missouri, U.S. Court of Appeals for the Tenth Circuit, and the U.S. Supreme Court.

Robert K. Weary Award

The Board of Trustees of the Kansas Bar Foundation established the Robert K. Weary Award in 2000 to recognize lawyers or law firms for their exemplary service and commitment to the goals of the Kansas Bar Foundation. Despite his objection, Bob Weary was selected as the initial recipient of the award in recognition of his decades of service to his community, the Kansas Bar Foundation, and the legal profession in Kansas. Sadly, Mr. Weary passed away in early 2001.

In 2010, this prestigious award was presented to Jack E. Dalton. He was honored for his dedication to the Kansas Bar Foundation. The Foundation would not be where it is without his trailblazing efforts.

Nominations for the Robert K. Weary Award should be submitted to Jeffrey Alderman, KBF Executive Director, by e-mail at jalderman@ksbar.org or to 1200 SW Harrison St., Topeka, KS 66612-1806, by Friday, April 15, 2011.
Unraveling Ethics
Unraveling the Negotiator’s Ethical Paradox

By David Rubenstein, Washburn University School of Law, david.rubenstein@washburn.edu

Editor’s note: This article originally appeared in the January 2011 Journal; however, due to unexpected errors, this article is being reprinted in its entirety.

The Problem
To what extent may a lawyer ethically mislead an adversary in negotiations? The question unveils an ostensibly paradox for negotiating lawyers: On the one hand, lawyers should represent their clients’ interests “zealously”; on the other, lawyers are generally obligated to be “truthful” toward others. If strategic success for a client demands some degree of deception toward opposing counsel, how can a lawyer fulfill the dual ethical ideals of client loyalty and truth to others? In some ways, he or she cannot – thus the paradox. But a partial solution (if it may be called that) comes from unraveling traditional notions of zeal and truth.

Unraveling Zeal
Although often regarded as an ethical axiom, zealous representation is not required by the black letter of the Kansas Rules of Professional Conduct (Rules). Rather, references to zeal are found only in the nonbinding preamble and comments to the Rules. And even then, it is a qualified zeal.

In particular, the comments to Rule 1.3 note that “[a] lawyer should act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client’s behalf.” In the immediately following comment, however, zeal is qualified by the admonition that “a lawyer is not bound to press for every advantage that might be realized for a client.” Similarly, the preamble to the Rules notes that “[a]s advocate, a lawyer zealously asserts the client’s position under the rules of the adversary system.” That is, zealous representation for a client is limited by the lawyer’s other professional obligations. Most pertinent here, the preamble specifically states that “[a]s negotiator, a lawyer seeks a result advantageous to the client but consistent with requirements of honest dealing with others.” (emphasis added)

Unraveling Truth (Out-of-Court)
Like zeal, truthfulness is a qualified concept under the Rules. Kansas Rule 4.1(a) provides that a lawyer “shall not” knowingly “make a false statement of material fact or law to a third person.” On its face, this rule applies to all interactions with third parties, including negotiations. Because a lawyer may not lie in negotiations, for example, he or she cannot falsely proclaim that “my client broke his arm,” when the injury was diagnosed only as a sprain. And the lawyer may not state, in defending a client, that “the Board of Directors has voted to reject your settlement offer,” when no such vote took place.

But may the lawyer falsely state in an out-of-court settlement negotiation a client’s present intention that the client will not settle for a penny less than $10,000, when the lawyer knows the client ultimately would accept much less? “Yes,” according to Rule 4.1, comment 1:

Whether a particular statement should be regarded as one of fact can depend on the circumstances. Under generally accepted conventions in negotiation, certain types of statements ordinarily are not taken as statements of material fact. Estimates of price or value placed on the subject of a transaction and a party’s intentions as to an acceptable settlement of a claim are in this category … .

Ultimately, context matters. In negotiating with third parties it is generally not a misrepresentation – at least not a material one – to “puff” (e.g., “our case is rock solid”) or “bluff” (e.g., “my client won’t take a penny less …”). Why are these falsehoods not material? The answer is as debatable as it is simple: we do not expect lawyers on the receiving end to believe them.

Negotiations Before a Tribunal (The Whole Truth and Nothing But …)

In contrast to out-of-court negotiations with third parties, a lawyer’s duty of candor to a judge is unqualified. Specifically, Kansas Rule 3.3(a) provides that a “lawyer shall not” knowingly “make a false statement of law or fact to a tribunal.”

Nothing in the rule or comments limits the obligation of candor in settlement conferences before a judge. And, whereas Rule 4.1(a) prohibits only material falsehoods, Rule 3.3(a) contains no (express) limitation for materiality. Comment 2 to Rule 3.3 also explains:

A lawyer acting as an advocate in an adjudicative proceeding has an obligation to present the client’s case with persuasive force. Performance of that duty while maintaining confidences of the client, however, is qualified by the advocate’s duty of candor to the tribunal.

Thus, bluffing a judge is not permitted. Any tension between the duty of candor and zeal is severed at its source: candor simply trumps in this circumstance.

Conclusion
Lawyers have professional responsibilities not only to the clients they serve, but also to opposing counsel, to opposing parties, and (where relevant) to the tribunal. The most

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Footnotes
1. The Kansas Rules of Professional Conduct define “tribunal” as “a court, an arbitrator in a binding arbitration proceeding or a legislative body, administrative agency or other body acting in an adjudicative capacity …” (emphasis added). See KRPC 1.0(n).
2. Cf. ABA Formal Op. 93-370 (1993) (explaining that it is improper for a judge to ask a party what their settlement limit is; but that if a judge asks, the lawyer should decline to answer and must not lie).
Beyond the Vacuum

By Amanda Haas, Washburn University School of Law

I’m not sure exactly how many times I’ve heard it, but it’s certainly more than a few: “Don’t use legalese.” Most professors emphasize this at some point in just about every law school course. The underlying message is that the documents we prepare and the things we do as attorneys serve to benefit real people – people who often do not have the legal education and knowledge that we have. In many attorney-client relationships there seems to be a disconnect between the real experience of those being affected by the law (the clients) and those working to interpret and use the law (attorneys), and this disconnect can prevent those in the legal profession from delivering the best outcome for their clients.

The funny thing is, although almost every law professor I know has given this kind of wise advice, the actual experience of law school (and perhaps even the practice of law itself) doesn’t actually instill this lesson.

As law students, we learn the law (and how to be lawyers) in a vacuum. It’s no secret that perhaps the main goal of the first semester of law school is to break down the minds of new students and rebuild them in a way best fit for the study of law. Pedagogically, this makes plenty of sense – law school, as an academic experience, is unlike anything else, and in order to succeed, most students must make an extreme adjustment from their prior academic style. Practically speaking, however, this approach might not best serve our future clients.

By the time we graduate law school, we understand a whole heap of things about the legal underpinnings of our society that 80 percent of the general population does not. I’m sure we’ve all experienced that moment when we are surrounded by friends and family, people with whom we were close before law school days, and suddenly the conversation takes a turn and we realize that everyone is uncomfortably silent because, for one, they don’t understand a word we are saying, and two, they really don’t care (much like we hadn’t cared before three years of law school).

Some law students, and lawyers, mistake this type of real-world disconnect for our own intellectual superiority. This might be the reason I’ve read dozens of law review articles that contain at least 50 words that even I don’t understand. Most of us have always been academics – “geeks,” “nerds,” “intellectuals,” whatever you’d like to call it. So this dramatic shift and increase in knowledge and vocabulary can make us feel like we’re in a class of our own – and in many practical ways, our knowledge and skill do set us apart.

But the law school vacuum, in my opinion, often leaves something very crucial out of the formula – the connection with the “real world.” Perhaps it’s the realist in me, or perhaps it’s a result of my prior education in psychology and the social sciences, but as I prepare to leave law school and begin practice, I realize that I’ve been taught very little about the unique personal aspect of legal cases. In law school, our focus is on the law and applying that law, often to obscure and random hypothetical situations formed in the minds of brilliant law professors. And here’s the law student drill: spot the issues, know the rules, apply the rules, and come up with a conclusion. That’s what we’ve been taught. I’m not sure I’d ever get extra points on a law school exam for noting the following: “What is motivating Ace to cut his children from his will?” or “I’d like to know more about Sally’s personal background with her business partner” or “This particular application of the law may have unforeseen personal and economic consequences in Eric’s life.” But in practice these types of questions and curiosities can mean the difference between a “good” outcome and an outstanding outcome for a client that helps forge a trusting attorney-client relationship.

This is where we could take a cue from our friends in the social sciences. In my opinion, being a good legal “counselor” means doing what you can to truly understand the person you’re working with. For most attorneys, no two cases are ever the same, and while the law may be a constant factor, the client and his/her individual situation will always be different. If, as lawyers, we approach all potential clients like a law school examination, I’m afraid we’ll be missing the point entirely. In order to be a zealous advocate for our clients, we must understand who they are, the factors contributing to their particular issue, and the experiences that have most affected them.

I’m not necessarily sure how to remedy this particular disconnect. Perhaps it starts with the advice, “don’t use legalese – speak to your clients in a way they understand.” Maybe all lawyers should take some type of course on “understanding your client” or “looking beyond the law.” It certainly makes sense for students to participate in some type of active externship or clinic experience that involves client contact (because not all legal jobs do). But perhaps if we ultimately keep in mind that what we’ve been trained to do is not just analyze complex legal problems in a vacuum, but to create real solutions for real people that operate in a real world, we will eventually find the right balance.

The truth is, we learn the law in a vacuum, and that will likely never change. But the law does not operate in a vacuum. As I prepare for my legal career, I will try to always keep this in mind. And I am beginning to realize that my education in psychology will be much more helpful in my days as an attorney than I had ever originally thought.

About the Author

Amanda Haas is currently a third-year student at Washburn University School of Law. She received her Bachelor of Science in psychology from Baker University in 2007. Haas is a Shamberg scholar and member of the Moot Court Council. After graduation, she will join the law firm of Morris, Laing, Evans, Brock & Kennedy Chtd. in Wichita as a general litigation associate.
When Corporate America in general, and the legal profession in particular, talks about diversity in the workplace, it usually leaps to two issues – race and gender.

From that leap comes the automatic criticism from some that worrying about those issues smacks of “quotas” and “lowering the criteria” to accommodate clients or to look good in public relations materials.

While I’ve literally written a book on how workplace diversity is so much more complicated and expansive than women and racial minorities, when it comes to the legal profession race and gender often do become the more obvious markers by which diversity is evaluated.

There is a reason, for example, why the American Bar Association is concerned about the large number of women of color who leave America's law firms in droves.

But there is a wider issue of diversity that I don't think is unconnected with the visible aspects of diversity that the legal profession concerns itself with – left-brain versus right-brain thinking.

In Daniel H. Pink's book, "A Whole New Mind: Why Right-Brainers Will Rule the Future," he talks about how the currency of success in America has moved from rewarding left-brained thinking, which is more rational and linear, in the Information Age to rewarding those who excel in right-brained thinking, which is more empathetic and holistic, in what he calls the Conceptual Age.

Generally speaking, Pink talks about how as a country, we have had to shift our thinking because of what he dubs "Abundance, Asia, and Automation." In other words, success comes when you can show that what you do can be done more creatively (because of the abundance of competition), cheaper (because many functions can be outsourced to Asia), or faster (because of the prevalence of computers and automation).

Therefore, he makes the strong argument that even attorneys aren’t immune to this concern because people can, for example, now easily go online and get cheap templates for wills, contracts, leases, business incorporation, and many other “simple” legal tasks that formerly could only be obtained by having a costly sit-down with your local lawyer.

As Pink writes, “The attorneys who remain will be those who can tackle far more complex problems and those who can provide something that databases and software cannot – counseling, mediation, courtroom storytelling, and other services that rely on R-directed [right-brained] thinking.”

In a nutshell, left-brain thinking emphasizes text while right-brain thinking emphasize context so it’s the lawyer who can offer creative, out-the-box solutions that aren’t charged by the boiler-plate who will excel in the still competitive market of law as clients want more bang for their buck.

Where this relates to diversity in the legal field is that as distasteful as it may be to reduce it to the visual diversity of a legal team, it’s one aspect of showing that more than a singular kind of background is being used to help achieve the best and most cost-efficient results that clients look for.

While racial and gender diversity, as well as other kinds, are important in a legal environment for a variety of reasons, so is the need for law firms to leverage the different ways of thinking and problem-solving that all lawyers need to have. When litigation or business concerns engage lawyers who come from all walks of life and who approach problems from more than just relying on legal and law firm precedent, you are far more likely to have someone come up with an approach that couldn't come from simply logging on EveryoneKnowsLaw.com.

Pink is right. The lawyers who can demonstrate they are adding value with creative yet focused solutions because of the diverse thinking, as well as the diverse people, they have on board will be the lawyers thriving in the transition from the Information Age to the Conceptual Age.

**About the Author**

Michelle T. Johnson is a diversity trainer, mediator, speaker, and writer, as well as a former journalist and employment attorney of several years. She has written three books on workplace diversity issues, including "The Diversity Code: Unlock the Secrets to Making Differences Work in the Real World," published in September 2010 by AMACOM, the publishing arm of the American Management Association.

Additionally, Johnson has had a diversity column in the business section of the Kansas City Star since 2007 called "Diversity Diva." She has spoken on diversity issues and conducted diversity workshops for several organizations, businesses, and colleges across the country, including Walmart headquarters in Bentonville, Ark., H&R Block, Hallmark Cards, and several municipalities. More information on Johnson can be found at www.michelletjohnson.com.
Unraveling the Negotiator’s Ethical Paradox

pressing ethical challenges for a lawyer generally emerge at the intersection of these competing obligations. Some of the ethical tensions that plague negotiators are ameliorated by close attention to the rules and comments. While it is true that a lawyer generally should provide zealous representation to a client, it is a qualified zeal: a lawyer’s advocacy must be constrained within the bounds of law. At the same time, while a lawyer generally owes a duty of truthfulness to others, it is a qualified truth: one that depends on circumstance. A lawyer cannot lie — either in-court or out-of-court — to serve their client’s interest. But, because it is deemed a legitimate negotiating tactic rather than a material falsehood, a lawyer may misrepresent a client’s settlement limit in out-of-court negotiations and engage in other nonfactual puffery.

About the Author

David Rubenstein is an associate professor of law at Washburn University School of Law. He teaches in the areas of professional responsibility, administrative law, and immigration. Prior to teaching, Rubenstein clerked for the Hon. Sonia Sotomayor on the Second U.S. Circuit Court of Appeals and for the Hon. Barbara S. Jones in the U.S. District Court for the Southern District of New York. He was also formerly an assistant U.S. attorney in the Southern District of New York, and an associate at the law firm of King & Spalding.
Changing Positions

Teresa L. Adams and Lora M. Jennings have been elected partners at Martin, Pringle, Oliver, Wallace & Bauer LLP, Wichita.

Zachary J.C. Anshutz has joined the Kansas Insurance Department, Topeka, as general counsel. Keven R. Davis has joined as director of Consumer Assistance and Government Affairs.

Karen Arnold-Burger has been appointed by Gov. Mark Parkinson as a judge of the Kansas Court of Appeals, Topeka.

Michael E. Baker has joined Jake’s Fireworks, Pittsburgh.

Cheryl C. Boushka has joined Van Osdl & Magruder P.C., Kansas City, Mo.

Sara K. Butler has joined Bryan Cave LLP, Kansas City, Mo.

Carlton D. Callenbach has joined Lockton Companies LLC, Kansas City, Mo.

Jeffrey A. Chanay has joined the Office of the Attorney General, Topeka, as deputy attorney general. Nicole M. Romine has joined as assistant attorney general.

Paul M. Croker has been elected shareholder and director of Wallace, Saunders, Austin, Brown & Enochs Chtd., Overland Park.

Jeffrey G. Dazey has joined Angela Keck Law Offices, Olathe.

Amy B. DeGraeve and Greer S. Lang have joined Lathrop & Gage LLP, Kansas City, Mo.

Ethan B. Domke has joined Paulson Electric, Cedar Rapids, Iowa.

Alisa N. Ehrlich,wichita, and Timothy A. Laycock, Kansas City, Mo., have become partners of Stinson Morrison Hecker LLP.

Patrick A. Edwards has joined the firm’s Wichita office as an associate.

Bradley L. Farney has joined Stewart Title Guaranty Co., Overland Park.

Michelle A. Fox has joined Kutak Rock LLP, Kansas City, Mo.

Jeffrey W. Garrett has joined Mayer & Rosenberg P.C., Kansas City, Mo.

Roarke R. Gordon, Brooks G. Kancel, and Calvin D. Rider have become members of Flynn, Googin, Coulson & Kitch LLC, Wichita.

Matthew S. Gough has become a partner at Barber Emerson L.C., Lawrence, and Edward H. Tully has joined the firm as an associate.

Lindsay F. Heist has joined Doughit’s Frey, Rouse Gentile & Rhodes LLC, Kansas City, Mo., as an associate.

Randi L. Helms has joined Case & Roberts P.C., Kansas City, Mo.

Jodi M. Hoss has joined SNR Denton LLP, Kansas City, Mo.

Denise M. Howard has joined Steve A.J. Bukaty Chtd., Overland Park.

Barbara K. Huff has been appointed by Gov. Mark Parkinson as a judge of 7th Judicial District, Lawrence.

Michael S. James has joined Denbury Resources Inc., Plano, Texas.

Kenneth R. Kula has joined Kennedy Clark & Williams P.C., Dallas.

Brad Allen Oliver has joined Wigger Law Firm Inc., North Charleston, S.C.

John A. Oliveros has joined Ross, Molina, Oliveros P.A., San Antonio.

Christopher T. Orosco has joined the Board of Indigents’ Defense Services, Northeast Kansas Conflict Office, Topeka, as a trial attorney.

Helen J. Pedigo has joined the Kansas Judicial Center, Topeka, as special counsel for Chief Justice Lawton R. Nuss.

Eunice C. Peters has joined the Kansas Office of Revisor Statutes, Topeka, as an assistant revisor.

Jeremiah L. Platt has joined Clark & Kellow Chtd., Manhattan.

Daniel M. Reynolds has joined Emerit, Chubb & Geltter, Independence, as an associate.

Trish Rose has become a district judge for Reno County, Hutchinson.

