THE KANSAS FELLOWS

Coffeyville
Hon. Jack L. Lively

Fort Scott
Leigh C. Hudson

Hutchinson
Gerald L. Green
John F. Hayes

Kansas City, KS
John Joseph Jurczyk Jr.
M. Warren McCamish
Hon. Gerald L. Rushifelt

Lawrence
John A. Emerson

Leawood
Kirk J. Goza

Lenexa
J. Eugene Balloun

Liberal
Kerry Edward McQueen
Gene H. Sharp

Manhattan
Robert L. Pottroff

Olathe
George A. Lowe

Overland Park
Thomas J. Bath Jr.
James L. Eisenbrandt
James D. Griffin
Mark D. Hinderks
Roger D. Stanton

Pittsburg
Richard C. Dearth
Fred J. Spigarelli

Salina
Aubrey G. Linville
C. Stanley Nelson

Topeka
Mark L. Bennett Jr.
Charles S. Fisher Jr.
Pedro L. Irigonegaray
Hon. Joseph D. Johnson
Hon. Edward Larson
Paul J. Morrison
Jerry R. Palmer
Donald Patterson
Wayne T. Stratton
Thomas E. Wright
Ronald E. Wurtz

Wichita
Hon. Donald Bostwick
Arden J. Bradshaw
H.W. Fanning
Jack Focht
Jay F. Fowler
Richard C. Hite
Richard L. Honeyman
Robert L. Howard
Hon. Patrick F. Kelly
Robert Martin
Daniel E. Monnat
Randall K. Rathbun
Stephen E. Robison
Robert J. Roth
Craig Shultz
Mikel L. Stout
Darrell L. Warta
Lee H. Woodard

of the

AMERICAN COLLEGE OF TRIAL LAWYERS

WELCOME AND CONGRATULATE

DONALD W. VASOS
DAVID J. REBEIN

ON THEIR RECENT INDUCTION INTO THE COLLEGE AS FELLOWS.

The American College of Trial Lawyers is a professional association of lawyers skilled and experienced in the trial of cases. Fellowship is by invitation only and limited to one percent of lawyers practicing in a state.
Our Mission:
The Kansas Bar Association is dedicated to advancing the professionalism and legal skills of lawyers, providing services to its members, serving the community through advocacy of public policy issues, encouraging public understanding of the law, and promoting the effective administration of our system of justice.

The Journal of the Kansas Bar Association (ISSN 0022-8486) is published by the Kansas Bar Association, 1200 S.W. Harrison, P.O. Box 1037, Topeka, KS 66601-1037; Phone: (785) 234-5696; Fax: (785) 234-3813. Member subscription is $25 a year, which is included in annual dues. Nonmember subscription rate is $45 a year. POSTMASTER: Send address changes to The Journal of the Kansas Bar Association, P.O. Box 1037, Topeka, KS 66601-1037.

The Kansas Bar Association and the members of the Board of Editors assume no responsibility for any opinion or statement of fact in the substantive legal articles published in The Journal of the Kansas Bar Association.

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U.S. Supreme Court Justice H. Robert Jackson wrote a famous article in the American Bar Association Journal titled, “The County-Seat Lawyer.” In it, he stated that such a lawyer was “pretty much gone.”

Not quite. But now, the county-seat lawyer is often a single mother or a husband and wife practice. The county-seat lawyer is not gone, but the county seat is taking a beating as population continues to decline in the rural Kansas counties.

“That lawyer has been an American Institution … Such a man understands the structure of society and how its groups interlock and interact, because he lives in a community so small that he can keep it all in view. Lawyers in large cities do not know their cities; they know their circles, and urban circles are apt to be made up of those with a kindred outlook on life; but the circle of the man from the small city or town is the whole community and embraces persons of every outlook. He sees how this society lives and works under the law and adjusts its conflicts by its procedures.”

If you do not get the opportunity to practice in the rural courts, you have missed something. The arrival of the District Judge is still an event, and it is not uncommon for the Clerk of the District Court to bring cookies or for all the lawyers to go to lunch. The “big case” will draw the curious, and the out-of-town lawyer who does not get help picking the jury proceeds at their own peril.

“But this vanishing country lawyer left his mark on his times, and he was worth knowing. He "read law" in the Commentaries of Blackstone and Kent and not by the case system. He resolved problems by what he called "first principles." He did not specialize, nor did he pick and choose clients. He rarely declined service to worthy ones because of inability to pay. Once enlisted for a client, he took his obligation seriously. He insisted on complete control of the litigation — he was no mere hired hand. But he gave every power and resource to the cause. He identified himself with the client's cause fully, sometimes too fully. He would fight the adverse party and fight his counsel, fight every hostile witness, and fight the court, fight public sentiment, fight any obstacle to his client's success. He never quit. He could think of motions for every purpose under the sun, and he made them all. He moved for new trials, he appealed; and if he lost out in the end, he joined the client at the tavern in damning the judge — which is the last rite in closing an unsuccessful case, and I have affiliated at many. But he loved his profession, he had a real sense of dedication to the administration of justice, he held his head high as a lawyer, he rendered and exacted courtesy, honor and straightforwardness at the Bar. He respected the judicial office deeply, demanded the highest standards of competence and disinterestedness and dignity, despised all political use of or trifling with judicial power, and had an affectionate regard for every man who filled his exacting prescription of the just judge. The law to him was like a religion, and its practice was more than a means of support; it was a mission. He was not always popular in his community, but he was respected. Unpopular minorities and individuals often found in him their only mediator and advocate. He was too independent to court the populace — he thought of himself as a leader and lawgiver, not as a mouthpiece. He "lived well, worked hard, and died poor." Often his name was in a generation or two forgotten. It was from this brotherhood that America has drawn its statesmen and its judges. A free and self-governing Republic stands as a monument for the little known and unremembered as well as for the famous men of our profession."

It is still common to find the lawyer that sits on the school board and takes criminal appointments and writes letters to the editor.

When Justice Jackson wrote this great article, there were very few women in the profession. It is jarring to read the article today and see the constant reference to “he” and “him.” As I travel the rural counties and courthouses, there are many women who proudly call themselves “country lawyers.” I am often asked what kind of law I practice. I have tried out many answers: “I am a jury lawyer.” “I represent people and businesses.” But the most accurate description of my practice is that I am a country lawyer. I know of no better way to describe the practice of law in a town small enough that you can't go anywhere and not encounter someone that you have sued, are suing, or are thinking about suing.

Recently, a country lawyer made his way to the Kansas Supreme Court: Justice Lee A. Johnson is from Caldwell, Kansas. I was privileged to attend his robing ceremony, as did half of the town of Caldwell. Before the ceremony, I stepped into the restroom and saw a cowboy from Caldwell wrestling with a tie he had brought just for this occasion. Not wanting to seem inhospitable, I struck up a conversation by asking, “How are things in Caldwell?” He looked at me, grinned broadly and said, “A lot better since Lee left.” He turned back to wrestle some more with that necktie.

I thought to myself: Was this man a client or was he an adversary? I couldn't know because in the country practice, over time, it is not uncommon for the people to have played both roles. It was obvious though, that this man had come to Topeka to pay his respects to a country lawyer.

Perhaps Justice Jackson was right, and the country lawyer is vanishing. If that is the case, then you ought to get out and see a few before they are all gone.

David J. Rebein can be reached by e-mail at drebein@rebeinbangerter.com or by phone at (620) 227-8126.
Annual Meeting is a Great Opportunity to get Involved With the Young Lawyers Section

Come join us in Wichita for the 125th KBA Annual Meeting

By Paul T. Davis, KBA Young Lawyers Section president

Given that I’ve now attended eight KBA Annual Meetings, it is hard to believe that I still qualify as a young lawyer. But one of the reasons that I became active in the KBA Young Lawyers Section is because of my yearly attendance at the Annual Meeting. Attending my first Annual Meeting in 1999, I immediately became interested in bar association activities. I think this is partly because the Annual Meeting offers KBA members the chance to expose oneself to many different aspects of bar involvement.

If you have never attended a KBA Annual Meeting, I highly encourage you to join us this year in Wichita from June 7-9. I always look forward to the meeting for many reasons. If you need a few CLE hours (which many of us usually do around June) this is a chance to catch some top quality CLE programs.

There is usually a nationally known speaker. This year, the keynote address will be given by Dan Glickman, former Kansas congressman and current president of the Motion Pictures Association of America. If you haven’t heard Dan Glickman speak before, I promise that you’ll be thoroughly entertained.

The Annual Meeting is also an opportunity for us to recognize those members of our profession who have distinguished themselves through service to our profession and to the state of Kansas. These award recipients will be recognized at the gala Installation and Awards Dinner on Saturday night.

Additionally, the Annual Meeting allows us to reconnect with law school classmates and faculty. Both KU and Washburn have new deans, and I’m sure they will both be present at the law school luncheons on Friday.

And perhaps most important, the Annual Meeting is a terrific networking event for young lawyers. You can meet lawyers from across the state. Additionally, I don’t believe there is a better opportunity around for young lawyers to socialize with members of the judiciary. There are always numerous members of the federal judiciary, Kansas Supreme Court, and Kansas Court of Appeals that attend the Annual Meeting. This is a fantastic opportunity to get to know our judges.

There are also many fun activities available for families. There is a fun run, a golf tournament, and a clay shoot. The Young Lawyers Section in particular has a number of activities that I hope will interest you as well. We will be sponsoring a pub crawl in Old Town Wichita, which promises to be lots of fun. This is a chance to meet other young lawyers and experience some of the great nightlife that Old Town has to offer. We will also be sponsoring a hospitality room with the Litigation Section. And yes, since we’re sponsoring this with the Litigation Section, you nonyoung lawyers (I don’t want to use that much disliked phrase “senior bar lawyers”) are welcome to attend. We will also be sponsoring a number of CLE programs targeted toward young lawyers.

There are many reasons to attend the KBA Annual Meeting. I hope that some of you attend because you want to get involved with the KBA Young Lawyers Section. But if this isn’t your primary interest, I suggest one other reason for attending: It’s a lot a fun! To register for the Annual Meeting, please go to www.ksbar.org or mail the registration form located on the center insert.

I hope to see you in Wichita!

Paul T. Davis is a partner with the firm of Skepnek Fagan Meyer & Davis P.A., Lawrence. He can be reached by phone at (785) 843-7674 or by e-mail at pauldavis@sunflower.com.
50 Years of the Kansas Bar Foundation and You

In 1957, a special committee of the Kansas Bar Association recommended the establishment of the Kansas Bar Foundation (Foundation) to the KBA Board of Governors. They foresaw an organization whose supporters would generously give time, talent, and contributions throughout the years to provide legal services for the disadvantaged, educate the public about the law, and foster the well-being of the profession.

Over the past 50 years, the Foundation has grown to become an organization of more than 600 members with numerous programs that serve the public. The Foundation forges partnerships between the bar, courts, and legal aid organizations in Kansas to improve our system of justice and to help low-income and disadvantaged members in our community by ensuring that they have meaningful access to the justice system to protect their rights. The Foundation places special emphasis on issues affecting children and families and also supports exceptional education programs for youth.

Since 1986, the Foundation has provided more than $3 million for public services. Through the years the Foundation has been instrumental in the following projects:

- Developing law-related education programs for youth, including the statewide mock trial competition for junior and high school students; conflict resolution programs to reduce in-school violence; legal rights and responsibilities booklets for teens; Law Wise, a school year publication sent to civics’ educators statewide complete with lesson plans and technology information; and a clearinghouse of law-related educational resources for educators;
- Administering the KBA’s reduced fee and pro bono programs; and
- Providing legal advice and representation for senior citizens, the poor, and victims of domestic violence.

There are a number of ways you can help the Kansas Bar Foundation, and it all truly makes a difference. You can support the Foundation by participating in the IOLTA program, joining the Fellows program, or volunteering your time. The Fellows recruitment season is upon us, and we want to grow. If you are interested in becoming a Fellow or increasing your level of giving, please contact Meg Wickham, manager of public services, at (785) 234-5696 or at mwickham@ksbar.org.

2007 Fellows Dinner

The 2007 Fellows Dinner is scheduled for Thursday, June 7 at the Wichita Country Club. Those added to the published roll of Fellows and those who have reached a new contribution level will be honored at the dinner. This black-tie gala event of the year provides a wonderful opportunity to salute the new Fellows, introduce new officers, and reminisce with colleagues. Invitations will be mailed.

For more information about the dinner, please contact Meg Wickham, manager of public services, at (785) 234-5696 or at mwickham@ksbar.org.
Status of KBA Legislative Agenda