Linda H. Tabory has been named a principal of the Hardwick Law Firm LLC, Kansas City, Mo.

Randall J. Wharton has joined the Kansas Department of Revenue, Topeka.

Larry W. Wynn III has joined BHC Rhodes, Overland Park.

Joshua D. Wright has joined Michael C. Brown P.A., Mulvane.

Changing Locations

Christopher J. Angles has started Angles Law Firm, 11900 College Blvd., Ste. 310, Overland Park, KS 66210.

Beall, Mitchell & Sullivan LLC has moved to 1041 N. Waco Ave., Wichita, KS 67203.

Bruce W. Beye has moved to 9393 W. 110th St., Ste. 450, Overland Park, KS 66210.

Kenneth J. Berra has become in-house counsel for Nationwide Insurance and has relocated his office to 12980 Metcalf, Ste. 100, Overland Park, KS 66213.

Melissa C. Carpani and Christopher A. Gordon have started Carpani and Gordon P.A., 4630 W. 137th St., Ste. 103, Leawood, KS 66224.

Jane E. Colombo has started the Law Office of Jane Colombo LLC, 5350 College Blvd., Overland Park KS, 66211.

Daland Corp. has moved to 9313 E. 34th St. N., Ste. 100, Wichita, KS 67226.

Stephen P. Doherty has started Hoffmeister, Doherty & Webb LLC, 8880 W. 151st St., Ste. 100, Overland Park, KS 66221.

Traci D. Ferrell has started Ferrell Law Office LLC, PO Box 135, Concordia, KS 66901.

Robert C. Gigstad has started Gigstad Law Office LLC, 8000 Foster St., Overland Park, KS 66204.

Lynette A. Herrman has opened Law Office of Lynette Herrman, 1041 N. Waco, Wichita, KS 67203.


Jessica F. Leffler has started The Law Office of Jessica F. Leffler, 109 W. 2nd St., Ottawa, KS 66067.


Lori A. Leu has started Lori A. Leu & Associates, 2415 Coit Rd., Ste. C, Plano, TX 75075.

Jonathan K. McCoy has started his own practice at 5250 W. 94th Terr., Ste. 118, Prairie Village, KS 66207.

Brad T. Murphee has started Murphee Law Office, 445 N. Waco, Wichita, KS 67202.

Barbara L. Palen has moved to 8200 W. 100th Terr., Overland Park, KS 66212.

William Jack Peggs has moved to 305 Omni Center, 111 S. Whittier, Wichita, KS 67214.

Rand E. Simmons has started his own practice at 527 Commercial, Ste. 416, Emporia, KS 66801.

Tai J. Vokins has started Vokins Law Office, 201 E. Loula, Olathe, KS 66061.

A. Scott Waddell has opened Waddell Firm LLC, 2029 Wyandotte, Ste. 100, Kansas City, MO 64108.

Miscellaneous

Todd W. Davidson, Salina, has been elected chairman of the board of directors of the Salina Area Chamber of Commerce for 2011.

Dennis D. Depew, Neodesha, has been elected by the Kansas Association of School Board as president-elect.

Kerry E. McQueen, Liberal, received the William Kahrs Lifetime Achievement Award by the Kansas Association of Defense Counsel.

Robert H. Royer Jr., Abilene, received the Distinguished Citizen of the Year Award at the Annual Abilene Area Chamber of Commerce Banquet.

Editor’s note: It is the policy of The Journal of the Kansas Bar Association to include only persons who are members of the Kansas Bar Association in its Members in the News section.

Correction: It was incorrectly reported in the January Journal that Lentz Clark Deines P.A. had moved their offices to a new location. The firm is still located at 9260 Glenwood St., Overland Park, KS 66212.
Obituaries

William Y. Chalfant
William Y. Chalfant, 82, of Hutchinson, died January 7 at Hospice House in Hutchinson. He was born October 3, 1928, in Hutchinson, the son of Claude Edward and Junia Maurine Young Chalfant.
He was a lifetime Hutchinson resident and graduated from Hutchinson High School in 1946, the University of Kansas in 1950, and the University of Michigan School of Law in 1956. He was an attorney with the firm of Branine, Chalfant, and Hill. Chalfant was a member of the Kansas and American bar associations and the Kansas Board of Law Examiners. He was a captain in the U.S. Marine Corps during the Korean War.
Chalfant is survived by his wife, Martha, of the home; son, William, of St. Louis Park, Minn.; daughter, Kristin, of Littleton, Colo.; brother, Steve, of Hutchinson; and two grandsons. He was preceded in death by a brother, Mike.

Harold D. Oelschlaeger
Harold D. Oelschlaeger, 85, died in Overbrook on December 27. He was born January 3, 1925, in Abilene to Fred and Georgia Weber Oelschlaeger and was raised in rural Dickinson County.

Oelschlaeger enlisted in the U.S. Army in 1943 and served with the 84th Infantry Division in Europe during the Battle of Germany and the subsequent Occupation of Germany. He was twice wounded and earned the Purple Heart, as well as the Combat Infantryman Badge and the Bronze Star. After returning from service in World War II, he entered Kansas State University, graduating in 1948. He then continued onto Washburn University School of Law, graduating in 1949.

Robert V. Talkington
Robert V. Talkington, 81, former president of the Kansas Senate and longtime Iolan, died December 26 in Kansas City, Kan. He was born August 23, 1929, to William H. and Nannie Patrick Talkington near Patrick, Texas. He earned a bachelor’s degree in education in 1951 and his law degree from the University of Kansas in 1954.

After service in the Army Counter Intelligence Corps during the Korean War, he began his legal career as a private attorney in Iola. Talkington was a member of Sigma Alpha Epsilon, Phi Delta Phi, Masons, Shriners, Elks, and the American Legion.

Survivors include five children, Jill McCaskill, of Cypress, Texas, Jacki Chase, of Iola, Lisa Dreasher, of Hutchinson, Jim Talkington, of Iola, and Tom Talkington, of Prairie Village; and 11 grandchildren. He was preceded in death by his wife, Donna, daughter, Jeanne, and son, Donald.

After law school, he began private practice in Plainville. During his time there, he served as city attorney and was elected as Rooks County attorney from 1964-72. He returned to Topeka in 1972 as a staff attorney for the Kansas State Board of Tax Appeals and later served as a court administrator for the Shawnee County Juvenile Court. He was a member of the Kansas Bar Association. Oelschlaeger was a life member of VFW Post No. 1650, American Legion Post No. 400, Disabled American Veterans, and the Phi Alpha Delta law fraternity.

He is survived by his wife, Jane; two sons, Roger and Alan; and four grandchildren. He was preceded in death by his parents, his brother, Max, and his two sisters, Verlene and Betty.

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Mobile, Machine Translation is Here

By Larry N. Zimmerman, Valentine, Zimmerman & Zimmerman P.A., Topeka, ks/lpm@larryzimmerman.com

"Ich liebe Sprachen (German), j’adore les langues (French), jeg elsker sprog (Danish), and ma armastan keelles (Estonian).” In English, “I love languages.”

I really do love languages and discovering the newest version of Google’s Translate app for Android has kept me smiling for weeks now. Admittedly, neither my day travelling in Estonia with a Danish journalism student nor my seventh grade French is sufficient to check the accuracy of those three translations. A few years of German, however, is enough to make me think the German is spot-on.

Google Translate Foundations

Translate has been around for several years at translate.google.com and does what you would expect. Enter in text from one language and the site translates it to one of more than 50 other languages. More recent enhancements support audio input allowing users to speak a phrase and hear it spoken back in the selected language. Instant translation is also fairly recent allowing the site to automatically recognize the input language and translate almost as fast as you type.

Some might recall earlier experiments in online translation like Babelfish from the ancient days of AltaVista (Babelfish lives on under Yahoo at babelfish.yahoo.com). It was impressive at the time but pretty crude and often more useful for creating “found poetry” by translating and retranslating text until it took flight from the original. (One of my favorites was a line from an English movie review for Transformers run through the Japanese translator and back to yield, “… summer vacation is good, the duck you cannot know.”)

By contrast, the technology behind Google Translate has been boringly accurate. I regularly plug headlines and news stories from foreign-language publications through it and the translations match the publications’ own translations. Most major sites are pre-translated, but as the social media world expands and vital news from spots like Tunisia and Egypt leak out via Twitter feeds, instant translation adds new dimensions to fast-breaking news stories.

Fortunately, Translate is not all business. Users quickly discovered an “Easter Egg” whereby the voice output could be tweaked to beatbox. Work out your own soundtrack using the cheat sheet at http://techcrunch.com/2010/11/29/google-beatbox/.

Translate on Android

The Translate website is all fine and good but the jaw-dropping fun is on the Android phone platform. In January, a really experimental Conversation Mode was added to the app for English-to-Spanish translation. Fire up Translate, select English as the input and Spanish as the output languages and the new Conversation Mode is offered as an option. This mode allows two people to speak to each other and hear translation in real-time. It is still a little rough and there is plenty of room for giggles and puzzled looks over some results but it turns a mobile phone into a passable bridge between two languages. (You can watch a Google demo of Conversation Mode handling German-English translation at http://gizmodo.do/ezrJPL.)

Conversation Mode may not yet replace a translator for an English-speaking attorney to prepare a will or form a corporation for a Spanish-speaking client. It is, however, entirely capable of managing some simple courtroom and office interactions. For example, it works very well for setting appointments, establishing a fee, and arranging payment plans. Sure, there may be supervisory issues under KRPC 5.3 but, frankly, if a lawyer does not speak Spanish, the depth of their supervision of a human translator is questionable already. Leaving a non-English speaker completely alone in the legal system is unreasonable if technology can partially bridge the gap when human translation is unavailable, unreliable, or unaffordable. Hopefully, Conversation Mode will continue development and roll out to other languages. It is not difficult to imagine a courtroom or office computer (or even a mobile phone) helping navigate issues between English-speaking attorneys and clients speaking Hindi, Chinese, or Vietnamese in real-time. The potential is astounding and relevant enough to human culture to merit a mention in Genesis.

Addendum: iPhone?

Google owns Android, which is now locked in competition with iPhone over the smartphone market. As such, iPhone users are confined to the online version of Translate. WordLens for iPhone, however, does use the phone camera to translate signs by optical character recognition. If a Spanish-speaking client says to you, “Here’s your sign,” the iPhone may help.

About the Author

Larry N. Zimmerman, Topeka, is a partner at Valentine, Zimmerman & Zimmerman P.A. and an adjunct professor teaching law and technology at Washburn University School of Law. He has spoken on legal technology issues at national and state seminars and is a member of the Kansas Credit Attorney Association and the American, Kansas, and Topeka bar associations. He is one of the founding members of the KBA Law Practice Management Section, where he serves as president-elect and legislative liaison.

To join the LPM Section or any other KBA section, you may register online at www.ksbar.org or call (785) 234-5696.
The Greatest Generation of Kansas Lawyers

By Matthew D. Keenan
**Introduction**

Tom Brokaw, in his book “The Greatest Generation,” quotes historian John Keegan for the proposition that the Second World War “is the largest single event in human history, fought across six of the world’s seven continents, and all its oceans. It killed 50 million human beings, left hundreds of millions others wounded in mind or body, and materially devastated much of the heartland of civilization.” Brokaw notes that, for these soldiers, every day for four years or more “they knew, intensely, great danger, separation, death, heroism, uncertainty, accomplishment, and cruelty.”

This article is dedicated to 19 men who experienced every bit of the emotional continuum described by Brokaw. Kansas lawyers all, with ages ranging from 83 to 90. All retired save one, living across the country, and sharing a common experience – serving on behalf of our country in World War II. They are, identified by age, the following:

- Tom Boone, 83
- Charles Svoboda, 83
- Glenn Opie, 84
- Wayne Probasco, 84
- Edwin Wheeler, 84
- G. Taylor Hess, 85
- C. Stanley Nelson, 85
- John Bausch, 85
- Emerson Shields, 85
- Robert Green, 86
- Arnold Nye, 86
- Donald Patterson, 86
- Lester Arvin, 87
- Aubrey Bradley, Jr., 87
- Robert Bates, 88
- Alfred Holl, 89
- Richard Rogers, 89
- Glee Smith, 89
- William Mullins, Jr., 90
- Robert Bates, 88
- Aubrey Bradley, Jr., 87
- Alan Holl, 89
- Richard Rogers, 89
- William Mullins, Jr., 90
- Robert Bates, 88
- Aubrey Bradley, Jr., 87
- Alan Holl, 89
- Richard Rogers, 89
- William Mullins, Jr., 90

What started with a series of questionnaires to all Kansas Bar members born in 1930 or before, something I named the “Legacy Project,” has grown into this. And for those other World War II veterans out there that I’ve missed, please send me your biographical information for inclusion in a forthcoming issue.

Beyond serving the country, and joining the Kansas bar, these 19 share a few other things: They have been married for an average of 60 years to the same woman, they joined the service at ages ranging from 18 to 15 (John Bausch), and they shared adventures no one could possibly foresee. They leapt into history, traveled halfway around the world, and asked no questions about what awaited them.

Most were born into a world defined by county lines, not country borders. All that changed on December 7, 1941. With the future of the world in the balance, they said their goodbyes and left.

Whether it’s Stan Nelson in the Marines, Bill Mullins in the Army, or Aubrey Bradley and Emerson Shields in the Air Force – here are their stories. Some retired as brigadier general (William Mullins), others captain (Edwin Wheeler), and a few more as staff sergeant (Wayne Probasco) or tech sergeant (C. Stanley Nelson).

Tom Brokaw stated that these historical events gave us “the greatest generation any society has ever produced. … These men and women fought not for fame and recognition, but because it was the right thing to do. When they came back they rebuilt America into a superpower.”

For these 19 Kansans, one can reach no other conclusion.

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**Feature Article: The Greatest Generation**

**THOMAS C. BOONE, AGE: 83**

Kansas Lawyer
Admitted: 1956
Military Experience: U.S. Navy (1945-46)

**My Story:** I am a Naval veteran having served in the 7th Fleet in the Southwest Pacific. I was in route from the Great Lakes Naval Training Center to Okinawa preparing for the invasion and occupation of Japan at the time the atomic bomb was dropped and the war ended. I was rerouted to the Philippines where I served the balance of my enlistment.

**Personal:** I married at the age of 23. My wife and I have two children and one adopted daughter: Sarah Rebekkah, who teaches English and French in Saudi Arabia, Caleb is an attorney, and Rachel is completing her master’s in English this year. Rachel was, literally, left by her mother on my doorstep at age 2 months.

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**CHARLES R. SVOBODA, AGE: 83**

Kansas Lawyer
Admitted: 1951
Military Experience: U.S. Navy Air Corps (1945-47)
Aviation Cadet

**My Story:** Charles R. Svoboda, age 83, and a veteran of World War II, graduated from high school at Lawrence at 17 years of age. With WWII in full swing, being drafted was imminent. I had always wanted to fly and the Navy Air Corps was seeking applicants in Kansas City. A month before my high school graduation, I came to Kansas City to apply, and I spent five days taking tests, mental, psychological, physical, and intelligence. I succeeded in passing and was sworn in as an aviation cadet the following week. We were required to have three semesters of college before flight training, and I was ordered to report to the University of Notre Dame in July a month after my graduation to satisfy that requirement.

Having completed the three semesters by the following July, I was then ordered to Naval Air Station Dallas for flight training where I served until reporting for the next stage of training in mid January. However, fortunately the atomic bomb had been dropped on Japan and the war was over. I say fortunately, because I later found out that our mission was to be
the advance d-strike force for the invasion of Japan, with estimated casualties of 85 percent for our flight group.

With the war being over and the large number of fighter pilots in the Navy, a Navy career did not appear promising, and despite the fact that I had signed on to serve eight years, the Navy permitted me to resign and I was honorably discharged. My home being Lawrence, I enrolled at Kansas University’s School of Engineering.

Three semesters later, because of a good grade average, I was invited to join Tau Beta Pi (the engineering equivalent of Phi Beta Kappa) and Pi Tau Sigma, an honorary mechanical engineering fraternity. Because of the large number of returning war veterans enrolling, an increase of faculty members was required, and because of my grades, I was asked to teach some engineering courses my senior year. Upon graduation from the engineering school, I decided to enroll in KU’s Law School, and graduated two years later in 1951. I continued teaching in the engineering school during the two years while I was in law school. My two years in law school presented a problem when the law school dean was reviewing my record for graduation although I met the academic requirements, there was a except for the six semester residency requirement so I filed a request for a waiver, which was granted. I took the Kansas Bar exam in September 1951, passed and was admitted. I then took the Missouri Bar exam in October, passed and was admitted in November 1951.

**Personal:** Married 60 years, January 27, 1951, to Margaret Jean with five children: Nancy (attorney), Jimmy, Bill, Michael, and Ann. I have been a trial lawyer for 55 years utilizing my education in engineering, specializing in construction, technical, and tort litigation in many state and federal jurisdictions and the Court of Federal Claims. I have held an AV pre-eminent rating with Martindale Hubbell for legal ability and ethical standards for more than 30 years.

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**GLENN OPIE, AGE: 84**

Kansas Lawyer  
Admitted: 1954  
Military Experience: U.S. Navy (1944-46)  
Radioman, 2nd Class

**My Story:** I remember radio and December 7, 1941. I was a 15-year-old at Great Bend High School at the time and was a newspaper carrier for the Great Bend Tribune. I believe it was a first for Great Bend – newsboys selling “extras” on street corners: “Read all about it … Japs attack Pearl Harbor.” The following year, I would be recruited by the Navy for its V-12 Officers Program. I was rejected because I didn’t have 20/20 eyesight at the time, but still ended up, in May, at Great Lakes Navy (Boot) Training Camp.

Before that, however, nearly all of us high school boys were excited over the prospect of being in the service – and it was heightened because some of us worked on building a B-12 Base near Great Bend (a few weeks before we graduated). The enthusiasm, and indeed near euphoria, I had of getting in the Navy was just overwhelming. Nearly all high school kids just couldn’t wait to serve. Now some of us going into the service are applauded because of our bravery. Actually, I was not in the least brave – I just wasn’t smart enough to relate to what could happen to me; it was going to be a great adventure.