By James W. Clark, KBA legislative counsel

<table>
<thead>
<tr>
<th>PROPOSAL</th>
<th>STATUS</th>
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<tbody>
<tr>
<td>1. Support the Model Entity Transactions Act, a joint ABA/NCCUSL proposal.</td>
<td>Secretary of State requested introduction, but when ABA withdrew support, bill was withdrawn from consideration.</td>
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<tr>
<td>2. Support removing the adverse impact of temporary protection from abuse orders, which are entered into the National Criminal Information Center.</td>
<td>Requested introduction of HB 2382, prohibiting entry of temporary orders without an opportunity for hearing. House Judiciary Committee held hearing on Feb. 14, KBA-only proponent; domestic violence coalitions and several law enforcement groups vigorously opposed. No committee action, dead for this session.</td>
</tr>
<tr>
<td>3. Support repeal of portion of HB 2554 allowing for DNA sample upon arrest before finding of probable cause.</td>
<td>Introduced as SB 237 and amended similar language into HB 2381. House Judiciary Committee took no action, but Senate Judiciary Committee voted to send SB 237 to interim study.</td>
</tr>
<tr>
<td>5. Oppose SB 44, subrogation rights for health insurance companies.</td>
<td>No hearings scheduled, dead for this session.</td>
</tr>
<tr>
<td>6. Oppose SB 74, requiring making the Medicaid recovery unit a party where medical assistance received by decedent or spouse.</td>
<td>Hearings held in Senate Judiciary Committee. KBA objected to language making Medicaid Recovery Unit a party, but committee passed the bill out without striking the offending language. Agreement reached to remove “party language,” and House Judiciary Committee amended the bill accordingly. Waiting House floor action.</td>
</tr>
<tr>
<td>7. Oppose HB 2075, prohibition of liability disclaimers in home inspection contracts, but exempts most types of inspections.</td>
<td>No hearings scheduled, dead for this session.</td>
</tr>
<tr>
<td>8. Support SB 35, applying code of civil procedure computation to requests for driver's license hearings after DUI.</td>
<td>Passed the Senate in February, referred to House Judiciary Committee. Committee made bill a vehicle for DUI-related legislation, including enhanced penalty for 0.15 BAC, with House Sub. SB 35, and recommended for passage.</td>
</tr>
<tr>
<td>9. Support SB 58, amending Uniform Trust Code to allow transfer of property in trustee’s name.</td>
<td>Passed the Senate Feb. 15 and passed the House on March 12.</td>
</tr>
<tr>
<td>10. Support SB 76, allowing all personal property included in small estate administration by affidavit.</td>
<td>Passed the Senate Feb. 13 and passed the House on March 12.</td>
</tr>
<tr>
<td>11. SB 17, removing funds unrelated to court operation from docket fee.</td>
<td>Passed the Senate Feb. 14, but only after reinstating all funds, but with additional requirement that each fund go through appropriations committee process. Referred to House Judiciary Committee.</td>
</tr>
<tr>
<td>12. SB 139, loser pays attorney fees.</td>
<td>KBA opposed in Senate Judiciary Committee. On Feb. 12 the committee voted to table the bill, dead for this session.</td>
</tr>
<tr>
<td>13. HCR 5008, replacing Supreme Court Nominating Commission with Senate confirmation of Supreme Court justices.</td>
<td>KBA Past President Rich Hayse and Secretary-Treasurer Tom Wright testified against resolution in House Federal and State Affairs Committee on Feb. 12, no further action by the committee, but since it is exempt from deadlines, bill could emerge at any time.</td>
</tr>
</tbody>
</table>
Candidates for Kansas Bar Association Officers Positions

President:
Linda S. Parks, Wichita

Vice President:
Timothy M. O’Brien, Overland Park

President-elect:
Ernest C. Ballweg, Overland Park
Thomas E. Wright, Topeka

Secretary/Treasurer:
Hon. Benjamin B. Burgess, Wichita
H. David Starkey, Colby

KBA Delegate to the ABA House of Delegates:
Sara S. Beezley, Girard

Candidates for Kansas Bar Association Board of Governors

District One:
Kip A. Kubin, Kansas City, Mo.

District Seven:
Laura L. Ice, Wichita

District Two:
Edward G. Collister Jr., Lawrence
Paul T. Davis, Lawrence

District Nine:
Hon. Kim R. Schroeder, Hugoton

District Eleven:
Melissa A. Taylor Standridge, Kansas City, Kan.
Hon. Benjamin L. Burgess, Wichita, is a district judge for the 18th Judicial District, a position he was elected to in 2002. He was sworn in on Jan. 10, 2003.


He received his B.A. from Kansas Wesleyan University, Salina, and his J.D. from Washburn University School of Law. He is admitted to practice law in the U.S. Court of Appeals for the 10th Circuit and the U.S. District Court for the District of Kansas. He became a member of the KBA in 1972.

Burgess served as District Seven representative on the KBA Board of Governors, 1998-2004. He served a number of years on the KBA Bench-Bar Committee and as chair, 2003-2006, and previously served on the Professional Ethics Advisory and Mentoring committees. He is a former president of the Wichita Bar Association, 1997-1998.

Thomas E. Wright is a partner in the Topeka law firm of Wright, Henson, Clark, Hutton, Mudrick & Gragson LLP. Wright was on the KBA Board of Governors, 1998-2005, and currently serves as the KBA secretary-treasurer. From 1987-1989 he chaired the KBA Legislative Committee and the Committee on Prevention of Legal Malpractice. He received the KBA Outstanding Service Award in 1989 and the Topeka Bar Association’s Warren W. Shaw Distinguished Service Award in 2003.

Wright chaired the Topeka-Shawnee County Consolidation Commission in 2005 and the Governor’s Gaming Committee in 2003. He was president of the Sam Crow American Inns of Court, 2004-2005.

While serving on the Kansas Supreme Court Nominating Commission, 1995-2003, the commission presented two governors with the majority of the current Kansas Appellate Courts members.

Wright has taught at Washburn University School of Law, 2001-present, and at Loyola Law School in Chicago, 2005, as part of the National Institute for Trial Advocacy. In the early 1980s he also served as an adjunct professor at Washburn in the Trial Techniques program.

He was a member and chairman of the Washburn University Board of Regents, 1986-1988, and is a current member of the American College of Trial Lawyers, Kansas Association of Defense Counsel, American Bar Association, and Kansas Bar Foundation.
Edward G. Collister Jr. is a partner with the firm of Collister & Kampschroeder, Lawrence. Originally from Long Island, N.Y., he received his B.A. from the University of Kansas in 1961 and his LL.B from the University’s law school in 1964. He was admitted to the practice of law in Kansas that same year.

Collister practices in the areas of real estate, zoning, planning, and land use; and civil, commercial, and criminal litigation.

Collister has been an active member of the Kansas Bar Association for his entire legal career. He currently serves on the Unauthorized Practice of Law Task Force and the Legislative Committee, chair 2001-2003.

He served on the KBA Board of Governors as District Two representative, 1997-2003. He also served on the Judicial Resources Task Force and was president of the Criminal Law Section.

Collister is a member of the Douglas County Bar Association, where he served as president from 1981-1982; Hugh Means Inn of Court; Association of Judicial Disciplinary Counsel; and the National Association of Criminal Defense Lawyers.

He served as a Kansas assistant attorney general, 1968-1972, and on the Kansas Commission on Judicial Qualifications.

Starkey received his B.A., cum laude, from Kansas State University in 1969 and his J.D. from Washburn University School of Law in 1975. At Washburn Law he served on the Board of Editors, Washburn Law Journal. He served in the U.S. Army, 1969-1972.

He is past president of the Kansas Bar Foundation and a member of the Kansas Lawyers Assistance Commission, Kansas School Attorneys Association, Kansas Association of Defense Counsel, and Association of Defense Trial Attorneys. He has served on many committees and task forces of the Kansas Bar Association.

During his legal career in Colby, he served as Thomas County attorney, president of the Colby Area Chamber of Commerce, member of the Colby Board of Zoning Appeals, Colby-Thomas County Planning Commission, and city council. He also served as city attorney and for more than 27 years was legal counsel to Colby Community College.

H. David Starkey is chief legal counsel for the Kansas Department of Agriculture. He was engaged in the private practice of law for 32 years as a member of Starkey & Gatz LLP, Colby.

His private practice included a broad range of litigation experience together with an office practice involving probate, commercial transactions, business organizations, real estate, and estate planning.

Paul T. Davis is a partner with the law firm of Skepnek Fagan Meyer & Davis P.A., Lawrence. He is serving his third term in the Kansas House as a Representative for the 46th District. Prior to serving with the Kansas Legislature, Davis was the legislative and ethics counsel for the Kansas Bar Association. He also previously served as assistant director for Government Affairs for former Kansas Insurance Commissioner Kathleen Sebelius.

Davis holds a B.A. in political science from the University of Kansas and a J.D. from the Washburn University School of Law. He is active in the Lawrence community, having served on the board of directors of the Health Care Access Clinic and the Arc of Douglas County and the City of Lawrence Housing Trust Fund Advisory Board.

Davis serves as president of the KBA Young Lawyers Section. He also serves as chair of the American Bar Association (ABA) Young Lawyers Division’s Family Law Committee. Davis previously was a member of the ABA Special Committee on Judicial Funding and has been a member of the ABA Young Lawyers Division Council.
Linda S. Parks, Wichita, is a managing partner with Hite, Fanning & Honeyman LLP. She has a range of experience with business transaction and commercial litigation. She earned her B.A., summa cum laude, in political science from Washburn University in 1979 and her J.D., cum laude, from Washburn University School of Law in 1983, where she was a staff member of the Washburn Law Journal.

Parks is a member of the Kansas and Wichita (WBA) bar associations and the Kansas Women Attorneys Association. With the KBA, she currently serves on the Raising the Bar and Law Related Education committees and the Ethics Grievance Panel. She is a Silver Fellow with the Kansas Bar Foundation and served for five years as the KBA’s delegate to the American Bar Association’s House of Delegates. She is currently serving as president-elect of the KBA and serves on its Executive Committee.

She has been a member of the ABA since 1983. As the KBA delegate to the ABA, she was on the Commission on Mental and Physical Disability Law, State Membership Chair, Select Committee of the House of Delegates, Minority Caucus, and National Caucus of State Bar Associations to the ABA. Parks is a Fellow of the American Bar Foundation, and she also serves on the board of the National Conference of Womens Bar Associations.

She has also served as a board member of Kansas Lawyer Services Corp. With the WBA, she serves on the Ethics Committee. Parks is also a founding member and first president of the Kansas Women Attorneys Association.

Parks has been active with numerous charitable and civic organizations. She currently serves on the board of the Wichita YWCA and Wichita Greyhound Charities Inc.

Timothy M. O’Brien is a partner in the Kansas City, Mo., office of Shook, Hardy & Bacon LLP. He practiced at the Logan and Martin firm in Overland Park until the firms merged in 1985. Previously he was a law clerk for Hon. Earl E. O’Connor. He is a 1980 graduate of the University of Kansas and earned his J.D. from the University of Kansas School of Law in 1983.

O’Brien has long been interested in the diversity area. In 2000, he co-founded and served as chair of Shook, Hardy & Bacon’s Diversity Committee. Through recruiting, training, retention, and other awareness initiatives, the committee’s efforts were nationally recognized when the firm was twice awarded the Thomas L. Sager Award by the Minority Corporate Counsel Association.

He is co-author of the Employee Retirement Income Security Act chapter of the second edition of the KBA’s “Kansas Employment Law Handbook.”

He is a past chairman of the Board of Friends of Johnson County Developmental Supports, a 501(c)(3) organization for the developmentally disabled.

He is also active in his church and his children’s school and sports endeavors.

Sara S. Beezley has been a solo practitioner in Girard since 1983. She graduated with high honors from Southern Methodist University, Dallas, with a B.A. in political science and economics in 1976. She earned her juris doctorate from Duke University in 1979 and was admitted to practice law in Kansas.

(continued on next page)
sas at that time. She is a member of the Kansas, American, and Crawford County bar associations; Kansas Trial Lawyers Association; and Kansas Association of Criminal Defense Lawyers. Beezley previously served on the KBA Board of Governors and held the offices of secretary-treasurer, vice-president, president-elect, and president. She is currently the KBA delegate to the ABA House of Delegates. Beezley also serves on the KBA Nominating Committee, Ethics Grievance Panel, and Fee Dispute Resolution Committee. She is also a trustee for the Kansas Bar Foundation and serves on the Raising the Bar Committee. Beezley is a member of the Commission on Judicial Performance and of the Family Law Advisory Committee to the Kansas Judicial Council. In 2006 she was appointed chairperson for the Kansas Board for Discipline of Attorneys. She is also a member of the 11th Judicial District Nominating Committee.

**DISTRICT ONE**

Kip A. Kubin, Kansas City, Mo., is a senior managing member in the law firm of Bottaro, Morefield & Kubin L.C. He has built a successful practice primarily in the areas of workers’ compensation, employment, Native American, administrative, and personal injury law.

Kubin has successfully represented clients through all phases of litigation involving jury and court trials on both the state and federal levels in Kansas and Missouri. He has argued cases before the appellate courts in Missouri and Kansas as well as in the 10th Circuit Court of Appeals. He has also handled cases in the administrative courts of Kansas and Missouri, the Bureau of Indian Affairs, the National Indian Gaming Commission, and the NCAA.

Kubin completed his bachelor’s degree at the University of Kansas in 1980. He earned his juris doctorate from the University of Kansas School of Law in 1983.

He has been an active member of the Kansas Bar Association since 1983. He has served on the KBA Bench-Bar Committee and has been a member of the KBA Nominating Committee since 1995. He has been actively involved with the National Association of Bar Presidents and has served on the Kansas Workers’ Compensation Advisory Board.

He is a member of the Johnson County Bar Association, where he served as president from 1993 to 1994.

Kubin speaks frequently at seminars and continuing legal education conferences. As a result of his experience and abilities, he has been selected for the past seven years by his peers as one of the “Best Lawyers in America” as well as being named by Kansas City Magazine as one of the 100 Best Lawyers in Kansas City.

**DISTRICT SEVEN**

Laura L. Ice, Wichita, is deputy general counsel at Cessna Finance Corporation (CFC) in Wichita. Prior to joining CFC, she was in private practice in Wichita for 13 years with Adams Jones as an associate and then a shareholder in the firm. She is a 1984 graduate of Washburn University School of Law, a 1980 graduate of the University of Kansas, and a fourth generation Kansas lawyer.