Navy boot camp, as it impacts a high school boy, is just hard to describe … let’s of drilling, learning how to handle a rifle, hand-to-hand combat, etc., were just a few matters I could hardly comprehend. However, in addition to learning about serving aboard a ship, because I could type, a part of my duties involved my employment as a secretary for the Catholic and Lutheran chaplains serving our company of recruits. I also sang Sundays in the Great Lakes Navy Blue Jacket Choir (about 400 men), but they were strong enough to overcome my presence. It was “really something” to sing with this group, many of whom were opera stars or professional musicians.

After boot camp and an aptitude test, I was assigned to Navy Radio School in Los Angeles, where we learned international Morse code (dits and das). Now for a country high school kid from Nowhere, Kansas, all of a sudden finding himself an implant in Los Angeles, was just mindboggling. I had been to a few high school dances, but The Hollywood Canteen was sort of like heaven, and not just girls (millions of them), but Hollywood actresses.

I was assigned to a ship in the South Pacific, but the trip from Los Angeles was an incredible ordeal. At least 7,000 men were aboard and most were seasick for days. I remember a Marine security sentry aboard the ship was trying to force a near comatose sailor to stand watch, but he simply could not stand up. The Marine threatened to shoot him for insubordination; the man couldn’t even raise his head. He simply told the Marine, “Do it (shoot me now).” Of course, that wouldn’t have happened. I had never seen hundreds of people throwing up over each other.

I was a radio operator for the destroyer USS Meade DD 602. We were operating out of the Philippines on maneuvers soon to be part of the task force to invade Japan. My job was to transcribe Morse code, which would be decoded, providing use operations orders.

One evening after having been on patrol for several days, our ship was anchored in Leyte Harbor with many other ships. That evening, one of the ships made its stern a makeshift theater and before “Bring on the Girls” was getting ready to play, a lonely pyrotechnic crawled into the horizon and, within two or three minutes, the entire sky seemed as bright as the sun. The hundreds of ships in the area were emptying their flares and rockets; the atomic bomb had been dropped. We were of course far from the site, but the main radio on the ship went crazy. Only the radio operators could provide war bulletins because only we could turn the jumbles of dits and das into words; we published several extra editions of war bulletins.

Our ship was in a huge typhoon in 1946 that tore the bow off the Cruise Pittsburg. Our captain got me out of bed in the
middle of the night to send an encoded message (which I later found out expressed his worry that we might be sunk by the raging seas). During the trip home the commodore wanted to deep sea fish, so he stopped five ships for an hour or so and everyone (who had a rod or reel) fished. After a few hours of fishing and heading toward the Panama Canal, we were in one of the worst storms ever encountered by the Meade (according to the old-timers).

I regard my two years in the Navy as doing much growing up. My sleeping area aboard the ship was in its stern. About 50 or 60 so of the communications division were billeted in “sardine closeness.” Below where I slept were approximately 40 or so depth charges; just in front of our sleeping quarters were two extra torpedoes and a few feet toward amidships, several tons of 5-inch shells. I told my parents not to worry about having to make any funeral arrangements, that if our ship was hit during the night, there wouldn’t be enough of me left to feed the fish.

Our ship played a very small part in bringing Japan to surrender. I never dreamed we would be so close to oblivion about 65 years later – today.

**Personal:** Married 51 years to his wife, Sandra. They have two sons, Harlan, who is a surgeon in Olathe, and Robin, who works for a company called Data Logistics. They also have four grandchildren, Tristan, Eden, Bennett, and Logan. He still practices probate and trust law in Great Bend. Opie is a member and past president of the Barton County Bar Association, earned the Kansas Bar Association’s Outstanding Service Award in 1973-74, serves as fund campaign chair of the Jack Kilby Memorial Plaza, and is an elected member of the Drum Corps International Hall of Fame and Great Bend High School Hall of Fame.

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**WAYNE PROBASCO, AGE: 84**
Kansas Lawyer  
Admitted: 1951
Military Experience: U.S. Army Air Corps (1943-46)  
Staff Sergeant

**My Story:** In 1943, I was 17 years old and a senior in high school. I was anxious to get into the service and enlisted in the Army Air Corps Reserve. Nine days after my 18th birthday – January 13, 1944 – I was inducted into the Air Force. Shortly thereafter, I graduated from the Air Force aerial gunnery school and was assigned as a right gunner crew member on a B-29 plane. Our crew was highly trained, having drilled consistently for almost a year. We had been issued all our combat gear and were in the staging area in California, ready to go overseas and do our share of bombing. The day before we left for Okinawa, the first atomic bomb was dropped. We proceeded to Okinawa, but, as you can well imagine, the war was over. I was discharged in April 1946.

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**EDWIN M. WHEELER, AGE: 84**
Kansas Lawyer  
Admitted: 1955
Military Experience: U.S. Army (1944-47)  
2nd Lieutenant (1945-46), 1st Lieutenant (1947-1952), Captain (Honorable discharge, 1952)

**From the Sarasota Herald Tribune:**
“I volunteered on the first call after I graduated from Marion High School in 1944. I was commissioned as second lieutenant in the U.S. Army before I was 19. It’s one of my early accomplishments of which I am very proud.

From 1944 to 1946, I went to Europe. When I got to Germany, President Harry Truman was under tremendous pressure to bring the troops home. So we were the guys that were coming in. There was plenty of indication at the time that our allies weren’t going to be our allies much longer, and, of course, they weren’t.

For the moment, they said they were going to assign me to the baking unit, and I didn’t know anything about baking. They took me under their wing and I learned from the masters. At one time, we were shipping 10,000 pounds of bread per week. It was a great experience for me.

After 1946, I joined the Reserve and, in 1950, I was called to active duty and sent to Korea as a platoon leader in Company L, 35th Regiment, 25th Division. I was wounded there and evacuated. I received the Presidential Unit Citation, the Combat Infantry Badge, the Purple Heart, and the Korean Presidential Citation.

It was much different for me in Korea than it was in World War II. I got to Korea in July 1951, and the Army had been there for about a year. Everything was blown flat. The poor Koreans were living in ditches and rice patties.

Gen. Douglas MacArthur wanted to cross the river in Northern Korea and eventually invade China, and Truman wasn’t going to have any part of that. China already had 1 billion people vs. 150 million Americans. It was a no-win situation.

Thought I was going to be assigned to a combat unit because, after all, in World War II, I never heard a shot fired. We were on a line that was established parallel to the 38th parallel, across the peninsula, in Korea. The Turkish brigade was on one side of us and the Second Division was on the other side.

Peace treaty talks were beginning there, so the Army was frozen in this position where we were to hold a line only if attacked. At about 11 p.m., they hit us head on. The Presidential Citation said that two divisions hit us. One round exploded so great and hit the corner of a roof on our foxhole and

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**Wayne Probasco (first row, far right)**

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**Edwin M. Wheeler**
swung 6- and 10-inch logs down on top of us. I knew I'd been hit because I could feel blood on my uniform.

The men in my platoon helped get the logs off of us and put me in storage in another depot that hadn't been hit.

I guess the battle lasted the better part of an hour or an hour and a half, but they didn't break our line.”

**Personal:** Edwin and his wife, Rosalie, were married on September 30, 1950, and have celebrated 60 years together. They have two sons: Ed, Jr., in Marion, and Chris, in Washington, D.C.

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**JOHN BAUSCH, AGE: 85**

Kansas Lawyer  
Admitted: 1950  
Military Experience: Kansas National Guard (1940-45)  
35th Infantry Division

As reported in the Topeka Capital-Journal in July 1964, John Bausch’s service to our country started when he was only 15 years old:

*Henry Bausch, right, points at a small artillery piece, while his son, John Bausch watches.*

The story begins back when John was 6 years old and his father, Henry J. Bausch, was a first sergeant with the Kansas National Guard. The father’s outfit was the anti-tank company, 137th Regiment of the 35th Division. Henry Bausch even got into the service at the tail end of World War I.

Young John began going to summer camp with the National Guard when he was 6. “I was sort of a mascot,” he explains.

John Bausch began his sophomore year at Topeka High School in September 1940. He quit December 15. He fudged on his age, telling the Guard he was 18, when he was a tender 15 years old, in order to go with his father when the outfit was called into service.

“We were only supposed to be in service for one year and I planned to go back and finish high school,” says John. However, the one year stretched to five, and John and his father served first in the United States and then went through five campaigns in the European Theater during World War II.

Two of those campaigns were crucial ones and they led to the battle of St. Lo. The 35th was designated to deploy to the Pacific Theater of Operations to participate in the land invasion of the Japanese mainland, which was to commence in November 1945. However, President Truman ordered the dropping of the atomic bombs on Hiroshima and Nagasaki in July/August 1945 and this then ended all hostilities with the Japanese Empire. We were then in the port of embarkation zone in France when this Pacific war ended.
Our Division arrived back in the U.S. in September 1945. I was discharged on September 7, 1945, at the rank of Sergeant at Fort Leavenworth.

**Personal:** John and Mary have been married 56 years. They have three children: Sarah Benson, of Denver, Susan Morriss, of Holton, and Steve Bausch, of Denver.

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**G. TAYLOR HESS, AGE: 85**

*Kansas Lawyer*

Admitted: 1953

Military Experience:

U.S. Army (1944-46), Reserve (1946-49)

*Surgical Technician*

*My Story:* I was a pre-med student at Harvard University in 1943 when I got drafted into the U.S. Army. I was sent to a camp in Massachusetts and sent for a student program to become for officer training in Fort Benning, Ga., program was disbanded and I was sent to Fort Jackson in South Carolina for infantry. Afterwards, I joined an artillery unit in Camp Gordon in Augusta, Ga., and began another round of basic training as a medic with field artillery.

We were transported from Boston to LaHavre, France, and assembled in Rouen. We went into action shooting across the Rhine River using shells to hit the panzer tanks (German), at times at point-blank range. We moved across the Rhine with the corps artillery, not assigned to a particular company but to an army (we were attached to three armies), crossed southern Germany, and at the end of the war ended up in Czechoslovakia, lucky in that they kept moving. There was one occasion our unit was replaced with another artillery outfit and they got clobbered!

*Here is an excerpt from a letter I wrote May 14, 1945 – “somewhere in Germany”:*  
You have been in the dark about me since before Easter. When we left our chateau near Fontaine la Bourg we spent our first night in Cambrai, France. Then on to Maestricht, Holland for another night. Our first large city that we saw (just the skeleton) in Germany was Julich. Then on to Badburg where the school was where we stayed the next night – Easter eve. Then we went north of Krefeld and fired on Duisburg – our first shells on the enemy. We moved south through Krefeld and fired on Dusseldorf. It was in the remains of Krefeld that I had that wonderful bath I wrote you about. We then made a long trip through Cologne and Bonn, crossing the Rhine on the General Hodges bridge (pontoon) in Bad Gotesburg and then on to Siegen for a night. Another day found us wandering through the mountains around Winterberg and landing at Ludenscheid beside the hospital. We had been a little delayed here arriving in the afternoon after the Germans had just been cleared out in the morning. Even while we were there we could watch infantry clearing out snipers in the other part of town across on another hill. It was in this position we got some counter battery fire – 88s. You could hear the shells coming for over a minute. Everyone really scattered when they started to land and very few slept outside of foxholes that night. The shells landed several hundred yards away from us – on the other side of the hospital so no one was hurt.

... This afternoon I got my first shower there since I left the chateau in France. Boy was it wonderful! You had as long as you wanted instead of a 6 minute limit back at the QM shower outfit in France. The blossoms are falling on our tent like snow now – the weather is delightful and I am getting a tan. I played a little volley ball just before mail call. It is after 11:00 now so I better quit.

We didn’t suffer many casualties – mostly accidents. A truck would get stuck and they’d have to use special equipment to pull something very heavy. I’d ride in the ammunition truck. There was another incident when we were occupying an area where the Germans left; some of the men found weapons, a pistol, and two men shot themselves in the finger.

After the war was over, I was in the army of occupation (I was in the XII corps men’s chorus touring Germany to entertain troops). I spent one semester in the University of London School of Economics and Political Science. Harry Laski was the instructor, a famous socialist. Afterwards I returned to South Germany near the Swiss border and the next day I was sent home to New Jersey, where I was discharged. I went back to Harvard University and graduated in 1949, and married my wife, Jane, on August 1, 1952. She was in Boston attending Katie Gibbs School after graduating from Carleton College. I received my LLB/JD from the University of Pennsylvania in 1953, had a general law practice in my hometown, Uniontown, Penn., and was general counsel for Susquehanna Broadcasting Co. in York, Penn., for 10 years. I then moved to Kansas in 1969 to serve as attorney for United Utilities, which became Sprint, retiring in 1988. I am a member of the Johnson County, Kansas, Pennsylvania, and American bar associations.

**Personal:** Married to Margaret Jane Kirkpatrick for 59 years. They have four children: Paul Taylor, George Kirkpatrick, John Hibbs, and Margaret Gwendolyn.

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**C. STANLEY NELSON, AGE: 85**

*Kansas Lawyer*

Admitted: 1951

Military Experience: U.S. Marines (1943-46)

*Tech Sergeant*

*My Story:* In May 1943, I had finished my freshman year at Kansas University, just turned 18, and in August, joined the Marines and went to San Diego boot camp, went to various schools around the country to become a radio-radar ground tech in the Marine air corps. In late 1944, I joined a fighter plane squadron of F4U Corsairs on Engebi, a small island somewhere in the Pacific – after the United States captured IE Shima, an island (where Ernie Pyle, well-known war correspondent had been killed) off the coast of Okinawa. Our squadron moved to the air base there to help our troops, using fire bombs, rockets, and machine guns to kill the Japanese who were holed up in caves in the hills of Okinawa. I was not involved in any combat, but Japanese planes occasionally sneaked in at night, under the radar, and dropped...
They should consent to my enlistment in the Army Air Corp. Ivan and I went home, and Ivan convinced my parents that I was old enough to enter the U.S. Air Force. We entered the Air Corps Student Program. When February 1943 rolled around, Ivan and I both were called to active duty. I believe Ivan was called to active duty on February 17, 1943, and I believe my report date was February 23, 1943, only four days later.

I had to report to Jefferson Barracks, Mo. (near St. Louis), and it was cold there, as it was close to the banks of the Mississippi River. We lived in square buildings that were built like chicken houses. I don’t believe we had a stove in our building. This was basic training for all of us as soldiers. We were there until early March when I was sent to Carroll College, Waukesha, Wis. We had classes there in math, geography and history for five months. My mother came to see me at Waukesha as she thought I was soon going to war. In August, I was put on a Troop Train to Santa Anna, Calif. Some way I found out that the train was going through Newton, so I notified my parents and they met me there for about a half hour while the troop train changed crews.

When we arrived at Santa Anna, Calif., we immediately went into the cadet classification program. I was classified as a pilot. We then had a six week cadet ground school training program. In September 1943, I was sent to Santa Maria, Calif., to a primary flight school in Stearman biplane trainers; this was a private flight school called “Hancock College Aeronautics.” That plane had landing gears close together. You had to fly the plane in a crab or cross control the stick and rudder to keep the plane from ground looping on a cross wind landing. The instructor threatened to wash me out if I couldn’t make a correct crosswind landing.

The first time my instructor took me for a ride in the Stearman, he had me ride in the back seat. He noticed that I acted scared so he did 22 slow rolls one after another. What the instructor didn’t know was my safety belt was loose, which held me in on the top of the roll. When we landed I had a gash in my right hand where I was holding on to the frame in the airplane during the slow rolls. After I soloed in the PT-17, my fear of flying diminished.

My next station was basic flight training at Lemoore, Calif. Here we first flew the BT-15, what we called the “Vultee Vibrator”; I caught on quickly to fly this low winged monoplane. The Army Air Corps decided that they were going to step up the basic flight training by having us fly the twin engine Cessna AT-15 that we called the “Bamboo Bomber.” It was constructed principally out of wood and canvas. That was when we started the second half of basic training. That twin engine plane seemed to be no threat to my flying ability. I had no problem in adapting to it. So the 50 of us all got sent to Marfa, Texas, to fly the same “Bamboo Bomber” in advance cadet flight training. On April 15, 1944, I got my wings and went home for a 30-day leave.

The Marfa base had a German prison of war camp without a fence. Three prisoners walked away who were later found dead in the desert from lack of water.
Marfa was noted to be the biggest town in the biggest country in the biggest state in the United States at that time.

Close to our base, a series of lights could be seen at night to the north of our runway. We did not ever hear what they were, but they think they are caused by gas leaking from the ground. Later it was associated with UFO stories.

Elizabeth Taylor’s movie “The Giant” was made in Marfa after the war.

We were awarded our wings at Marfa and made 2nd lieutenant or flight officers. Ten percent of the class 44-D were made flight officers and I happened to be one of the unlucky 10 percent.

We were given a 30-day leave. I spent most of my time in Lincolnville. My brother, Fred, and Virginia Brunner planned their wedding while I was on leave, wherein I stood in as best man in uniform. One incident that I remember while on leave was I went to Hillsboro, and I saw German war prisoners walking down the street arm-in-arm with Hillsboro girls eating ice-cream. I wanted to call my commanding officer to stop this practice, but I later cooled off.

Something transpired at Lemoore that I will always remember. The commanding officer called me into his office and showed me an honorable discharge from the service. Since I was 18 years old I could either accept or reject it; I rejected it. My father was a good friend of Sen. Arthur Capper and my father apparently told him I was needed on the farm. However my brother, Fred, was still there with a farming deferment. I felt that if I was discharged, Fred would have to go into the service. I liked flight training and still thought the war would be over before I was ready to go overseas.

After we finished our operational training in January, we were then sent back to Lincoln, Neb., to be sent overseas to England. In late January 1945, I met my parents, my brother, and his wife, Virginia, and gave them the keys to my gray 1936 Ford, which they took home. This was the occasion that I stated to them, that I would come home without a scratch and that was the way it turned out. The next day the crew and I took a train to Camp Kilmer, N.J., where we boarded the “Aquitania” (sister ship to the Lusitania) and were on our way to England. The conditions aboard the ship were not very pleasant, especially for the enlisted men. But the officers got to eat in the ship’s dining room twice a day. It took us only seven days to get to Liverpool, England, where we landed. A couple of days in Liverpool, then we were sent to our airbase at Molesworth, England. The 303rd Bomb Group was located there, where its group name was called “Hells Angels.” We arrived there on February 5, 1945.

Radio Silence

On the way to a target on one of my first 10 missions, while all the planes maintained radio silence, we heard a good-speaking American voice say, “What is our target today? I missed briefing.” We had briefings before each mission. After about three inquiries, someone in our bomb group said, “You damn Kraut get off the air.” That stopped the inquiries.

Corridor

One of the peculiarities of the war of the 8th Air Force was that the Germans had a corridor in which they let the B-17 formations fly over the Netherlands. The Germans

(Continued on the next page)
Robert M. Green

ROBERT M. GREEN, AGE: 86
Kansas Lawyer
Admitted: 1961
Military Experience: U.S. Army
Lieutenant

My Story: In the course of my life, I have had many meaningful experiences. Perhaps the most meaningful was Christmas Eve 1944. I do not recall the target or which numbered mission, but it was a dangerous day to be out in Germany. That evening, we were all glad to be home and on the ground again. Eight of the 10-men crew got transportation to take us to a small Protestant “Church of England” at a small town adjoining the airbase. The church was full of people for its Christmas Eve service. We stood up in the back, shoulder to shoulder, for the entire service. Present were three Jews (Ratner and Bill Feinburg – later killed in Germany), three Catholics, and three Protestants. We spoke very little to each other or anyone else, before or after the service. It was at a time when we all felt the need to say “thanks.” The town was Korth Pichenhom. Doesn’t that have a good British sound?

I practiced general probate and real estate law for 50 years and became inactive in June 2002. I became a lawyer because I thought I could be of most assistance to others. Best advice received was to become rich and marry a rich lady. The best advice I can offer is to be prepared, be honest, and do not lose your perspective.

Personal: I have a sister, Jane Brown, who was a receptionist for Keith Sambora, attorney for Sedgwick County, later district court judge for more than 20 years; I could make her laugh anytime. I love to read something other than law in my spare time.

Arnold C. Nye

ARNOLD C. NYE, AGE: 86
Kansas Lawyer
Admitted: 1949
Ensign USS Solomons CVE 67

My Story: I am a veteran of World War II and was an ensign serving aboard the USS Solomons CVE 67. I enlisted while still in high school at age 17. Shortly thereafter, in November 1943, I was called up and attended the U.S. Navy V-5 program at Warrensburg, Mo. After completing the assigned courses, I was transferred to Northwestern University in Chicago, graduated and was commissioned as an ensign in the U.S. Navy.

While assigned to the USS Solomons we patrolled the east coast of the U.S. and acted as a qualifier aircraft carrier for new pilots. Two other officers and I were assigned 24 hour shifts continuing as long as we were out to sea. We would split the shifts into four hours on and 12 hours off with a “dog watch” from 2 to 4 a.m. and 4 to 6 a.m. so that we would not always have the same four hours on duty.

I was honorably discharged at the close of the war in 1946. The USS Solomons was decommissioned in the spring of 1946 at Norfolk, Va. Thereafter, I graduated from KU Law School.

I have practiced law continuously in Newton, Kan., since 1949 and recently qualified my continuing education hours for another year; I have been an active member of the Kansas Bar Association since my admission to practice in 1949. In 2009, I was recognized by the Kansas Bar Association at their annual meeting and award dinner in Overland Park when I was presented a “60-year pin.” There were two of us old-timers attending.

I would like to make a few comments about the many years of being a practicing attorney: It seems like “yesterday”
when I was the newest lawyer in town and needed help in finding the courtroom and the county courthouse. Today, I am the senior lawyer in our local bar association of about 25 members. I recall professional contact with some of our local lawyers that are now gone: J.G. Somers, Bernard Peterson, Vernon Stroberg, Alfred Schroeder (formally chief justice), Fred Ice, John Thomas Reid (federal magistrate judge), and many others.

**Personal:** I have been married 65 years to my wife, Kathryn; we were high school sweethearts. We have three children: Gregory Nye, a partner at our firm, Pam Behymer, and Christopher Nye, an attorney in Idaho.

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**DONALD PATTerson, AGE: 86**

**Kansas Lawyer**  
**Admitted: 1950**

**Military Experience:** U.S. Army (1942-46)  
**Corporal**

**My Story:** I was a tank gunner, corporal, and pathfinder in Europe. Our tank crew was one of the liberators of the Dachau Concentration Camp. What we saw and smelled there is beyond description. I had nightmares over it for 20 years. I was in the second tank that arrived, but we were not the first to arrive at the camp itself. I think forward elements of the 42nd Division and the 45th Division arrived about 1 p.m., and we did not get there until about 4 p.m., but the camp was not yet secure. All guards were SS who had taken an oath that they would never surrender, and most of them did not. The camp was far from secured when we arrived; I and several others took out a guard tower. I had used the tank commander’s 50 caliber. I was with the guy that took the pictures later released to the press by army intelligence.

**Military Airfield at Munich**

Two memorable events occurred. On the way in, I fired the luckiest shot that was ever fired by anybody in World War II. While the tank was still moving, and the gun was at right angles to the axis of the tank, I knocked out with one shot an 88 battery that was pointed directly at us. It was simply a question of which gun could get its shot fired first. Ours was smaller but easier to aim. Normally, one never fired the tank gun while moving because vibration made aiming impossible. We were on level ground, firm, and going in second gear, which is about 4 mph, so I could draw a bead on the target and let the shot fly, hoping I was lucky, and I was.

The second event was that after arriving, we saw three Germans, two of whom were dressed up in women’s clothing, make a break for it across a concrete apron. One had a broken arm. His right arm was in a cast, but positioned in a very high, awkward position. Forty-two years later, at a reunion, we were told the guy with the broken arm was Werner Von Braun, the founder of our NASA.

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**Omar Bradley**

The 20th and 27th Battalions were positioned in the Bavarian Alps blocking the Brenner Pass and my battalion, the 27th, had dug in at the other pass that blocked off all aid, fuel, food, ammunition, etc., to the German forces in Italy. On May 6, 1945, Field Marshal Kesselring surrendered to the 20th Armored Division, and for us, the war in Europe was over. A day or two after the surrender, the first sergeant went around the encampment; barked off a number of names that made no sense at all because they were all ranks; told us to report to company headquarters in twenty minutes with our “piece,” a stupid submachine gun we called “the grease gun,” but we were not told where we were going.

We jumped into trucks, asked where we were going, and the usual answer was “none of your business.” We ended up in the courtyard at Salzburg surrounded with government buildings. A loud speaker said that all 27th Battalion Tank personnel were to be in the front rank and that included me. The guy to my left was Johnny Nairn from Pawnee Rock, Kan.

I looked out of the corner of my eye to the right and saw a German staff car drive up, and a guy with scrambled eggs on the bill of his cap was handing his sword over to another U.S. Army man whose back was turned. That man turned around, had four stars on his helmet, and was easily recognized as Omar Bradley. The man behind him had three stars, Gen. Patch, commander of the 7th Army, and the guy behind him had one star, Orlando Ward, commander of the 20th Armored Division. He carried the clip board. It was obvious that Bradley was going to review the troops, which he did by stopping at every 7th guy.

I counted down. He was going to miss me, but he was going to get John Nairn, the first guy to my left. Bradley passed directly in front of me by a distance of probably less than two feet. When he stopped in front of Nairn and said, “What’s your name soldier?” Nairn replied, “Sergeant John Nairn, sir.” Bradley: “Where are you from?” Nairn: “Pawnee Rock, Kansas, sir.” Bradley: “I know right where that is, it is on Highway 56.” (Bradley was from Missouri and knew the territory.) Bradley, pointing to the grease gun, “Did you ever have to use that son?” Nairn, “No sir.” Bradley, “Would you use anything?” Nairn, “Yes sir.” Bradley, “What did you use?” Nairn, “Luger.” (We all had captured Lugers; they worked better.) Bradley, “Carry on.” We were in the 3rd Army for a period of time, but later were transferred to the 7th. I never saw Gen. Patton.

**Personal:** Married to his wife, Mary, for 64 years. They have two children: Bruce, 54, a registered nurse in Columbus, Ohio, and Nancy, 51, a housewife married to a retired lieutenant colonel and former deputy chaplain at West Point.

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**LESTER C. ARVIN, AGE: 87**

**Kansas Lawyer**  
**Admitted: 1947**

**Military Experience:** U.S. Army National Guard (1943-46)  
**Staff Sergeant**

**My Story:** I enlisted at the age of 19, while a sophomore at Ottawa University. I served from 1943-46. I was initially in Honolulu, which, at the time, was a U.S. territory. I served
in the intelligence corps and was on the Mariana Islands. I was a part of the invasion of Saipan, 27th Infantry, along with the 1st Marine Division. Saipan was critical to the bombing missions into Japan. Our job was to interrogate remaining Japanese but there were none left – they committed suicide as a preference over being captured. I served to review and approve all mail communications from soldiers and civilians to the states.

Before the Saipan invasion, I was first assigned to the G2 Intelligence Section at Command Headquarters for the Pacific at Fort Shafter, Honolulu, in March 1943. At that point, the population of the five main Hawaiian Islands was about 75 percent Japanese. Because of this, the commanding general, Gen. Richardson, declared martial law. One implication of this was that all publications, telephone, and radio on the islands were censored. G2 was given this responsibility.

Initially, I worked in telephone censorship, but it eventually became clear that more help would be needed to do this job. As a result, the War Department enlisted a number of women from the mainland to come over and assist. Seeing an opportunity, I clandestinely made arrangements for my fiancée, Kay, to travel to San Francisco, apply to the War Department, and get stationed in Hawaii to perform one of these tasks. This was possible because, as a member of G2 Intelligence, my own mail was, of course, uncensored.

Because this kind of thing was naturally forbidden, Kay and I had to pretend to have met in Hawaii, which required a measure of discretion. We worked together for some time, and I had to pretend to have met in Hawaii, which required a measure of discretion. Eventually, I was given a cup of ersatz coffee and a crust of black bread. After about two hours, I was taken to a school building, which was a command center, and was interrogated by a German army first lieutenant; Adolph Hitler Division was on his uniform – black coffee and black bread again. Eventually, I was taken to a basement room of another school building, where I saw other prisoners, amongst them my co-pilot with a broken right leg.

I had been confined for about two weeks when I saw my first Russian soldier who told us we were to be liberated the next day. (The German guards had already run away,) I was back in England several weeks later. The war was over in Europe; the date was May 8, 1945.

I was awarded the Purple Heart, Prisoner of War Ribbon, and Air Medal with five clusters.

I received my law degree from Kansas University in 1949. Emerson Shields was in law school with me and we were in the Reserve together.

In 1951, I was recalled as a legal officer in a Reserve Unit and stationed in England. At that time, all pilots were required to maintain flying proficiency. On January 5, 1952, I was sitting on a taxi strip waiting my turn to take the runway when a U.S. Navy plane crash landed and turned 180 degrees into my plane. I sustained severe burns and was in and out of hospitals for about four years. In 1956, I resumed law practice in Wichita and after 50 years of practice I retired.

Personal: Married Audrey on June 8, 1945, and have been

AUBREY J. BRADLEY, JR., AGE: 87
Kansas Lawyer
Admitted: 1949-2006
Pilot

My Story: In 1942 I was a sophomore at the University of Kansas and was 18 years old when Pearl Harbor was attacked.

I enlisted in the Army Reserve but I wanted to be a pilot so I transferred to the Army Air Corps Reserve. I trained in the South East Flying Command, became a B-17 pilot and was sent to England in 1944.

We were flying from Deenethorpe, England. I had flown 32 missions without a scratch. On the 33rd mission (the last bombing raid over Europe and Hitler’s birthday) the first burst of flak hit the No. 4 engine and set us on fire. I told the crew to bail; my co-pilot and I were still in the cockpit when the right wing exploded throwing us into a spin. We were spinning out of control and the left wing folded. We were taught you could not recover from a spin. Both of us were drawn out of the aircraft (I believe by the hand of God). As we parachuted down we landed in different places. I landed in a field and was met by very angry Germans who had been ordered by Hitler to shoot any enemy fliers on sight. Farmers were there in a plowed field. I learned later it was Brandenburg, Germany. The date was April 20, I was kicked by many of them but soon a German command car came to my rescue. I was taken to a local command post where I was interrogated by a German army first lieutenant; Adolph Hitler Division was on his uniform – black coffee and black bread again. Eventually, I was taken to a basement room of another school building, where I saw other prisoners, amongst them my co-pilot with a broken right leg.

I had been confined for about two weeks when I saw my first Russian soldier who told us we were to be liberated the next day. (The German guards had already run away,) I was back in England several weeks later. The war was over in Europe; the date was May 8, 1945.

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Personal: Married Audrey on June 8, 1945, and have been
married for 65 years. We met in England and we have two daughters: Diane Bradley Holmes (deceased in 1992) and Janet Bradley Jungenann.

ROBERT L. BATES, AGE: 88
Kansas Lawyer
Admitted: 1953
Military Experience: U.S. Army Air Force
1st Lieutenant

My Story: I went into the Army from my hometown of Hingham, Mass., at the age of 18. I was assigned to the Army Air Force and became a navigator. I flew in 30 missions out of England. I was also recalled for service in the Korean War.

The most memorable experience was when we were flying a new B-17 plane from Nebraska to Newfoundland and on to Scotland. We encountered problems with the plane from the beginning. After we left Newfoundland and were approaching the Irish coast, we encountered a major storm over the Atlantic; we lost an engine and were low on fuel. Not knowing what to expect, we gathered up all of our personal information from the plane and threw it out into the ocean so we could not be identified unless we wanted to be identified. We had to land the plane in the bay at Donegal, Ireland. The plane was in the water and we walked through the water to the beach. I was the last one of the 10 crew members aboard to leave the plane. No one was hurt in the crash landing. In Donegal, we created quite a bit of excitement. The whole town came out and welcomed us and treated us well; the date was February 23, 1944. The next day, we were going to North Ireland to catch a train to London. One of our new friends gave us a bottle of whiskey to drink on the way. We stayed in London for a couple of days before rejoining our group.

I returned to Ireland twice to revisit the scene and the people who befriended us. My total service to the country was five years.

ALFRED HOLL, AGE: 89
Kansas Lawyer
Admitted: 1949
Military Experience: U.S. Army Air Corps (1942-66)
Lieutenant Colonel, Retired

My Story: My enlistment date into the Army Air Corps, now U.S. Air Force, was June 12, 1942. I hitchhiked from Hays, where I was attending college, to Fort Riley on old U.S. Highway 40.

It was required to pass a mental test, and if passed, a physical test before one was accepted and sworn into the Air Corps. By my request and qualifications, I was accepted as a navigator, which required 10 weeks in pre-flight and 18 weeks in navigation school, nine weeks of dead reckoning and then nine weeks of celestial.

After graduation, I was a second lieutenant and was assigned to a B-24 crew of 10 men. We picked up a new B-24 at the Topeka Air Base and flew it to Great Britain by way of Goose Bay, Labrador, then to Iceland, and then to Great Britain. After six missions in a B-24, we were changed to a B-17 in which we flew 30 missions. I had two bombardiers sitting in front of me shot up so badly that they never flew anymore missions. The last was December 30, 1944. That was the last time I have been shot at. I stayed in the Air Force Reserve and after 24 years, retired as a lieutenant colonel.

When Pearl Harbor occurred, I was teaching the upper grades in Denmark, Kansas. Judge Ed Larsen was a 4th grader in the school. I was living at the Lutheran minister’s parsonage. The night of December 7, 1941, the minister, the Rev. Nielson, said to me, “This will have more effect on you than you now realize.” He was right!

Personal: Married to wife, Louise Luce, for 60 years, deceased in 2000. They have two daughters: Carol Ann Lang and Barbara Painter. He was a Kansas attorney from 1949-50 and is retired general counsel of a major gas transmission company.

RICHARD D. ROGERS, AGE: 89
Kansas Lawyer
Admitted: 1947
Military Experience: U.S. Army Reserve (1941-45)
Captain

My Story: “I was a junior at K-State when Pearl Harbor hit us. K State was a land grant college and two years of ROTC was required. I then enlisted in advanced ROTC in the Infantry and took two more years. About two weeks after the Japanese raid, I was a corporal (mandatory) in the Army Reserve. I was allowed to graduate on a speeded-up schedule and finished my ROTC training. However, I had not been to summer camp, so I went to Fort Benning as a corporal and became a second lieutenant in the Infantry at graduation from Fort Benning.

I was assigned to Camp Wolters in Texas and taught basic training. They wanted me to be on cadre at Camp Wolters, but I was young and foolish, and wanted to go overseas. I transferred to the Army Air Corps as a second lieutenant and went
to bombardier-navigator school in Texas. Upon graduation, I joined my crew on a B-24 bomber at El Paso, Texas. I then went to Italy and joined the 744th Bombardment Squadron, 456th Bombardment Group, and 15th Air Force.

I flew 33 missions to Germany, Austria, and Poland. My crew finished their 35 missions and went home. However, I was squadron bombardier, briefing bombardiers, and I was not allowed to complete my missions. Twenty-five missions in England gave you a 50-50 chance of survival and 35 missions in Italy gave you a 50-50 chance of survival. Originally, we did not face the fighter planes they faced in England. This changed near the end of the war when the Germans built the ME-262 jet plane that flew 100 miles faster than the P 51 American fighter plane.

As a lead bombardier, I led 350 planes to Newberg, Germany, where we destroyed the factory and air field for the ME-262. I have the pictures and intelligence report for this raid. It was very successful.

After my crew went home, I led a raid where we dropped fragmentation bombs on the German Army facing the British 8th army in Italy. I did this for two days in a row. About three weeks later, the British 8th army broke through the German defenses and went clear to the Brenner Pass in Austria. This ended the war in Italy.

I also participated in a raid on an oil refinery at Oswiecim, Poland, where our plane was shot up to a great extent. We lost one engine and our oxygen system. We went down to 10,000 feet and the rest of our Air Force went back to Italy at 22,000 feet. We called for help to get home as we would be shot down by the German Air Force flying alone. We were lucky that Col. Ben Davis’ Tuskegee Airmen were on the raid, and two P 51s took us all the way back to Yugoslavia before they had to leave us for lack of fuel. This group never lost a damaged plane during the war.

On December 7, 1944 in Italy, I received the Distinguished Flying Cross along with air medals for my missions.