Ice has been active with the Kansas and Wichita bar associations throughout her career. For the KBA, she served two terms as secretary-treasurer, 2000-2004, and is completing her first term on the KBA Board of Governors as a representative of District Seven. She served many years on the KBA Continuing Legal Education Committee and has chaired its Long-Range Planning and Annual Meeting subcommittees. She was awarded an Outstanding Service Award from the KBA in 2002 and is a Gold Fellow in the Kansas Bar Foundation. She served on the Wichita Bar Association Board of Governors as vice president and president-elect and is currently completing her term as president. She also chaired several WBA committees and received the WBA President’s Award in 1999.

Ice has also been very active in the Kansas and Wichita women attorneys associations. She served as chair, 2002, and program chair, 1997 and 2004, for the KWAA Annual Conferences. She was the 2004 recipient of the WWAA Louis Mattox Attorney of Achievement Award. She also served on the Washburn University School of Law Board of Governors from 1999-2005.

**DISTRICT NINE**

Hon. Kim R. Schroeder, Hugoton, is a district judge for the 26th District in southwest Kansas, a position he has held since January 1999. He has served as KBA Board of Governors District Nine representative since 2004 and serves as the Board liaison to the Bench-Bar Committee.

He received his undergraduate degree from Washburn University in 1979 and his J.D. from Washburn University School of Law in 1982.

Prior to becoming a district court judge, he was a partner in the law firm of Brollier, Wolf & Schroeder, Hugoton, as a general practitioner. He served on the former KBA Professional Ethics and Grievance Committee from its inception through January 1999.
Melissa A. Taylor Standridge currently serves as chambers counsel for the Hon. David J. Waxse, U.S. Magistrate Judge for the District of Kansas. Prior to working for the federal judiciary, she was an associate in the Shook, Hardy & Bacon LLP Labor and Employment practice group where she litigated all types of employment matters. While at Shook, she served as chairperson of the firm’s Diversity Committee and as a member of the Search and Pro Bono committees.

Taylor Standridge became a member of the Kansas Bar Association in 1995 and has been an active KBA member since. She has made numerous CLE presentations to Kansas attorneys on behalf of the bar association and presently is the KBA Board of Governors representative for District 11. In addition to her position on the Board, Taylor Standridge has served as chair of the KBA Diversity Committee and was one of 10 original committee members charged with developing a long-term plan to address diversity issues facing the bar association. As part of this plan, she developed and implemented the Kansas Student Legal Internship program and the Cultivating Lawyers in Kansas program in Wyandotte County, the goals of which are to provide experiences within which Kansas City, Kan., minority students can learn about the legal system; be exposed to a healthy, productive work environment; and be placed in daily contact with lawyers, judges, and other positive role models.

She is a member of the Earl E. O’Connor Inn of Court (Wyandotte and Johnson counties) and presently serves as co-chair of the Mentoring Committee.

Taylor Standridge received her B.S. in business administration in 1984 from the University of Kansas. She earned her J.D., with distinction, in 1993 from the University of Missouri-Kansas City School of Law, where she was a member of Order of the Bench and Robe, Order of the Barristers, and editor in chief of the *UMKC Law Review*. From 1993-1995 she served as chambers counsel for the Hon. Elmo B. Hunter in the U.S. District Court for the Western District of Missouri.
The Casemaker Explosion!

By René Eichem, assistant executive director

B y now I trust that most of you have used — or at least heard about — Casemaker, the KBA’s new members-only online legal research service. Named as a finalist for Favorite Legal Research Tool in the United States by Technolawyer.com, Casemaker provides affordable legal information to government agencies, law firms, law schools, judges, and lawyers across the country.

Casemaker has significantly lowered the cost of legal research and has leveled the playing field for solo practitioners and small law firms. These individuals now have access to the same types of online legal research that previously had been affordable only to large law firms. And the best part is that KBA members are able to conduct legal research with absolutely no additional fees! As a KBA member, you will never be charged for using Casemaker, regardless of the amount of time you are online.

Currently, more than half of the state bar associations in the United States are members of the Casemaker Consortium; what this means is that those states that are not part of the consortium do not have access to Casemaker, nor can they or their members purchase subscriptions to Casemaker. However, KBA members (and members of other consortium state bar associations) have FREE and unlimited access to case law for all 50 states, as well as federal and national databases!

Casemaker offers significantly more state appellate case law for the past 50 years than any other U.S. legal research library (with the exception of LexisNexis and Westlaw, whom Casemaker equals). Casemaker’s enhanced federal libraries include Federal Appellate decisional law, which has decisions from the U.S. Supreme Court beginning with its inception. Most U.S. Circuit Court libraries will include decisions post-1949.

Free Casemaker CLE seminars

The KBA has been conducting complimentary Casemaker CLE seminars throughout the state; to register for an upcoming seminar, visit www.ksbar.org. Each class has been approved for 1.0 hour of CLE credit and is open to members and nonmembers alike.

A session titled “The Casemaker Explosion – Version II” will be held at the KBA Annual Meeting in Wichita on Friday, June 9, immediately following the General Session. For more information about or to register for the KBA Annual Meeting, please see the center spread in this issue of the Journal.

Casemaker Tips and Tricks

Every issue of the ejournal includes a “Casemaker Tip of the Week.” These tips range from how to print directly from Casemaker to how to Shepardize a case. To view all previous tips, visit www.ksbar.org/casemaker/tips.

If you do not currently receive the ejournal or you have previously opted out of receiving it and would like to resubscribe, contact Bar Services at (785) 234-5696 or at info@ksbar.org.

The Future of Casemaker

We are always adding to and enhancing the Kansas Casemaker library. “Books” that are in the process of being added to our library include:

1. Kansas Reporter Citation and Pagination,
2. Kansas Administrative Code,
3. Journal archives from 1982 to present,
4. Worker’s Compensation verdict/settlement reporter,
5. Ethics Opinions,
6. Ability to search case law and statutes for all 50 states simultaneously,
7. Ability to search multi-books within each state library concurrently, and
8. Much more!

How to Access Casemaker

To access Casemaker, you must be a member of the Kansas Bar Association. Membership categories include law school students, paralegals, lawyers, and judges. Enter Casemaker by going to www.ksbar.org/members/casemaker. You will be prompted to enter your Username and Password; your Username is the e-mail address you have on file with the KBA and your Password is your KBA ID number (not your Supreme Court number).

Starting with the March 2007 issue of the Journal of the Kansas Bar Association, your KBA ID number can be found on the mailing label. If you are unsure which e-mail address you have on file with the KBA or what your KBA ID number is, please contact Bar Services at (785) 234-5696 or at info@ksbar.org.