When the war in Europe ended, my bombardment group was returned to the United States. We were sent home for 30 days, then were to train in B-29s to go to Japan for missions. While I was home, President Truman dropped the big bombs in Hiroshima and Nagasaki and I was able to obtain a discharge. I entered KU Law School in September 1945. Two and one-half years later I was practicing law in Manhattan.

My brother, who was two years older, spoke Spanish and he spent World War II in South America. However, he stayed in the Army and had a difficult time in the Korean War. I was called up for a physical examination, but I had a family, and the Air Corps had no need for a B-24 bombardier.

I flew many of my missions as a lead bombardier mainly because my pilot had flown many hours training gunners, and I rode on his coat tails because he was so well-qualified to fly as a leader. I have lost any connection with my crew and do not believe the other officers are still alive. Because they returned ahead of me, I lost all trace of their locations.

World War II was a great experience for me. We were shot up many times, but no crew member was ever wounded. Many planes in our group were lost during the war.

Personal: Married to Beth Stewart (40 years, deceased) and second wife, Cynthia Tilson Conklin (23 years). They have three daughters and two sons.
William J. Mullins, Jr.

Reserve: Enlisted in Kansas Army National Guard in 1949; occupied numerous positions thereafter in the 137th Infantry, culminating in the command of the second BN 137th Infantry on October 6, 1967, and served in that capacity until the battalion in May 1968 and was ordered to active duty in the Pueblo Crisis. I then served in the Republic of Vietnam from May 1969 until November 1969 as deputy chief, Revolutionary Development Cadre Division, MACV. I was discharged from active duty in December 1969, returned to Guard duty and retired as a brigadier general on June 25, 1979.

Decorations and Awards: Among others, Silver Star Medal, Legion of Merit, Bronze Star Medal, Combat Infantry Badge, and other campaign medals; Joint Service Commendation Medal; Army Commendation Medal; American Service Medal; World War II Victory Medal; European-African-Middle Eastern Campaign Medal with three stars; Army of Occupation Medal; and National Defense Service Medal.

My Story: I enlisted in the U.S. Army on June 27, 1942, at Springfield, Mo., and was sent by bus to Jefferson Barracks near St. Louis for processing. There I was given a physical exam and took an oath to support and defend the Constitution. I also was issued basic supply needs. I was also given classification exams.

In the middle of July, I was assigned to the 95th Infantry Division, located at Camp Swift, Texas, about 30 miles south of Austin. After completion of my basic training, I was promoted to corporal in charge of a 37MM anti-tank gun squad and later was made a member of the Cadre to train new recruits.

On December 8, 1942, I reported to the Infantry Officers Candidate School located at Fort Benning, Ga. I graduated as a second lieutenant on March 8, 1943, and was assigned to the Anti-Tank Company 263rd Infantry, 66th Infantry Division at Camp Blanding, Fla. I spent the next year-and-a-half training my platoon at various locations, to wit: Camp Blanding, Fla., Camp Robinson, Ark., and Camp Gordon, Ga.

On June 11, 1943, I married my college sweetheart. We had met at Southwest Missouri State University at Springfield, Mo. Her name was Miller and we were seated alphabetically in a math class. I was a junior with a lot of college math under my belt and she was a freshman. She asked me if I would help her with her homework and I was glad to do so. We later decided to get married when I was in the Army and stationed at Camp Blanding, near Jacksonville. I located a minister in Jacksonville who would marry us. Marilyn was a Baptist, I was a Methodist, and the minister was a Presbyterian. Our marriage was definitely ecumenical. The minister’s wife was a witness. The female manager of the hotel, where I had reserved a room, was the other witness. We have been married now for 67 years.

When I went overseas, Marilyn wrote to me nearly every day. Her letters usually arrived in batches of six or seven. If I was occupying a fox hole at that time, I would dig out extra space at the side of my hole for a candle to be placed and read my letters at night over and over again by candlelight.

In June 1944, I started my deployment to Europe. I landed at Omaha Beachhead on July 15. Barrage balloons were still up and, over the P.A. system, the band was playing “The Missouri Waltz” as I walked up the beachhead trails carrying all my luggage. At the replacement depot, I was informed that there was a need for infantry officer (but not anti-tank officers). I was asked if I would accept an assignment to an Infantry Rifle Company. I said “yes” but I doubt if it would have mattered how I answered that question.

In any case, on August 24, 1944, I became platoon leader of the second Platoon of Company K, 318th Infantry, 80th Infantry Division. The company was “dug in” southwest of Normandy, France. We spent most of August, September, and October conducting scouting raids, improving our defenses and night activities to capture prisoners. This was the period of the famous “Sitzkrieg.” It was dirty, nasty fighting. This lasted until November 1, 1944, the date of the offensive to drive all Germans from northeast France. After attacking about a week, the Achilles tendons near my ankles became swollen to the extent that I could hardly walk. I went to a medical aid station for relief. I expected to return that day to my platoon. However, the next day, I was in Paris and the next week in a hospital in England.

I was in an American hospital from December to February 20, 1945. I reported back for duty to Company K on March 1, 1945. On March 3, my platoon attacked Clausen. While I was riding on the back of a medium tank, which was supporting our attack, and I was giving directions to the enclosed tank commander, the tank was destroyed by a German rocket. The tank crew bailed out and I found myself alone on the back of the tank. Shortly thereafter, we received instructions to cancel the attack. We were relieved the next day by units
Feature Article: The Greatest Generation ...

William J. Mullins, Jr. (second row, far right)

of the 13th Armored Division. My runner, my first squad sergeant, and my medic were killed in this action.

On March 11, 1945, near Zerg, Germany, my platoon destroyed many enemy positions delaying my company’s advance, halted an enemy counter attack, captured three artillery pieces, a tank, and an ammunition truck, thereafter, during March and April of 1945, my company, as a part of the 80th Division, destroyed enemy resistance across Germany in Mainz, Erfurt, and ended in Chemnitz, Czechoslovakia.

Late in April, I led the American battalion in a victory parade, with the Russians, in Pilzen, Czechoslovakia. Early in May, Company K moved, by motor convoy, to Branau, Austria. We continued attacking south to Vocklebruck, where, on May 7, the war in Europe ended. During the war, Company K lost five officers and 100 enlisted men – killed in battle.

Note: My wife and I went back to France in 1985 and visited Normandy. This is the town where the battle lines were located in 1944. We found the remains of several foxholes left by my platoon in 1944. Strange, still, we found a plaque commemorating the fact that units of my division, the 80th, had served their country at that same location in 1918.

Personal: Bill and Marilyn have been married for 67 years. They have a son, William J. Mullins, III.

About the Author

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People have the Power:¹
The Power of the Petition
By Robert W. Parnacott
The power to petition the government can take many forms. This article will address specifically the ability to petition the government to hold an election. These petitions can be initiated based on the nature of a protest, requiring the government to either undertake or abstain from taking, respectively, an action or call an election on the question presented. Kansas law provides for a variety of petitions, ranging from the recall of state and local officials, to initiative and referendum ordinances for cities and protests against property and sales taxes, local government bonds, charter resolutions, and ordinances. Attorneys who advise governmental entities or election officers who may receive petitions or who represent members of the public who seek to petition must be aware of the statutory requirements for the form, circulation, and submission of petitions. Failure to comply with these requirements can at best require the petitioners to start back at square one, or at worst forfeit their right to bring a petition if time has expired.

This article will provide a short overview of the process for recall of local elected officials, with an update of a September 2001 article followed by a review of the recall process for state elected officials. The next section of the article will cover the general requirements found in K.S.A. 25-3601, et seq., which apply to petitions other than recall petitions, authorized by law. The following section will then address initiative and referendum petitions. In the final section, protest petitions will be discussed.

I. Recall of Elected Officials in Kansas

Article 4, § 3 of the Kansas Constitution provides:

All elected public officials in the state, except judicial officers, shall be subject to recall by voters of the state or political subdivision from which elected. Procedures and grounds for recall shall be prescribed by law.

Since the September 2001 article, the legislature has made several material changes in the recall act. Most importantly, it has eliminated one of the grounds for recall and restricted applicability of another. “Incompetence” of an officer no longer supports a recall petition. “Misconduct in office” is defined as “a violation of the law by the officer that impacts the officer’s ability to perform the official duties of the office.” Other legislative changes since the 2001 article include:

2002 – Eliminating the requirement that a petition for recall of a local official only be circulated by a sponsor in the election district where the sponsor resides;

2003 – Requiring all mandamus proceedings involving recall of local officers to be commenced within 30 days of the determination of the sufficiency of the petition;

2003 – Requiring the county or district attorney, or other attorney designated to review the petition for recall of a local officer, to include in the determination of the sufficiency of the grounds for recall whether:

1. The facts do not support the grounds for recall as stated in the petition for recall;

2. The petition is not substantially in the required form;

3. The petition was filed during the first 120 days of the term of office of the official sought to be recalled or within less than 180 days of the termination of the term of office of the officer sought to be recalled;

4. The person named in the petition is not a local officer;

5. There are an insufficient number of required signatures of any kind;

6. The local officer sought to be recalled has been or is being subjected to another recall election during such officer’s current term of office; or

7. The application does not conform to any other requirement of this act; and

8. Allowing the local officer subject to the recall to provide the county election officer, within 10 days after notification the petition has been properly filed, a statement of up to 200 words, justifying the officer’s conduct in office.

One other change was initiated by a court opinion. In Richards v. Schmidt, Richards initiated a recall petition against a city councilperson. The sponsor received the necessary determinations regarding the sufficiency of the recall petition by

Footnotes
1. “I awakened to the cry that the people / have the power to redeem / the work of fools / ...” Patti Smith, People Have the Power, on Dream of Live, Arista Records (1988).
2. Examples of other types of petitions, which do not result in an election question, include zoning protest petitions under K.S.A. 12-756(f) and petitions to form special benefit districts for municipal improvements under K.S.A. 12-604(b).
January 17, 2001. The petition was submitted with 181 signatures on April 16, 2001. The statute required the minimum number of signatures to be at least 40 percent of the votes cast in the last general election. The issue presented was whether “the last general election” referred to the election immediately prior to the sufficiency finding (in this case, the April 1999 election that would have required a minimum of 170 signatures) or the election immediately prior to the submission of the petition (April 2001 that had a higher turnout than the 1999 election, resulting in a minimum number of signatures of 270).

The court noted that the statutory provisions then in effect were unclear whether the last preceding election should be the election prior to the determination of sufficiency, or the election prior to the submission. The court also noted that the right to recall elected officials is a fundamental constitutional right, which is to be liberally construed in favor of the ability to exercise the right. The court found “little guidance” in the legislative history. The court concluded that, when considering the entire act in pari materia in light of the fundamental nature of the right to recall, the term “last general election” is directed toward the election immediately prior to the date the petition is circulated, i.e., the date the sufficiency of the petition is ruled on by the recall committee. The legislature subsequently amended the statute to state the number of signatures is to be calculated using “the last general election for the current term of the office sought to be recalled.”

One additional court opinion regarding recall has been issued. In Collins v. Hoeme, the narrow issue is whether the local officer can seek damages as a measure of relief under the recall and mandamus acts. On remand of the earlier appeal, the district court issued a permanent injunction against the recall election. The officer then sought attorney fees, costs, and damages from the recall committee, the county attorney, and the county election officer. The Court of Appeals found that no facts pled in the mandamus petition would support any damages claim. More importantly, the court found that the recall committee lacked the capacity to sue or be sued. The court also found the duties of the county attorney and election officer under the recall act were discretionary in nature, and therefore those parties were immune from liability under the discretionary function exception in the Kansas Tort Claims Act. Finally, because the recall act did not provide any clear statutory authority for the award of damages, there was no basis under that act to award damages.

Recall of state level elected officials (or those appointed to fill vacancies), such as the governor, members of the state legislature, any other officer elected in a statewide vote, and members of the state board of education, is specifically governed by K.S.A. 25-4305 to 25-4317. No state officer may be recalled in the first 120 days or the last 200 days of his or her term.

Grounds for recall are the same as for local officers. For all state officers, except the secretary of state, the secretary of state is the officer responsible for receiving and reviewing applications for recall; if the proposed recall is of the secretary of state, the lieutenant governor is responsible. The process starts with the filing of an application and payment of a $100 deposit, to be refunded after the petition has been properly filed.

The application must contain the following:

1. Name of the person and the office proposed for recall;
2. Grounds (described in no more than 200 words);
3. A statement that the sponsors are residents of Kansas and possess the qualifications of an elector;
4. Designation of a recall committee of at least three sponsors;
5. Listing of at least 100 sponsors subscribing to the petition; and
6. Signatures (with names and addresses) of registered electors equal to at least 10 percent of the vote for the office involved, based on the totals for the election held for the current term of the office holder.

The secretary of state then must review and either certify the application as sufficient, or notify the recall committee that the application is not certified. The secretary can refuse to certify the application if:

1. The facts do not support the grounds for the recall;
2. The petition is not substantially in the form required by the act;
3. The petition is filed either too early (first 120 days of the term) or too late (last 200 days of the term);
4. The person proposed for recall is not a state officer;
5. The state officer had already been subject to a recall petition in the same term; or
6. The petition fails to comply with some other requirement.

Any petition for mandamus (to require a recall to proceed) or injunction (to stop a recall from proceeding) must be filed within 30 days of the decision of the secretary of state. Once the application is certified by the secretary of state, the secretary then prepares the petition containing:

1. The name and office of the person to be recalled,
2. The statement of the grounds for recall included in the application,
(3) a statement on each page of the petition that it is a crime to sign a name other than that person's own name to a petition, knowingly sign more than once for the same proposition at one election, or sign the petition knowing he or she is not a registered elector,

(4) sufficient space for signatures and addresses, and

(5) other specifications prescribed by the secretary of state to assure proper handling and control.23

The secretary should prepare the number of copies of the petition in an amount reasonably calculated for full circulation in the state or the election district of the officer subject to recall. Each petition must be numbered by the secretary, who is required to keep a record of the petitions delivered to each sponsor.

The secretary of state must give the county election officer of each county in which the petition may be circulated a copy of the statement of the recall grounds set out in the application, as well as a copy of the statement of the officer proposed for recall (the statement cannot be more than 200 words) that justifies the officer's conduct.24 This justification statement may be filed with the secretary of state within 10 days after the date the officer receives notice that the filing was determined to be proper. The county election officers must keep these statements available for public inspection.

The circulator, or sponsor, must be a resident of the state of Kansas with the qualifications required for an elector of the state of Kansas.25 He or she must circulate the petition only in the state (for a statewide officer) or district of the state of officer proposed for recall. Each copy of the petition can only be circulated in one county. The county election officer of that county must certify to the secretary of state the sufficiency of the petition's signatures. The registered voter signing the petition must provide his or her name and address as it is listed in the voter registration books. A person may withdraw his or her name from the petition only by written notice, submitted before the date the petition is filed, to the secretary of state. The circulators have 90 days from the date that the secretary of state delivers the petitions to the recall committee to obtain the necessary signatures. The signatures must be legible, unless a legible printed name is provided also, and in ink. The county election officer or the secretary of state must judge the legibility of any particular signature.

Each petition turned in must be certified with the circulating sponsor’s affidavit.26 The affidavit must substantially state:

(a) the person signing the affidavit is a sponsor,

(b) the person is the only circulator of that petition or copy,

(c) the signatures were made in the petition circulator’s actual presence,

(d) to the best of the petition circulator’s knowledge, the signatures are those of the persons whose names they purport to be, and

(e) the person circulated the petition in the manner provided by the act.

In determining the sufficiency of the petition, the secretary of state and county election officers assisting the secretary of state shall not count subscriptions on petitions not properly certified.

Any individual state officer can only be subject to recall once in any single term of office. The petitions must be signed by registered voters of the state, if the officer serves a statewide office, or of the limited district, if the state office is not statewide. The number of signatures must equal at least 40 percent of the votes cast for all candidates for the office of the state officer sought to be recalled, such percentage to be based upon the last general election for the current term of office of the state officer sought to be recalled. The secretary of state, assisted by the county election officers, determines the sufficiency of each application and petition for a state officer recall.27 Within 30 days of filing, the secretary of state reviews the petition and then must notify the recall committee, and (Continued on the next page)

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the state officer proposed for recall, whether the petition filing was proper or improper. The secretary of state notifies the recall committee that the filing is improper if it is determined that:

(a) there is an insufficient number of subscribing qualified registered electors,

(b) the petition was filed within less than one hundred and eighty (180) days of the termination of the term of office of the state officer sought to be recalled, or

(c) the petition does not conform to any other requirement of the act.

If the petition is properly filed, the secretary of state sets the ballot form and then calls a special election to be held not less than 60 or more than 90 days after notification of the proper filing.

If there is a primary or general election already scheduled in that time span, the recall election must be held in conjunction with the scheduled primary or general election. The recall ballot question should read:

Shall (name of official) be recalled from the office of ____________?

The voter’s choices are: “Yes” or “No.” Unless otherwise provided for by the recall act, any statutes or regulations that would apply to a question submitted election also apply to recall elections.

A majority of the votes favoring the recall, if so determined by the state board of canvassers, leads to the secretary of state certifying the result, which is that the office is considered vacant starting the day after certification. The vacancy is filled as any other vacancy would be filled. Any person that is aggrieved by the determinations made by the secretary of state can bring an action to challenge the determination within 30 days of notice of determination. The action may be filed in either Shawnee County or the county where the state officer has legal residence.

II. General Requirements for Election Petitions

Any petition required or authorized by law, except recall petitions as previously noted, is subject to the requirements of K.S.A. 25-3601, et seq., as well as any additional requirements imposed by the statute requiring or authorizing the petition. The act covers petitions authorized by statute or by a constitutional provision, even if the petition is not intended to require an election. The county election officer, or other person designated to receive petitions, must provide any person requesting information on the petition process with copies of K.S.A. 25-620 (regarding the form of ballot questions) and the general act regarding petitions, K.S.A. 25-3601, et seq.

The petition must be submitted to the county attorney or district attorney, unless a county counselor is appointed in the county or district involved, for the review of the legality of the form of the question set out in the petition. This review is “directed toward the form, rather than the content, of the question the petitioners seek to bring to an election.” The petition must be either hand delivered, or sent by certified mail, return receipt requested, and then the reviewing attorney has five business days to provide a written advisory opinion on the legality of the form of the question presented. If the opinion is the form of the question is not sufficient, the opinion must state the specific grounds upon which the opinion is based. Failure of the reviewing attorney to issue the opinion within the five business days of receipt is deemed a determination that the form of the question is legally sufficient.

The written opinion of the attorney, that the form of the question meets the statutory requirements, creates a rebutta-

30. K.S.A. 25-4316
33. The attorney general has opined that even zoning case protest petitions, authorized by K.S.A. 2009 Supp. 12-757(f)(1) are subject to review under this act, even though not resulting in any election. Att’y Gen. Op. No. 03-18. On the other hand, where the petition process is sufficiently complete, e.g., petitions to create sewer improvement districts (K.S.A. 19-27a01), the general law does not apply. Att’y Gen. Op. No. 90-37.
35. K.S.A. 2009 Supp. 25-3601(a). Only the county attorney, district attorney or county counselor has the authority to determine the sufficiency of the form of the question; the county election officer does not, and can only determine the sufficiency of the signatures. Att’y Gen. Op. No. 81-71. However, the county election officer can reject a petition that lacks the necessary recitals. Att’y Gen. Op. No. 78-40.
The specific statute authorizing a particular type of petition may require a different form of the question, in which case the more specific statute would control, as noted previously. The petition must be limited to one issue or proposition. The petition must state:

1) the question to be presented on the election ballot; and
2) the taxing or political subdivision where the election will be held; and
3) a recital above the signature places worded as follows:

I have personally signed this petition. I am a registered elector of the state of Kansas and possess the qualifications of an elector of the state of Kansas. I have personally witnessed the signing of the petition by each person whose name appears thereon.

At the end of the documents submitted as one petition, another recital, in the following form, must be provided:

I am the circulator of this petition and a resident of the state of Kansas and possess the qualifications of an elector of the state of Kansas. I have personally witnessed the signing of the petition by each person whose name appears thereon.

The circulator must then sign underneath the recital and provide his or her residence address. The circulator’s signature must be verified by oath or affirmation by a notarial officer, e.g.:

State of ___________
County of ___________

Signed and [sworn to or affirmed] before me on ___________ [Date] by __________________ [Name of circulator].
[Seal]
[Name of notarial officer]
[Title or rank]

My appointment expires: ________________ [Date].

Unless the more specific statute states otherwise, the documents constituting the petition must be filed with the county election officer. The petition must be filed within 180 days of the date of the first signature. The documents constituting the petition must be filed together at the same time; otherwise the documents will be considered separate petitions, which may affect the sufficiency of the number of signatures required for a particular matter. Once the documents are filed, they cannot be amended, or withdrawn and resubmitted for filing. A person may withdraw his or her name from the petition by notifying the election officer, or other official, “no later than the third day following the date upon which the petition is filed.” Any notice to withdraw a signature is also subject to the verification requirement in the act. Petitions, once filed, are public records subject to disclosure under the Kansas Open Records Act; however, while another state’s open records requirement withstood what was treated as a First Amendment facial challenge in a recent U.S. Supreme Court case, that case has been remanded to the district court for further proceedings on the “as applied” cause of action.

42. K.S.A. 2009 Supp. 25-3601(c).
48. Short form of verification upon oath or affirmation. K.S.A. 2009 Supp. 53-509(c).
55. K.S.A. 45-215, et seq.
56. Doe v. Reed, No. 09-559, 2010 WL 2518466 (U.S. Supreme Court, June 24, 2010).
III. Initiative and Referendum

Residents of cities have a general power not extended to anyone else;\(^57\) by petition they can call for an election on whether an existing ordinance should be repealed or amended, or they can seek an election on whether a new ordinance should be adopted.\(^58\) This power, however, may not be used when ordinances are:

1) administrative in nature;

2) related to a public improvement to be paid wholly or in part by the levy of special assessments; or

3) subject to referendum or election under another statute.\(^59\)

Perhaps the most contested feature of the general city initiative and referendum act is when a subject is legislative (and permitted) or administrative (and therefore not authorized by the act). The Kansas Supreme Court, earlier this year, restated the criteria for determining when a subject is administrative versus legislative. In McAlister v. City of Fairway,\(^60\) the court reviewed proposed ordinances that would have restricted future relocation of the city offices, and would have prohibited the city from using rezoning or eminent domain to convert certain properties to commercial or multi-family residential uses.\(^61\) The court began its analysis by noting that each case must be decided on the particular facts, and when the facts are undisputed, the court’s appellate review is de novo.\(^62\) The resolution of the question can be difficult, because often a particular ordinance may have both administrative and legislative elements; for the ordinance to be authorized under the initiative act, it must be “quite clearly and fully legislative and not principally executive or administrative,” but it does not have to be “solely legislative” in character.\(^63\)

The court has provided these guidelines:

1. An ordinance that makes new law is legislative; while an ordinance that executes an existing law is administrative. Permanency and generality are key features of a legislative ordinance.

2. Acts that declare public purpose and provide ways

and means to accomplish that purpose generally may be classified as legislative. Acts that deal with a small segment of an overall policy question generally are administrative.

3. Decisions which require specialized training and experience in municipal government and intimate knowledge of the fiscal and other affairs of a city in order to make a rational choice may properly be characterized as administrative, even though they may also be said to involve the establishment of policy.\(^64\)

In addition to the guidelines, the court also noted:

[If the subject is one of statewide concern in which the legislature has delegated decisionmaking power, not to the local electors, but to the local council or board as the state’s designated agent for local implementation of state policy, the action receives an “administrative” characterization, [and] hence is outside the scope of the initiative and referendum.\(^65\)

The analysis is not simply a mathematical calculation of the number of factors in favor of one side or the other.\(^66\)

Legislative ordinances regard: creation of an organized fire safety program,\(^67\) whether to adopt one of two proposed flood control projects,\(^68\) regulation of abortion,\(^69\) and imposition of an ad valorem tax (if there is independent statutory authority for the city to impose the tax).\(^70\) Administrative ordinances regard: where to locate new fire stations or whether to renovate existing fire stations,\(^71\) banning a casino, and prohibiting extension of city services to a proposed casino,\(^72\) authorizing the sale of a municipal utility system,\(^73\) use of traffic control devices at designated intersections,\(^74\) abolishing the office of city administrator in a second-class city,\(^75\) setting term limits,\(^76\) and requiring a city to sell real property to the highest bidder.\(^77\)

The petition must conform to the general requirements set out in the previous section of this article. Instead of filing the petition with the county election officer, the petition is filed with the city clerk.\(^78\) The petition must request that the city council or commission pass the ordinance (in which case no election is necessary) or call an election for a vote on the pro-

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58. K.S.A. 12-3013.

59. K.S.A. 12-3013(e). For example, because charter ordinances are covered by another constitutional provision, art. 12, § 5, a charter ordinance cannot be enacted by initiative and referendum. Att’y Gen. Op. No. 94-108. And an ordinary ordinance under the initiative statute cannot be used to amend or repeal an existing charter ordinance. Id.


61. 289 Kan. at 394-95.

62. 289 Kan. at 399.


64. 289 Kan. at 403 (citations omitted).


66. 289 Kan. at 411, finding for one of the ordinances that although only one factor supported the administrative side, the underlying facts indicated that the impact on the city’s administrative authority was so “overreaching” as to render the ordinance principally administrative rather than legislative.


78. K.S.A. 12-3013(a).
proposed ordinance. Each person signing the petition must provide the street and number of their residential address. The circulator of the petition must, by oath before an authorized officer,\textsuperscript{79} certify that:

Such person believes the statements therein and that each signature to the paper appended is the genuine signature of the person whose name it purports to be.\textsuperscript{80}

In first class cities, the total number of signatures must be at least 25 percent of the number of voters in the “last preceding regular city election.”\textsuperscript{81} In second or third class cities, the percentage is increased to 40 percent. If the city clerk determines there are sufficient signatures, the city council or commission must adopt the ordinance within 20 days of the clerk’s certification of the sufficient number of signatures, or must “forthwith” set an election. The mayor cannot veto the ordinance if the city council proposes to adopt the ordinance.\textsuperscript{82}

If a regular city election is already scheduled within 90 days of the certification, the ordinance can be submitted at that election; otherwise the city is required to call a special election.\textsuperscript{83} The ordinance submitted to vote must be the same as proposed in the petition. The election ballot may state the proposed ordinance in full, or provide a “title generally descriptive of the contents thereof,” preceded by this form of the question: “Shall the following be adopted?”\textsuperscript{84} The ordinance must contain the ordaining clause: “Be it ordained by the governing body of the city of ______.”\textsuperscript{85} If multiple ordinances have been set for vote, the proposed ordinances must be separately numbered and printed.\textsuperscript{86} The proposed ordinance must be published once a week for two consecutive weeks in the official city newspaper.\textsuperscript{87} Those two publications cannot be more than 20 days or less than five days before the election date. If a majority votes in favor of the ordinance, it is immediately effective.\textsuperscript{88} The ordinance cannot be repealed or amended for the next ten years except by submitting the ordinance amendment or repeal to another vote. If a majority votes in favor of the amendment or repeal, it is immediately effective.\textsuperscript{89} The city council or commission can submit an amendment or repeal of the ordinance at the next regular city election. There must be at least a six-month interval between any special elections called to amend or repeal an initiative ordinance.

There is also additional authority for initiative and referendum petitions under K.S.A. 12-138a, involving submitting the question of whether to levy any tax or other revenue measure (e.g., a fee, excise charge or other type of exaction) to a vote. If at least 10 percent of the registered voters in a city sign the petition, the city council or commission must call an election on whether the revenue measure should be enacted.\textsuperscript{90} The ballot, and presumably the petition, must “state the nature of the tax or revenue measure, its proposed rate and the date it would take effect.” A petition may also be submitted to call for a question on the repeal of any revenue measure adopted under K.S.A. 12-137 or 12-138a.\textsuperscript{91}

Residents may also by petition, initiate a city name change.\textsuperscript{92} The petition must state the proposed new name, be signed by at least 10 percent of the legally qualified electors in the city and be submitted to the city governing body. The petitioners must submit a certificate from the Kansas secretary of state that the proposed name would not be confused with any other city. The proposition for the ballot, and the petition, should read:

Shall the name of the city of _____________, Kansas be changed to the city of _____________, Kansas?\textsuperscript{93}

If the governing body determines that the petition is sufficient, it must certify its finding to the county election officer who must then set the question for the next general election, if one is scheduled within six months of the certification.\textsuperscript{94} If no election is scheduled within the six months, a special election must be called between 45 and 60 days of receipt of the petition by the county election officer. City residents can also by petition initiate a change in the city’s form of government.\textsuperscript{95}

City and county residents may initiate action leading to imposition of a retail sales tax.\textsuperscript{96} Ten percent of the registered voters in the city, must sign the petition to force a vote in the city.\textsuperscript{97} In the county, 10 percent of the voters who voted at the last election for the office of secretary of state are required.\textsuperscript{98} Also, two adjoining counties can be petitioned to impose a sales tax if a petition is submitted in each county signed by 10 percent of the voters in each county who voted in the previous election for the office of secretary of state.\textsuperscript{99} The sufficiency of signatures is to be determined by the county election officer.\textsuperscript{100}

Residents of a city, county, or township may petition the governing body to impose a tax on gross earnings derived from money,\textsuperscript{101} notes, and other evidences of debt.\textsuperscript{102} Five percent of the registered voters of the political subdivision in-

\textsuperscript{79} K.S.A. 54-101 authorizes notaries, judges, mayors, court clerks, county clerks, and registers of deeds to administer oaths.

\textsuperscript{80} K.S.A. 12-3013(a).

\textsuperscript{81} Id. Persons signing must be registered voters, but not necessarily voters who were registered or who had voted in the last election. Att’y Gen. Op. No. 91-67.

\textsuperscript{82} K.S.A. 12-3013(g).

\textsuperscript{83} K.S.A. 12-3013(3).a.

\textsuperscript{84} K.S.A. 12-3013(b).


\textsuperscript{86} K.S.A. 12-3013(b).

\textsuperscript{87} K.S.A. 12-3013(d).

\textsuperscript{88} K.S.A. 12-3013(c).

\textsuperscript{89} K.S.A. 12-3013(d).

\textsuperscript{90} K.S.A. 12-138a.

\textsuperscript{91} K.S.A. 12-138b.

\textsuperscript{92} K.S.A. 12-154, et seq.

\textsuperscript{93} K.S.A. 12-156.

\textsuperscript{94} K.S.A. 12-155.

\textsuperscript{95} K.S.A. 12-1019 (city manager plan); 12-1036a/1036h (mayor-council-city manager plan; city of the first class); 12-1038 (city manager plan; city of the second class); 12-10a01/10a09 (modified mayor-council form); and 12-3904 (consolidation of operations, procedures, and functions of offices or agencies).

\textsuperscript{96} K.S.A. 12-187 et seq.

\textsuperscript{97} K.S.A. 2009 Supp. 12-187(a).


\textsuperscript{100} K.S.A. 2009 Supp. 12-187(f).

\textsuperscript{101} The term money includes gold and silver coins, U.S. treasure notes, and other forms of currency in common use. K.S.A. 12-1,102(a).
volved must sign the petition, which must include a statement “in substantially the following form”:

Shall _________ (county) (city) (township) impose a tax on gross earnings derived from money, notes and other evidence of debt at a rate of ____ pursuant to K.S.A. 12-1,101, et seq., to reduce property taxes?”

If the petition has sufficient signatures, the question must be submitted at the next state general election, or the next election held to elect officers of the political subdivision. If a township is involved, the electors of the township do not include residents of any third-class city. Residents can also petition the city government to form and levy a tax for a public library.

Other initiative opportunities involve abolishing a cemetery board, imposing a tax to fund elderly service programs, establishing a community historical museum, extending the boundaries of the taxing district for a municipal university, disincorporation of a third-class city, formation of a community building district for third-class cities, establishment or termination of the operation of a county hospital, system, or voting plan for a local board of education, creation of a memorial or monument, construction of a township building, acquisition of land or construction of a chapel in a township cemetery, dissolution of a groundwater management district, and formation of a water assurance district.

IV. Protest Petitions

Cities have had constitutional home rule powers since July 1, 1960. Under this authority, when (with certain limited exceptions) a legislative enactment does not apply uniformly to all cities, any city can adopt a charter ordinance that exempts the city from the legislative enactment in whole or in part, and the city may also adopt alternative or additional local ordinances in its place. The charter ordinance cannot take effect for 60 days, during which time city residents can circulate a petition demanding that the ordinance be submitted to a vote of the city’s electors. The form of the question must read:

Shall charter ordinance No. _________, entitled _________ take effect?

At least 10 percent of the number of voters in the last preceding regular city election must sign the petition. The petition is filed with the city clerk. The council or commission must within 30 days of the filing of the petition call an election. If the city council or commission does not call the requested election, the ordinance does not become effective. The election must be held within 90 days of the filing of the petition. The ordinance calling the election must be published once a week for three consecutive weeks in the official city newspaper.

Counties have had statutory home rule power since 1974. Counties can adopt charter resolutions, subject to a long list of exceptions, which exempt them from all or any part of an act of the legislature, and may adopt additional or alternative local resolutions regarding the same subject. Any charter

102. K.S.A. 12-1,101(f). Notes and other evidence of debt include stock shares, notes, bonds, debentures, claims secured by deeds, liquidated claims, and demands for money, accounts receivable, and all written instruments, contracts, or other writings fixing or showing a fixed obligation (either determined or to be determined in the future). K.S.A. 12-1,102(b). The term does not include oil and gas leases or other types of oil and gas royalty interests. Id.

103. K.S.A. 12-1,102(g).
104. K.S.A. 12-1220, 12-1231, and 12-1236.
105. K.S.A. 12-1427.
106. K.S.A. 12-1680.
111. K.S.A. 17-5907(b), 17-5908(b).
113. K.S.A. 19-3a02.
114. K.S.A. 19-2698.
115. K.S.A. 19-3508.
117. K.S.A. 20-2901.
118. K.S.A. 24-122, 24-139.
121. K.S.A. 42-368.
123. K.S.A. 68-518, 68-598.
125. K.S.A. 72-7302.
126. K.S.A. 72-8005.
127. K.S.A. 73-402.
128. K.S.A. 80-105, 80-904, 80-906, and 80-919.
129. K.S.A. 82a-1034.
130. K.S.A. 82a-1338.
133. Id. The petition does not necessarily have to state the “demand”; the attorney general has opined that the filing of the protest petition constitutes the necessary demand. Att’y Gen. Op. No. 09-17.
135. Id. The term “last preceding regular city election” refers to the election immediately preceding the final publication date of the charter ordinance. Att’y Gen. Op. No. 09-17.
137. Kan. Const. art. 12, § 5(c).
139. K.S.A. 19-101b(a); (b).
resolution does not take effect for 60 days following final publication of the resolution, during which time residents of the county can circulate a petition demanding that the resolution be submitted to a vote of the county electors.\textsuperscript{140} The form of the question on the petition must read:

\begin{quote}
Shall charter resolution No. __________, entitled _____________ take effect?
\end{quote}

At least 2 percent of the number of voters voting in the last preceding November election, or 100 voters, whichever is greater, must sign the petition. The petition is filed with the county election officer. The county commission must within 30 days of the filing of the petition call an election. If the county commission fails to call the requested election, the resolution does not become effective. The election must be held within 90 days of the filing of the petition. The resolution calling the election must be published once a week for three consecutive weeks in the official county newspaper.

The general municipal bond law, K.S.A. 10-101, \textit{et seq.}, provides for an election on any bond issue where the enabling act allows for petitions.\textsuperscript{141} A number of statutes that authorize issuance of bonds (including general or special obligation bonds or revenue bonds) include provisions allowing protest petitions to force elections on the issuance of the bonds. Many statutes that authorize political subdivisions to levy taxes (ad valorem, sales, or other types of revenue generating measures) allow for protest petitions that require elections before the taxes can take effect. Many types of public improvements (infrastructure such as roads, bridges, water and sewer facilities, etc.; public buildings, such as courthouses, etc.) are subject to protest petitions. Acquisition or sale of public property can also be prevented by protest petitions. Finally, there are protest petitions allowed for issuance of franchises, establishment of local programs, and other miscellaneous types of governmental action.