Casemaker Support

If you have questions or need assistance using Casemaker, please don’t hesitate to contact me at (785) 234-5696 or at reichem@ksbar.org. And don’t forget the Help feature that is available on every page in Casemaker, as well as our helpful FAQ page and Tips of the Week page on our Web site at www.ksbar.org/casemaker.
Long before the mandatory CLE there was a concept that attorneys took CLE to learn something. To be better attorneys. To help their clients. And in the universe of CLE, there is probably no continuing legal education topic more dreadful than tax and estate issues. Or, arguably, more important.

Anyway, a long time ago, in a galaxy far, far away, my dad was determined to get his share of CLE. The year was 1972. And the presenter was one Jim Logan. He was the former KU Dean and knew a lot about estate and tax issues, and someone at the public television station in Topeka thought he needed an audience. Logan stood in front of the camera, stiff as a frozen corpse, and waxed and waned on estate tax issues. "Must see TV" this was NOT. The Dean was sandwiched between Jacques Cousteau "the early years" and the fall Public TV fundraising drive. Maybe one or two people on the entire planet dared to watch this stuff. And one was my dad.

Now dad had this figured out. He wouldn’t dare burden the main television with this programming. This show ran on Saturday afternoons. So he put it on the basement television. In our home, this was no elaborate den. It was a "combat zone" where my parents tossed the kids during bridge club and anytime anyone of importance came over. This was the dungeon where three sons would engage in fighting, kicking, and screaming. My older brother, Tim, would practice his wrestling moves, build bombs from leftover firecrackers, and have poker tournaments. Dad knew all this, of course, which is why he taped it. But this was long before the VCR, so he taped it with an audio tape, using pillows around the television to protect the audio quality. It was a crude production. It was like attempting to record Mozart in the New York subway.

The three boys cared little about any of this. But what happened next brought religion to our world. On our first huge road trip, probably to Colorado, dad, without warning, popped in one of his treasured tapes. He played the tapes throughout the car. With all due respects to Jim Logan, this made Chinese Water torture like a day at the Ritz Carlton. The most horrible punishment on the planet. Nothing you could do would drown out the drone.

We endured this torture on Highway 56 on the way to Wichita, along I-70 east to Topeka, and west to Denver. We heard about spillover trusts, blended trusts, generation skipping trusts and trusts that you create when you are on your death bed. Which is where we thought we were. There was nothing we could do to insulate our ears. There was no iPod, no Walkman, no headphones. It was anguish that the Geneva Convention outlawed in the early 1960s. Sometimes over the background noise you could make out boxing matches, spitball fights, and other teenage battles. When it was over, we could have drafted a generation skipping trust between gym and algebra in high school.

And so earlier this month I went snooping in my parents home. And there I found the treasure trove of tapes. My hand shook as I held it closely, not knowing whether to burn it or frame it.

In writing this column, Judge Logan told me that his presentation actually earned a national award for CLE. Three boys named Keenan obviously had no vote in the matter.

About the Author

Matthew Keenan grew up in Great Bend and attended the University of Kansas, where he received his B.A. in 1981 and his J.D. in 1984. For the last 21 years, Keenan has practiced with Shook, Hardy & Bacon LLP. He may be reached at mkeenan@shb.com.
Contributing to Delinquency:
Thoughts on Starting Law School at age 19

By Guillermo Gabriel Zorogastua, University of Kansas School of Law

I began law school at age 19, and I will graduate at 22. My age had never before been an issue. Despite having started my undergraduate education at 16, I was no different from my peers. If anything, the few administrators who knew about my age considered it an asset, as though I was making the most of my time.

Law school is different. When waiting in line for a roller coaster, there is almost always a sign that reads, “You must be THIS tall to ride the roller coaster.” Law school seemed to be headed the same way. Having discussed my age with the director of admissions of a law school, she noted the admissions committee might not think I was mature enough for the rigors of the curriculum. I was tall enough but maybe not old enough. I wondered how to approach this issue. After all, my age had never been a problem before.

My solution: I wrote my personal statement about maturity and about the value a younger law student could bring to the firm. The firm welcomed this.

One summer, I interviewed with a New York and a San Francisco firm for second-year summer clerkships. An attorney from the New York firm looked at my resume and, horrified, scolded me for including my age on my resume. First of all, he said it was illegal. The specific line, if I remember correctly, was “Youngest first-year student at age 19.”

I then interviewed with a New York and a San Francisco firm for second-year summer clerkships. An attorney from the New York firm looked at my resume and, horrified, scolded me for including my age on my resume. First of all, he said it was illegal. Second, he said I was probably too immature for the practice of law anyway. I still think it funny that he developed this “illegal and immature” perspective of me after having looked at my resume for a few seconds and after exchanging no more than seven words with me.

In contrast, an attorney from the San Francisco firm seemed impressed. He was excited to meet someone so “young, diverse, and unique” who was so close to entering the practice of law. He essentially considered my age an asset — an accomplishment in itself. He said I would make a great addition to the firm.

Don’t get me wrong — I complain neither about my law school experience nor about my age. If anything, my age has added an interesting twist to my legal education, one I have fondly welcomed.

For example, a professor still jokes that he remembers my mother during the KU Law admitted students open house. She felt the session might help her understand what to expect.

The event was intended for nontraditional students or spouses of law students. I was the only student whose mother had attended. My professor — the presenter at the event — joked with my mother. We laughed at the misunderstanding. Already the youngest new student, here I was also the only new student sending his mother to orientation events.

Summer clerkships also posed an interesting, though fun, dilemma. At first, I had decided not to discuss my age because many of my peers and one administrator had mentioned to me that I should not do so. The issue arose at social events — I could not drink, and some of the attorneys began to ask why. I made some polite excuse, but what was I thinking? It could not be good for the firm to contribute to the delinquency of a minor.

I write this essay to suggest a new category of diversity. When the legal profession refers to age as a diversity matter, it generally refers to older attorneys, not younger. This ignores the unique experience younger law students face and unduly narrows the definition of diversity.

I am not alone in starting law school early. Every year, a few students start law school at ages younger than 22. The University of Miami School of Law and the University of Virginia School of Law report at least one 18-year-old in their 2006 first-year classes. Miami has even had a 14-year-old first-year student. Doogie Howser, J.D., graduated too young to sit for the bar exam.

Still, one should not take the implications of this unique experience to the extreme. Doing so encourages misconceptions. Many equate youth with immaturity. However, not every student who starts law school younger than 22 is “immature.” This is the case although students who start law school at 19 — or 14, for that matter — have not lived as long as their peers and may not have accumulated as much life experience. In other words, younger law students are simply a little younger.

About the Author

Guillermo Gabriel Zorogastua received his B.A. in political science and B.S. in criminal justice from Wichita State University. Upon graduation, he plans to work in the business litigation department of a law firm.