\section*{V. Conclusion and Checklist}

The various statutes that address specific petition types vary significantly in the deadlines by which the petitions must be filed, by how many signatures are necessary (including the percentage and the base number to apply the percentage to) and where the petition is filed. Some statutes call for additional requirements and may specify the exact form of the question to be put on the petition. When advising any client on the submission or receipt of a petition, the following checklist may be helpful:

\begin{itemize}
  \item Carefully review all statutes (both general and specific) that apply to the type of petition involved;
  \item Prepare a list of the key dates involved: submission of the application or petition, date for receipt of approval, time allowed for circulation, when the petitions must be filed, and, if any court challenges are required, filing dates for the court;
  \item Check with the reviewing attorney, or the appropriate election officer, to see if he or she can provide any guidance on the petition process, including samples of previously approved petitions;
  \item Verify with the appropriate election officer the number of signatures that are necessary for the petition to be sufficient; and
  \item Make sure the circulators understand any restrictions on the circulation of the petition; e.g., that they have to personally witness the signatures and whether there are limitations on the geographic area in which the petition can be circulated.
\end{itemize}

Once the petitions are circulated and signed, review to make sure the petitions are complete and compliant with the legal requirements.

Have the circulator’s signature properly notarized.

File the petition as directed by the applicable statute.

If necessary, prepare and file any petition for mandamus or other challenge to any action on the petition by the reviewing officer.

\section*{About the Author}

Robert W. Parnacott, of Wichita, graduated with dean’s honors from Washburn University School of Law in 1991. Following law school, he was a research attorney on the Central Staff for the Kansas Court of Appeals and subsequently for Justice Tyler C. Lockett of the Kansas Supreme Court. He then served as a staff attorney for the Kansas Corporation Commission and later for the Kansas Department of Health and Environment. Prior to joining the Sedgwick County Counselor’s Office, he was in private practice with Woodward, Hernandez, Roth & Day LLC in Wichita.
STATE V. DIVINE
MONTGOMERY DISTRICT COURT – REVERSED AND REMANDED
NO. 102,907 – JANUARY 28, 2011

FACTS: Divine placed on probation after 2003 guilty plea to lewd and lascivious behavior. Pursuant to Kansas Offender Registration Act (KORA), Divine required to register as a sex offender for 10 years, and registration requirement also imposed as condition of probation. Some three years after completing probation, Divine filed petition to expunge his conviction. District court accepted and executed journal entry approved by prosecutor and defense counsel. Divine then filed motion to lift the registration requirement because his conviction had been erased. District court found K.S.A. 22-4908 prevented granting the petition. Divine’s appeal transferred to Supreme Court.

ISSUE: (1) Expungement of conviction and (2) KORA

HELD: Expungement of Divine’s lewd and lascivious conviction terminated his status as an offender required to register under KORA. Expungement statute does not provide an exception for disclosure of the expunged conviction through KORA registration, and expungement order in this case did not make such disclosure a special exception under K.S.A. 2010 Supp. 21-4619(f)(3). State v. Riedel, 242 Kan. 834 (1988), is distinguished. Relief sought by Divine flowed from expungement statute, not from a court order barred by K.S.A. 22-4908. State’s challenge to technical errors in the expungement petition as jurisdictional is not properly before the court where State did not appeal the expungement order, and participated in any procedural errors by agreeing to submit matter on an approved journal entry. Reversed and remanded for district court to rescind its order that Divine must continue to register, and to enter order that Divine’s registration requirement has terminated as matter of law.


STATE V. FINCH
DOUGLAS DISTRICT COURT – APPEAL SUSTAINED
NO. 101,136 – JANUARY 7, 2011

FACTS: In DUI prosecution, district court granted motion for judgment of acquittal, based on margin of error for Intoxilyzer 5000 used to test Finch’s blood-alcohol concentration. State’s appeal on question reserved was transferred to Supreme Court.

ISSUE: Interpretation of K.S.A. 8-1567(a)(2)

HELD: Case concerns matter of statewide interest important to the correct and uniform prosecution of DUI cases. K.S.A. 2007

STATUTES: K.S.A. 21-3301, -3301(a), -3504, -3504(a)(3)(A), -3504(c), -3511, -3511(a), -3511(b), -4643, -4643(a)(1)(G); and K.S.A. 22-3601(b)(1)
Supp. 8-1567(a)(2) is a per se statute. State need not prove actual alcohol concentration of driver's blood or breath at time of driving or at time of measurement. It also need not prove alcohol actually impaired the defendant's driving. The statute is clear and unambiguous. It neither requires nor prohibits fact-finder's consideration of Intoxilyzer 5000's margin of error. Such margin of error is merely one factor to be considered in arriving at the verdict. Here, State's evidence was sufficient to establish a prima facie case. Defense challenge to the reliability and accuracy of state's evidence was for jury to decide. District court judge erred in granting motion for judgment of acquittal. Error also noted in district court judge's reliance on testimony the judge was familiar with from another case.

STATUTES: K.S.A. 2009 Supp. 8-1567(a)(2); K.S.A. 2007 Supp. 8-1567(a)(1), -1567(a)(2), -1567(a)(3); K.S.A. 8-1567(a)(2); and K.S.A. 60-409(a), -409(b)

STATE V. MCCASLIN
SEDGWICK DISTRICT COURT – AFFIRMED
NO. 99,628 – JANUARY 21, 2011

FACTS: McCaslin convicted of first-degree premeditated murder, rape, and aggravated arson. Sentence included hard 50 prison term for the murder conviction. On appeal, McCaslin claimed: (1) error to admit hearsay evidence in violation of right of confrontation; (2) insufficient evidence supported the convictions; (3) prosecutorial misconduct in badgering McCaslin during cross-examination, asking him a question having no good-faith evidentiary basis, and inflaming emotions and passions of jury during rebuttal remarks; (4) error to admit video evidence of fire department's arrival and response to fire; (5) error to admit evidence of photograph of burned house which included victim's burned naked body; (6) insufficient evidence supported trial court's finding of the two aggravating factors supporting the hard 50 sentence; (7) Kansas hard 50 sentencing scheme is unconstitutional; (8) error to impose aggravated terms in sentencing grid for the rape and aggravated arson convictions; (9) Sixth and 14th amendments violated by enhanced sentences without prior convictions being submitted to jury; and (10) cumulative error denied McCaslin a fair trial.

ISSUES: (1) Confrontation and hearsay, (2) sufficiency of evidence for convictions, (3) prosecutorial misconduct, (4) fire department video, (5) photograph of victim, (6) sufficiency of evidence for hard 50 sentence, (7) constitutionality of hard 50 sentencing scheme, (8) aggravated terms in sentencing grid, (9) enhanced consecutive sentences based on criminal history, and (10) cumulative error

HELD: Objection during trial to “stating facts not in evidence” was insufficient to preserve hearsay and confrontation issues for appeal. Contemporaneous objection requirement on these specific grounds not satisfied.

Under facts, each conviction supported by sufficient evidence. Each instance of prosecutorial misconduct is separately examined. Gross and flagrant misconduct in prosecutor's cross-examination of McCaslin, but not motivated by ill will even though a close call. Ill will, and gross and flagrant misconduct in prosecutor asking McCaslin a specific question without any good-faith basis for the question, and in prosecutor's rebuttal remarks. KRPC and ABA Standards cited. Under facts, no reversible error.

Fire department video assisted jury's understanding of multiple witnesses, was not unduly prejudicial, and was not excessively cumulative.

McCaslin failed to renew his objection in pretrial motion to suppress to photograph of victim. No appellate review of this issue.

Under facts, sufficient evidence supported trial court's finding that McCaslin committed the crime in an especially heinous, atrocious, or cruel manner, and to avoid or prevent lawful arrest or prosecution.

No reason advanced in this case to retreat from court's prior rejection of identical constitutional arguments based on recent U.S. Supreme Court decisions.

No jurisdiction to review presumptive sentences.


McCaslin not denied a fair trial by cumulative error.

DISSENT (Johnson, J.): Would find individual instances of prosecutorial misconduct constituted plain error which was not harmless, and cumulative effect of this misconduct prejudiced McCaslin and denied him a fair trial. Also strongly disagrees that defense counsel's objection during cross-examination of McCaslin was inadequate under the circumstances to preserve appellate review of hearsay confrontation claim.

STATUTES: K.S.A. 21-3401(a), -3501(1), -302(a)(1)(A), -3718(a)(1)(A), -3718(a)(1)(A), -3719(a)(1), -4635, -4636, -4636(f); K.S.A. 22-3601(b)(1); and K.S.A. 60-261, -404, -460, -460(a)-(c)

STATE V. THOMAS
GEARY DISTRICT COURT – REVERSED
COURT OF APPEALS – REVERSED
NO. 98,123 – JANUARY 21, 2011

FACTS: Officer Brown of the Junction City police department spotted a woman on the street he thought was L.N., who was under subpoena. The woman was Thomas, not L.N. However, Thomas agreed to provide information for a field interview card. When Thomas provided her address, Brown knew it was the address of prior drug incident. The interview was non-confrontational and the parties shook hands and said good-bye. As they walked away, Brown turned to Thomas and asked her if she would answer a couple more questions. Thomas agreed. Brown asked Thomas that he remembered the drug incident and Thomas denied involvement in that incident. When asked, Thomas said that she had used drugs and alcohol earlier in the day. According to Brown, Thomas did not appear to be under the influence of drugs. Thomas called for back-up. Brown asked if Thomas had drugs in her possession. Thomas eventually admitted to possessing two crack pipes, which she had found on the ground. Thomas was arrested. She waived her Miranda rights and made incriminating statements about her use of cocaine that evening and in the past. The district court denied Thomas' motion to suppress all the evidence during the second encounter, finding it was voluntary. Thomas was convicted of possession of cocaine found in the crack pipes.

ISSUES: (1) Motion to suppress, (2) consensual encounter, and (3) speedy trial

HELD: Court found the district court erred in denying Thomas' motion to suppress. Court held that Brown's call for back-up, when combined with his other conduct, would convey to a reasonable person that he or she was not free to refuse to answer Brown's question or otherwise terminate the second stage of the encounter. Before and after making the call, Brown repeatedly asked Thomas questions about her drug use and possession until she confessed. Court held that since the second encounter turned into an investigatory detention, the State needed reasonable and articulate suspicion of criminal activity. Court held that Brown was unable to articulate more than an inchoate and unparticularized suspicion or hunch that Thomas was involved in criminal activity. Court reversed both lower decisions and concluded the evidence was fruit of the poisonous tree and should have been suppressed. Court calculated and assessed the time following arraignment and determined that the state was responsible for 179 days following arraignment, which was within the statutorily permitted speedy trial statute and Thomas was not denied a speedy trial. Court found that Thomas did not preserve
her Sixth Amendment claim of confrontation by admitting a KBI forensic report without requiring the forensic examiner to testify.

**CIVIL**

**ASSUMPTION OF RISK**
**SIMMONS V. PORTER ET AL.**
**LYON DISTRICT COURT – AFFIRMED**
**NO. 102,662 – JANUARY 7, 2011**

FACTS: Simmons was tragically injured in a gasoline fire while he was employed by Porter Farms. Simmons was removing the fuel tank on a farm truck. The tank shifted and covered Simmons in gasoline as he lay under the truck. While quickly getting out from underneath the truck, he kicked a light causing a spark and fire. Simmons sued Porter Farms arguing that Porter Farms owed him a legal duty of care and skill to provide him with a reasonably safe workplace. He alleged breach of this duty was the natural, probable, and proximate cause of his injuries. The district court granted summary judgment in favor of Porter Farms under the assumption of risk doctrine.

ISSUE: Assumption of risk
HELD: Court stated the assumption of risk doctrine still exists in Kansas concerning certain employer-employee relationships. Court agreed with three findings by district court: (1) Simmons had knowledge relating to the use of or dealing with automobile mechanics or vehicle repair equal to or superior of that of the defendants. The court finds the plaintiff in charge of this particular project and nobody else told him how to do his job. (2) The court finds Simmons did recognize that there is a risk of fire with gasoline and made a decision to proceed ahead with the project as he was asked to do as part of his employment. The court finds the defendant did not ask for any additional equipment but chose to proceed with the equipment that he had in his possession. (3) The court finds that there were no defective equipment or tools used or provided by the defendants in this case. There may not have been the ideal equipment or proper equipment but the equipment provided to the plaintiff to perform the repair was not defective.

STATUTE: K.S.A. 60-258a

**ATTORNEY FEES**
**SNIDER V. AMERICAN FAMILY MUTUAL INSURANCE**
**WYANDOTTE DISTRICT COURT – REVERSED AND REMANDED**
**NO. 103,340 – JANUARY 7, 2011**

FACTS: Snider held a Business Key Policy of insurance through American Family for his heating and cooling business. After 12 air conditioning condensers, tools, and equipment were stolen from Snider's residential storage facility, Snider made a claim to American Family for insurance coverage. American Family determined that the 12 air conditioning condensers were not covered. Snider sued American Family for judgment in the amount of $5,000, plus interest, attorney fees and costs. The trial court determined that the insurance policy did not provide coverage for the theft and granted summary judgment to American Family. The Kansas Court of Appeals reversed, finding that theft was covered under the policy and the air conditioning condensers were contractor's equipment. Court remanded for judgment in favor of Snider and for the trial court to determine attorney fees and costs for Snider. Snider requested $43,599.55 in attorney fees and costs. American Family argued the fees were excessive. The trial court awarded $5,000 in attorney fees to Snider.

**ISSUE:** Attorney fees
**HELD:** Court held the trial court failed to adequately consider the factors under Supreme Court Rule 1.5(a) (2010 Kan. Ct. R. Annot. 458) and instead entered an award of attorney fees in the exact amount of Snider's recovery under the policy. Moreover, it is apparent that the trial court improperly included appellate attorney fees in its judgment. Because the trial court went outside of the legal framework for awarding attorney fees, court found an abuse of discretion in the trial court's judgment. After reviewing the record in this case and Snider's attorney's billing statements, in light of the factors under Rule 1.5(a), court determined that Snider is to be awarded $19,500 in attorney fees plus $155 in costs.

STATUTE: K.S.A. 40-256, -908

**CIVIL PROPERTY FORFEITURE**
**STATE V. BLACK 1999 LEXUS ES300**
**JOHNSON DISTRICT COURT – AFFIRMED**
**NO. 102,286 – JANUARY 7, 2011**

FACTS: After investigating Andrew Wurtz for dealing marijuana, the police seized his 1999 Lexus ES300 and petitioned to forfeit it since he had used it for selling drugs. Wurtz stipulated that the car was properly subject to forfeiture but insisted that the forfeiture be limited in scope under K.S.A. 60-4106(c) because forfeiting the $8,000 car was grossly disproportionate to the $250 he had gained from the two drug sales conducted from the car. The district court found that the forfeiture of the car was not grossly disproportionate to Wurtz's repeated drug sales and the large potential penalty provided by statute – up to $300,000 – for such sales. The court entered judgment against Wurtz and ordered that the car be released to the police department for its official use.

**ISSUE:** Civil property forfeiture
**HELD:** Court held that Wurtz's argument fails because the iniquity under K.S.A. 60-4106(c) considers all of the circumstances, including related criminal conduct not directly involving the car. The circumstances in Wurtz's case included: Police observing Wurtz possess and sell marijuana on several occasions in a year; Wurtz admitting to selling marijuana to his co-workers; and Wurtz also admitting that he routinely purchased what an officer called a dealer-level amount of the drug. The forfeiture of Wurtz's Lexus worth about $8,000 was not grossly disproportional to his repeated criminal conduct. Moreover, contrary to Wurtz's contentions, K.S.A. 60-4106(c) is not unconstitutionally vague because it provides objective factors to prevent courts from arbitrarily and discriminatorily applying the statute.

STATUTES: K.S.A. 20-302b(a), -329, -3018(b); K.S.A. 22-2402, -3206(3), -3402(2); and K.S.A. 60-404

**DUI AND DRIVER’S LICENSE SUSPENSION**
**SHRADER V. KANSAS DEPARTMENT OF REVENUE**
**DECATUR DISTRICT COURT – REVERSED WITH DIRECTIONS**
**NO. 103,176 – JANUARY 21, 2011**

FACTS: Officer Burmaster, of the Oberlin Police Department, observed a van driven by Shrader make a left turn without using a turn signal. He knew Shrader's license was suspended. Burmaster activated his lights and Shrader eventually stopped when he pulled into his driveway. Burmaster said that Shrader had poor balance...
as he walked to his house and smelled of alcohol. Burmaster asked Shrader for his driver's license and proof of insurance. Burmaster had difficulty presenting both documents and explained that neither was any good anyway. Burmaster asked Shrader to submit to field sobriety tests and a PBT. He refused. Burmaster arrested Shrader for driving with a suspended license. At the station, Shrader refused a breath test. The Kansas Department of Revenue (KDOR) suspended Shrader's driving privileges. The district court affirmed Shrader's suspension finding that Burmaster handcuffed Shrader and informed him he was under arrest for driving with a suspended license; therefore, it was clear that Shrader was under arrest at the time of his test refusal. Additionally, the district court found Burmaster had reasonable grounds to believe Shrader had been operating his vehicle while under the influence of alcohol. The district court concluded that in a driver's license suspension proceeding, a district court is not permitted to consider the reason for an individual's arrest or the timing of the arrest.

ISSUES: (1) DUI and (2) driver's license suspension

HELD: Court found that the requirement of K.S.A. 8-1001(b)(1) that before an individual is required to submit to a breath test deemed consented to under K.S.A. 8-1001(a), the individual must have been arrested for an offense involving operation of a motor vehicle while under the influence of alcohol. Court held that the offense of driving with a suspended license does not, by itself, involve operation of a motor vehicle while under the influence of alcohol under K.S.A. 8-1001(b)(1).

STATUTE: K.S.A. 8-259, -1001(a), (b)(1), -1020(p), (q), -1567

MENTAL HEALTH - SEX OFFENDERS
IN RE ONTIBEROS
SEDGWICK DISTRICT COURT – REVERSED AND REMANDED
NO. 100,362 – JANUARY 28, 2011

FACTS: In proceeding under Kansas Sexually Violent Predator Act (KSVA), voluminous exhibit was admitted for limited purpose of providing two expert witnesses access to documents to use in evaluating Ontiberos, and for appellate record. After jury finding Ontiberos was a sexually violent predator, he appealed claiming KSVA is unconstitutional because it contains no way to contest competence of court-appointed attorney. Supreme Court granted motion to remand to district court for Van Cleave hearing on newly asserted claim of ineffective assistance of counsel. On remand, district court conducted hearing and denied ineffective assistance of counsel claim, finding defense counsel stipulated to the exhibit, and foundation for admitting the documents could have been proven.