FOOTNOTES:
1. How many future lawyers first taste advocacy arguing against the seemingly cruel discrimination of amusement park rides?
2. To my knowledge, none of my law school applications said, anywhere, “You must be THIS old to be a law student.”
3. No — I did not write my personal statement in crayon.
4. It’s a little cheesy; I know. I simply wanted to market myself to these firms as unique.
5. He said he is not allowed to consider my age during the hiring process.
6. Yes, he said this — immediately after telling me he is not allowed to consider my age during the hiring process.
7. I received mixed messages.
8. This occurred before I decided to prominently display my age on my resume.
12. For those unfamiliar with the TV series, Douglas “Doogie” Howser was a 16-year-old medical doctor.
13. Supra note 11.
2007 Outstanding Speakers Recognition

The Kansas Bar Association would like to extend a special thank you to and recognition of the following individuals who gave so generously of their time and expertise in speaking at our Continuing Legal Education seminars for January through March 2007. Your commitment and invaluable contribution is truly appreciated.

Sonya Allen, Office of State Bank Commissioner, Topeka
Susan B. Andrews, Kansas Department of Health & Environment, Topeka
Jennifer Lynne Arnett, Wallace Saunders Austin Brown & Enochs Chtd., Overland Park
Gary L. Ayers, Foulston Siefkin LLP, Wichita
Terri Bezek, Kansas Court of Appeals, Topeka
E. Lou Bjorgaard Probasco, Law Firm of E. Lou Bjorgaard Probasco, Topeka
India N. Boulton, Sprint Nextel Corp., Overland Park
Karen Braman, Kansas Health Policy Authority, Topeka
Melanie J. Brantham, Brantham Law Firm, Overland Park
Bernard E. Brown, The Brown Law Firm, Fairway
David J. Brown, The Law Offices of David J. Brown L.C., Lawrence
Hon. Michael B. Buser, Kansas Court of Appeals, Topeka
Theresa M. Bush, Kansas Attorney General's Office, Topeka
Hon. Brenda Cameron, Johnson County District Court, Olathe
Ingrid Campbell, U.S. District Court, District of Kansas, Kansas City, Kan.
Frank Carella, Office of State Bank Commissioner, Topeka
Kevin J. Cook, Cook & Fisher LLP, Topeka
Gerald L. “Jerry” Cooley, Gilliland & Hayes PA, Lawrence
Christopher V. Cotton, Shook, Hardy & Bacon LLP, Kansas City, Mo.
Joseph Custer, University of Kansas Wheat Law Library, Lawrence
S. Lucky DeFries, Coffman, DeFries & Nothern PA, Topeka
Hon. Joseph Dickinson, 9th Judicial District, Harvey County, Newton
Martin B. Dickinson, University of Kansas School of Law, Lawrence
Emily Anne Donaldson, Stevens & Brand LLP, Lawrence
Holly A. Dyer, Foulston Siefkin LLP, Wichita
Jeffrey L. Ellis, Lathrop & Gage L.C., Overland Park
Peter J. Enko, Blackwell Sanders Peper Martin LLP, Kansas City Mo.
Mark K. Fendler, Polsinelli Shalton Flanigan Suelthaus P.C., St. Louis
Kimberly K. Gibbens, Blackwell Sanders Peper Martin LLP, Kansas City, Mo.
Philip S. Goldberg, Shook, Hardy & Bacon LLP, Kansas City, Mo.
Steven W. Graber, Steven W. Graber P.A., Manhattan
Dr. Peter Graham, Acumen Assessments, Lawrence
David Harger, Bremyer & Wise LLC, McPherson
Marilyn M. Harp, Kansas Legal Services, Topeka
Jerry D. Hawkins, Hite Fanning & Honeyman LLP, Wichita
Lewis A. “Pete” Heaven, Lathrop & Gage L.C., Overland Park
Keith R. Henry, Weary Davis L.C., Junction City
Robert E. Hiatt, Kansas Department of Commerce, Topeka
Hon. Stephen A. Hilgers, McPherson County District Court, McPherson
Robert R. Hiller Jr., Kansas Health Policy Authority, Topeka
Clarence D. “Clancy” Holeman, Riley County, Manhattan
Leslie F. Hulnick, Hulnick Law Offices P.A., Wichita
Troy V. Huser, Huser Law Offices P.A., Manhattan
Donald W. Hymer Jr., Johnson County Courthouse, Olathe
John D. Jurcyk, McNary, Van Cleave & Phillips PA, Roeland Park
Kevin C. Koc, Employee Rights Law Firm, Kansas City, Mo.
Eric G. Kraft, Duggan, Shadwick, Doerr & Kurlbaum P.C., Overland Park
Kip A. Kubin, Bottaro, Morefield & Kubin L.C., Kansas City, Mo.
L.J. Leatherman, Palmer Leatherman & White LLP, Topeka
Angela G. McGuire, H&R Block Inc., Overland Park
Jack D. McInnes, Slagle, Bernard & Gorman, Kansas City, Mo.
Kyle J. Mead, Lawyers Title of Topeka Inc., Topeka
Michael W. “Mike” Merriam, Attorney at Law, Topeka
Michelle L. Miller, Alderson, Alderson, Weiler, Conklin, Burghart & Crow L.C., Topeka
Jason J. Montgomery, McAnany, Van Cleave & Phillips PA, Roeland Park
Tish S. Morrical, Hampton & Royce L.C., Salina
Paul Morrison, Kansas Attorney General’s Office, Topeka
Edward J. Nazar, Redmond & Nazar LLP, Wichita
Scott Nehrbass, Foulston Siefkin LLP, Overland Park
Paige A. Nichols, Attorney at Law, Lawrence
K. Kirk Nystrom, Topeka
Maurice J. O’Sullivan Jr., Lathrop & Gage L.C., Kansas City, Mo.
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Tricia Tenpenny, Bath & Edmonds PA, Overland Park
Holly A. Theobald, Alderson, Alderson, Weiler, Conklin, Burghart & Crow, LLC, Topeka
Hon. Mary B. Thrower, Ottawa County District Court, Minneapolis
Gaye B. Tibbets, Hite Fanning & Honeyman LLP, Wichita
Sharon A. Werner, Sedgwick County District Attorney’s Office, Wichita
Cheryl L. Whelan, Kansas Army National Guard, Topeka
Hon. Meryl D. Wilson, 21st District, Riley County, Manhattan
Hon. William S. Woolley, 18th Judicial District, Sedgwick County, Wichita
Lori E. Worley, Polsinelli Shalton Flanagan Suelthaus P.C., Kansas City, Mo.
Thomas E. Wright, Wright Benson et al. LLP, Topeka
Wyatt M. Wright, Foulston Siefkin LLP, Wichita
Members in the News