ISSUES: (1) Constitutional challenge to KSVA, (2) right to effective assistance of counsel in KSVA proceeding, and (3) ineffective assistance of counsel claims in KSVA proceeding

HELD: KSVA is constitutional even though it contains no specific statute allowing a respondent to challenge the effectiveness of court-appointed counsel. Other methods exist to test effectiveness of court-appointed counsel, such as procedure followed in this case. Because there is a statutory right to court appointed counsel in KSVA proceedings, there is a correlative right to competent, effective counsel. It is a due process violation to have ineffective assistance of counsel in sexually violent predator determinations.

Appellate Practice Reminders . . .

From the Appellate Court Clerk’s Office

Expedited Appeals

Parties can, by motion pursuant to Supreme Court Rule 5.01 (2010 Kan. Ct. R. Annot. 33-34), move for expedited briefing and hearing in an appeal. The reasons stated should be significant and sufficient to merit moving the case ahead of others in line.

The appellate courts, on their own motion, designate certain categories of cases for expedited handling: juvenile offender, child in need of care, child custody, adoption, interlocutory appeals by the State in criminal cases, and civil interlocutory appeals. Court reporters and attorneys are expected to complete their work within the initial time period assigned. Unlike other appeals in which the appellate clerk has authority to grant a limited number of motions for extension of time, all motions in expedited cases go to the respective appellate court for decision. Extensions will be granted only for extraordinary reasons, and any extension will likely be for a shortened period of time. Once briefing is completed, an expedited case will be set on the next available docket.

Requests for Transcripts After Docketing

Requests for transcripts are required to be filed at the time of docketing; however, additional transcripts may be requested after a case is docketed. Pursuant to Supreme Court Rule 3.03(c) (2010 Kan. Ct. R. Annot. 25), those additional transcript requests must be filed and served in the same manner as the original transcript request. The transcript request is filed in the district court with service on the court reporter and all parties. A copy of the request is mailed to the clerk of the appellate courts. If the appellate clerk does not receive a copy of the transcript request, briefing schedules may be set before all transcripts are completed.

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If a party wants a file-stamped copy of any document submitted to the appellate courts, that party must send an extra copy of the document and a return envelope with sufficient postage to cover return of the document.

For questions about these or other appellate procedures and practices, call the Clerk's Office at (785) 296-3229 and ask to speak with Carol G. Green, Clerk of the Appellate Courts.
Ontiberos did not receive a fair trial. Defense counsel was not well prepared, failed to object to state's impeachment use of documents never admitted for that purpose and outside stipulation in open court, and failed to object to state's mis-characterization and exaggeration of a prison disciplinary report. In re Care and Treatment of Cole, 289 Kan. 234 (2009), is distinguished.

STATUTES: K.S.A. 22-4506, 59-20a01 et seq., -29a06, -29a06(b), 60-420, -422, -1501, -1507

TORTS - CONSTITUTIONAL LAW
BLOOM V. ARNOLD
LEAVENWORTH DISTRICT COURT – REVERSED AND REMANDED
NO. 103,352 – JANUARY 21, 2011
FACTS: Prison disciplinary action initiated against Bloom for not reporting to assigned job. After secretary of corrections set aside the discipline, Bloom filed civil action alleging the officer assigned a job outside Bloom's medical restrictions, and initiated discipline in retaliation for Bloom naming and serving the officer as a defendant in a federal civil rights action. District court dismissed the petition as failing to state a claim for abuse of process. Bloom appealed.

ISSUES: (1) Abuse of process and (2) retaliation
HELD: As matter of first impression in Kansas, the term “process” in an abuse of process claim limits the claim of abuse to proceedings invoking the aid of judicial process. An abuse of process claim based on improper use of an administrative or other nonjudicial proceeding is insufficient as a matter of law to support such a claim. District court's decision to dismiss Bloom's claim for abuse of process is affirmed, but not for reason stated by the district court. Bloom sufficiently alleged in his petition that defendants improperly used the prison administrative disciplinary process as a pretext for retaliation. Reversed and remanded to reinstate the petition construed as a civil rights claim for retaliation, 42 U.S.C. § 1983.


CRIMINAL
STATE V. AGUIRRE
FINNEY DISTRICT COURT – AFFIRMED
NO. 101,337 – JANUARY 7, 2011
FACTS: Aguirre convicted in 2006 case of failing to register under Kansas Offender Registration Act, and convicted in 2007 case of rape, aggravated indecent liberties with a child, and aggravated intimidation of victim. Appeals from both cases consolidated. In appeal from 2006 case, Aguirre claimed: (1) district court erred in denying motion for mistrial when state violated motion in limine to exclude reference of Aguirre’s prior sex offense to which Aguirre had stipulated and (2) prosecutor failed to disclose evidence that Aguirre had claimed a sheriff deputy raped victim in Aguirre’s 2007 case. In appeal from 2007 case, Aguirre claimed: (3) conviction for aggravated intimidation of a victim involved two sets of alternative means; (4) error to admit expert testimony regarding child victim's recantation; (5) district court erred in permitting Aguirre to comment on credibility of victim; (6) insufficient evidence supported rape conviction because no physical evidence and victim recanted; and (7) cumulative error denied him a fair trial. In both appeals, Aguirre claimed the use of his criminal history to enhance penalty for convictions violated Apprendi.

ISSUES: (1) Motion in limine, (2) exculpatory evidence, (3) alternative means, (4) expert testimony, (5) questions about victim's motives, (6) sufficiency of the evidence, (7) cumulative error, and (8) Apprendi sentencing claim
HELD: Prosecutor should have better prepared witness to describe Offender Registration Unit in manner consistent with order in limine, but witness' single reference was not intentional or motivated by ill will, and Aguirre not prejudiced.

Evidence was not exculpatory with respect to the crime of failing to register, and Aguirre obviously knew of the claim.

First set of alternatives involving attempt did not present a true alternative means issue. Substantial evidence supported second set of alternatives involving malice.

Aguirre did not renew his pretrial objection to expert testimony. No showing of abuse of trial court's discretion in allowing this expert testimony.

Aguirre failed to object to state asking him to comment on victim’s credibility, and no prejudice in district court allowing Aguirre to answer.

Ample evidence supported Aguirre's convictions.

No trial errors support cumulative error claim. Apprendi sentencing claims defeated by controlling Supreme Court precedent.

STATUTES: K.S.A. 2006 Supp. 21-4704(a), -4704(j); K.S.A. 21-3301, -3502(c), -3504(c), -3833, -3833(b); and K.S.A. 22-3717(D)(2)(B), -4901 et seq., -4904

STATE V. GARDNER
JOHNSON DISTRICT COURT – VACATED AND REMANDED
NO. 103,312 – JANUARY 14, 2011
FACTS: Gardner required to wear alcohol monitor as condition of prettrial release. When he entered guilty plea four weeks later, district court suspended incarceration, placed him on probation, and ordered him to pay $121 for full cost of alcohol monitor. On appeal, Gardner claimed district court could only order maximum of $15 per week for supervision costs for total of $60.

ISSUE: Monitor expense cost
HELD: Order assessing costs against Gardner is vacated. District court had no discretion to ignore $15 per week maximum that legislature imposed for prettrial supervision costs, K.S.A. 2009 Supp. 22-2802(15). This specific statute controls over more general statute granting district court broad discretionary power to impose probation conditions and impose costs. Remanded with directions to impose cost amount as limited by K.S.A. 2009 Supp. 22-2802(15).

STATUTES: K.S.A. 2009 Supp. 22-2802, -2802(1)(c), -2802(15); K.S.A. 21-3412(a), -4610, -4610(c)(7); and K.S.A. 22-2801

STATE V. HOFFMAN
RENO DISTRICT COURT – REVERSED AND REMANDED WITH DIRECTIONS
NO. 103,133 – JANUARY 28, 2011
FACTS: Hoffman pled guilty to indecent liberties with a child and indecent solicitation of a child. On March 19, 2004, the district court sentenced him to 32 months’ prison and then placed him on probation with community corrections for 36 months. On March 24, 2005, Hoffman stipulated to a probation violation, but the district court did not revoke his probation and ordered it to continue with the additional condition of 60 days in jail. On January 29, 2007, the district court entered an order extending Hoffman's probation for an additional year and both Hoffman and his probation officer signed the order, but there was never a hearing held regarding the matter. On July 26, 2007, the state filed another motion to revoke. Hoffman stipulated to the probation violation and the district court revoked the probation and reinstated it for a term of 36 months, with an additional 60 days in jail on work release. On August 6, 2009, the state filed a third motion to revoke probation. Hoffman asserted that the district court did not have jurisdiction to revoke his probation because his term of probation expired on March 19, 2007. The district court denied the motion based on a
finding that Hoffman still owed restitution at the time the order extending Hoffman's probation was filed in January 2007. Hoffman stipulated to violating the terms of his probation and the district court revoked same and ordered him to serve his underlying prison sentence.

**ISSUES:** Probation violation

**HELD:** Court held the order entered in January 2007 did not inform Hoffman that he was entitled to a modification hearing and a judicial finding of necessity prior to having his probation extended and consequently, his consent to the order cannot be construed as a valid substitute for the procedural requirement extending the probationary term. For this reason, the January 2007 order extending Hoffman's probation was invalid, and Hoffman's term of probation expired on March 19, 2007. Because the state did not commence proceedings to revoke Hoffman's probation within 30 days after his probation expired, the district court did not have jurisdiction to revoke Hoffman's probation. Court held the district court erred in denying Hoffman's motion to dismiss and granting the state's motion to revoke his probation. Reversed and remanded with directions to release Hoffman from custody.

**STATUTES:** K.S.A. 21-4611(c)(7), (8); and K.S.A. 22-3716(d)

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**STATE V. LACKEY**

**WYANDOTTE DISTRICT COURT – AFFIRMED NO. 102,553 – JANUARY 28, 2011**

**FACTS:** Lackey pled guilty to two counts of possession of cocaine. Lackey challenged his criminal history, but the district court denied the motion. The district court followed the plea agreement and reduced Lackey's sentence in one case by 6 months, imposing a 24-month imprisonment. In the other case, the district court granted a durational departure sentence of 24 months. Because Lackey was on felony bond when he was arrested, the district court ordered the sentences to run consecutively.

**ISSUES:** (1) Criminal history score and (2) withdraw plea

**HELD:** Court concluded that the district court properly compared Lackey's three Kansas City, Mo., municipal ordinance convictions for domestic battery and aggravated assault to class B person misdemeanor convictions in Kansas. Consequently, the convictions were aggregated into one person felony for Lackey's criminal history score. Court affirmed the district court's decision rejecting Lackey's motion to withdraw his plea before sentencing. District court had discretion to permit Lackey to withdraw his plea if Lackey showed "good cause." Court rejected Lackey's argument that mutual mistake about criminal history demonstrates good cause to support a request to withdraw a plea made prior to sentencing. Court found the district court applied the proper legal standard. Court found that Lackey was represented by competent counsel, he was not misled, coerced, mistreated or unfairly taken advantage of, and the plea was fairly and understandable made. Court also rejected Lackey's Apprendi claim.

**STATUTES:** K.S.A. 21-3412(a), -4701, -4710, -4711; and K.S.A. 22-3210, -4603(d)(f)(3), -4608

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**STATE V. ROBINSON**

**CRAWFORD DISTRICT COURT – AFFIRMED NO. 103,152 – JANUARY 7, 2011**

**FACTS:** District court revoked Robinson's probation December 2007. Robinson filed motion to correct illegal sentence, claiming his 12 month probation period ended December 2006. District court denied the motion, finding delay in processing the probation revocation was due to Robinson's incarceration in Arkansas when probation violation warrant issued in March 2006. Robinson appealed.

**ISSUE:** Revocation of probation

**HELD:** Due process requires state to act in timely and reasonable manner in revoking probation after a probationary period expires. Under *State v. Hall*, 287 Kan. 139 (2008), there was sufficient evidence that state acted with reasonable diligence in investigating Robinson's whereabouts and pursuing probation violation warrant and putting a hold on Robinson in Arkansas. State does not waive a probation violation if it simply lodges a detainer but does not execute a probation violation warrant when the violator is in prison in another state. The use of a detainer is satisfactory evidence of diligence by the state.

**STATUTE:** K.S.A. 22-4401 et seq.

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**STATE V. SAWYER**

**WYANDOTTE DISTRICT COURT – AFFIRMED NO. 101,624 – JANUARY 7, 2011**

**FACTS:** The charge against Sawyer arose while he was in the Wyandotte County Jail for another offense. Penny Saunders, who was working in the jail's commissary, was assigned to deliver pizzas to areas of the jail housing inmates. She testified that when she stepped into the pod Sawyer was in, he started calling her a bitch and screaming repeatedly, "I'm going to kick your ass," "I'll kill you," and "I'll hit you." A sheriff's deputy, John Lawrence, corroborated Saunders' testimony, and the jury convicted Sawyer of criminal threat, which occurs when a person threatens to commit violence against another with the intent to terrorize the other person. Sawyer contends that the district judge should have recused himself rather than preside over his trial for criminal threat. Sawyer also argues that the judge incorrectly told the jury that it could infer intention from a person's acts and that the judge should have had more testimony read back to the jury than the jury requested.

**ISSUES:** (1) Recusal, (2) jury instructions, and (3) read-back of testimony

**HELD:** Court held that although the judge had presided over prior criminal cases involving Sawyer, a judge's knowledge about a defendant gained through judicial proceedings generally is not cause for removal of the judge. This is also not the sort of extraordinary case in which bias should be presumed. As for Sawyer's other arguments about trial errors, the inferred-intent instruction has been upheld in similar cases, and the district court did not err when it provided a read-back only of the specific testimony the jurors requested.

**STATUTES:** K.S.A. 20-311d; K.S.A. 21-3419(a)(1); and K.S.A. 22-3414(3), -3420
Rule 607 is hereby amended, effective the date of this order:

(a) All complaints, investigations, reports, correspondence, proceedings, and records of the commission shall be private and confidential, and shall not be divulged in whole or in part to the public except as provided in these rules or by order of the court. This rule of confidentiality, however, shall not apply to a written notice of formal proceedings issued pursuant to Rule 611(b), or to any document filed with or issued by the commission thereafter, or to any hearing held before the hearing panel pursuant to Rules 614 and 619;

(b) The rule of confidentiality shall not apply to the complainant or to the respondent;

(c) The rule of confidentiality shall not apply to any information which the commission or a panel considers to be relevant to any current or future criminal prosecution or ouster proceedings against the judge;

(d) The commission may, in the course of an investigation, provide a copy of the complaint to the judge. If the judge files a response to the complaint, the commission may, in its discretion, provide a copy of the response to the complainant;

(e) This rule does not prohibit the complainant or the judge from disclosing the existence of a complaint or from disclosing any documents or correspondence filed by, served on, or provided to that person. The remainder of the commission's file remains confidential.

(d) This rule does not apply to:

(1) a written notice of formal proceedings issued under Rule 611(b) or any document filed with or issued by the commission thereafter;
(2) any hearing held before a hearing panel under Rules 614 and 619; and
(3) any information that the commission or a panel considers relevant to any current or future criminal prosecution or ouster proceeding against the judge.

(e) The commission or a panel is authorized, in its discretion, to disclose relevant information and to submit all or any part of its files:

(1) to the Disciplinary Administrator for his or her use and consideration in investigation or prosecuting alleged violations of the Supreme Court Rules Relating to Discipline of Attorneys;
(2) to the Impaired Judges Assistance Committee; and
(3) to the Supreme Court Nominating Commission, District Judicial Nominating Commissions, and the Governor for use and consideration in evaluating any prospective nominee for judicial appointment.

(e) The commission or a panel is authorized, in its discretion, to disclose relevant information and to submit all or any part of its file to the Impaired Judges Assistance Committee.

(f) The commission or a panel is authorized, in its discretion, to disclose to the Supreme Court Nominating Commission, District Judicial Nomination Commissions, and to the Governor, all or any part of its file involving any prospective nominee for judicial appointment and the commission or a panel is authorized, in its discretion, to make public all or any part of its files involving any candidate for election to or retention in judicial office.

By order of the Court, this 7 of February, 2011.

FOR THE COURT

Lawton R. Nuss
Chief Justice
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◆ addition of a 2-hour option for law practice management programming.
◆ “professional responsibility” has been renamed “ethics and professionalism.”
◆ additional approval of non-substantive diversity and elimination of bias programming in the ethics and professionalism category.
◆ all attorneys will be required to file as either active or inactive. The exemption for active, but not practicing status is removed.
◆ requiring proof of completion of one-year compliance to return to active status from inactive status.

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2011 Appellate Practice Update
Ramada Convention Center, Topeka

Friday, April 8, 9:10 a.m. – 3:45 p.m.
Nuts & Bolts 2 for the Transactional Lawyer
Crowne Plaza Hotel, Lenexa

Friday, April 15, 9 a.m. – 3:30 p.m.
2011 Health Law Institute
DoubleTree Hotel, Overland Park

Friday, April 15, 9 a.m. – 3:30 p.m.
2011 KBA Litigation CLE
The Oread, Lawrence

Friday, April 29, 9 a.m. – 3:45 p.m.
Bankruptcy & Insolvency: A Review of Title 11 in 2011
DoubleTree Hotel, Overland Park

Co-sponsored by The Bar Plan; Bruce, Bruce & Lehman LLC; Case, Moses, Zimmerman & Martin P.A.; Cricket Debt Counseling; Evans & Mullinix P.A.; Gary E. Hinck P.A.; Henson, Hutton, Mudrick & Gragson LLP; Lentz Clark Deines P.A.; Stevens & Brand LLP; Stumbo Hanson LLP; Topeka Area Bankruptcy Council Inc.; and Woner, Glenn, Reeder & Girard P.A.

MAY

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2011 Intellectual Property CLE
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The Future is Now: Health Care Reform
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