CHANGING POSITIONS

Alan C. Anderson has joined Fenix Resources LLC, Lawrence.
Donna Bohn and Ipek Candan Snyder have been elected as members of Hinkle Elkouri Law Firm LLC and Mitchell L. Herren has been named the co-managing director.
Thomas R. Buchanan has been re-elected as executive vice president and Brian J. Nieswanger has been elected as executive director at McDowell, Rice, Smith & Buchanan P.C., Kansas City, Mo. John D. Dunbar has joined the firm.
John R. Bullard has been appointed to fill the remaining term of Labette County Attorney.
Leslie D. Chambers has joined Blackwell Sanders Peper Martin LLP, Kansas City, Mo.
Kristen A. Cooke has joined Baker Sterchi Cowden & Rice LLC, Kansas City, Mo.
David C. DeGreeff and Michael J. Hundley have joined Levy & Craig P.C., Kansas City, Mo.
Gary D. Denning has joined Kennedy Berkley Yarnevich & Williamson Chtd., Salina.
Neely L. Fedde and Blakely Justin Pryor have joined Shook, Hardy & Bacon LLP, Kansas City, Mo.
Laura E. Fleming has joined the Wyandotte County District Attorney’s Office, Kansas City, Kan.
Schyler Dale Goodwin has joined Goodwin Law LLC, Goodland.
Chad M. Griffith has joined Armstrong Teasdale LLP, Kansas City, Mo.
Bryan C. Hitchcock has joined the Sedgwick County District Attorney’s Office, Wichita.
Daniel J. Hubert has joined EMBARQ, Overland Park.
Donna L. Huffman has joined Home Quest Mortgage, Oskaloosa.
Derek Johannsen, Kevin B. Johnson, Alex Judd, and Schalie Anne Johnson have joined Wallace, Saunders, Austin, Brown & Enochs Chtd., Overland Park.
Jeffrey A. Kennard has joined Scharnhorst Ast & Kennard P.C., Kansas City, Mo.
Mark D. Kiefer has joined Davis & Jack LLC, Wichita.
Stuart M. Kowalski has joined Slawson Companies, Wichita.
Alson Martin has joined Lathrop & Gage L.C., Kansas City, Mo.
Paul L. Monty has been chosen as the new district magistrate judge for Washington County.
Stephanie R. Nall has joined Parker & Hay LLP, Topeka.

Susan Olander has been promoted to the position of vice president and general counsel with Federated Rural Electric Insurance Exchange, Lenexa.
Kenzie M. Singleton has joined Sloan, Eisenbarth, Glassman, McEntire & Jarboe LLC, Lawrence.

CHANGING PLACES

Brian R. Barjenbruch has started his own firm, Law Offices of Brian R. Barjenbruch LLC, 201 N. Spring St., Independence, MO 64050-2822.
Justin A. Barrett has started his own firm, Barrett Law Firm P.A., 280 N. Court, Colby, KS 67701.
Bass Family Law Firm has moved to 1310 Carondelet Dr., Ste. 420, Kansas City, MO 64114.
David F. Holmes has moved to 11 E. 2nd Ave., Hutchinson, KS 67501.
Daniel D. Metz and Jennifer R. O’Hare have formed the office of Metz & O’Hare Chtd., 116 S. 4th St., Lincoln, KS 67545.
Kimberly Wolf Renyer has started her own firm, Renyer Law, 430 Main, P.O. Box 527, Quinter, KS 67752.
Sloan, Eisenbarth, Glassman, McEntire & Jarboe LLC has opened a new law office at 842 Louisiana, Lawrence, KS 66044.
The Wichita office of Stinson Morrison Hecker LLP has moved to their new offices at 1625 N. Waterfront Parkway, Ste. 300, Wichita, KS 67206-6602.
Stephen J. Ternes has started his own firm, Ternes Law Firm Chtd., 135 N. Main St., Wichita, KS 67202.

MISCELLANEOUS

Frazier & Steier has changed to Frasier & Johnson LLC, Beloit.
Edgar W. White was named the Pioneer Man of the Year at the annual meeting of the Morton County Historical Society.

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.

“Jest Is For All” by Arnie Glick

“I want to reserve a life estate in the premises — actually I want to reserve nine life estates.”
Spotlighting the Servicemembers Civil Relief Act Through Bradley

By Trip Shawver, Wichita

This is the first in, hopefully, a continuing series of practice pointers shared by members of the Kansas Bar Association’s Family Law Section. We all have special niches and talents that, if shared, can make our overall Bar better.

As a reserve JAG for 28 years, and now retired, I have tried to stay abreast of military issues and divorce. The recent case of Levi Bradley and Amber Bradley (In re Marriage of Bradley, 282 Kan. 1; 137 P.3d 1030) that was decided July 14, 2006, spotlights the fairly new Servicemembers Civil Relief Act (Act) and stays requested pursuant to that Act. The prior Soldiers and Sailors Civil Relief Act had been in effect since 1944, but has been replaced by the Servicemembers Civil Relief Act, 50 U.S.C.A. App. § 501 et seq., which has many provisions relating to servicemembers.

The Bradley case addressed a servicemember’s request for stay pursuant to 50 U.S.C.A. App. § 522. The case is significant in that it sets out the proper procedure for applying for a stay. In that case, the proper procedure was not utilized and, therefore, the court did not have to grant the stay.

We have all haphazardly asked for a continuance or stay, because a client is in the military and, generally, the courts grant the stay. When push comes to shove, however, you need to follow the statute. The statute is succinct. It provides in 50 U.S.C.A. App. § 522(b):

(b) Stay of proceedings

(1) Authority for stay

At any stage before final judgment in a civil action or proceeding in which a servicemember described in subsection (a) is a party, the court may on its own motion and shall, upon application by the servicemember, stay the action for a period of not less than 90 days, if the conditions in paragraph (2) are met.

(2) Conditions for stay

An application for a stay under paragraph (a) shall include the following:

(A) A letter or other communication setting forth facts stating the manner in which current military duty requirements materially affect the servicemember’s ability to appear and stating a date when the servicemember will be available to appear.

(B) A letter or other communication from the servicemember’s commanding officer stating that the servicemember’s current military duty prevents appearance and that military leave is not authorized for the servicemember at the time of the letter.

It appears that if the servicemember, on her or his own, initiates the stay, the court “shall grant a stay.” If the member has an attorney do it for her or him, the jury is still out as to whether it becomes permissive.

Bottom line, if you really need the stay, you really need to do it by the book. The Court, in the Bradley case, made an interesting comment that leaves the door open for other issues. They stated, “We do not reach the question of whether the trial court could not have entered the temporary order changing the custody of Tyler if Levi had complied with § 522(b)(2).” That may be the subject of future issues — stay tuned.

About the Author

Trip Shawver, Wichita, graduated from Kansas State University, 1967, and Washburn University School of Law, 1970. He has been practicing 37 years and focuses on family law, litigation, and mediation. He is the president of the KBA Family Law Section, past chairman of the Alternative Dispute Resolution Section, former Military Law Section, and Legislative Committee. He has been mediating 18 years and serves on the High Conflict Divorce Committee for the Office of Judicial Administration. He is a retired JAG and is recognized by the courts as an expert in military divorce issues.

Editor’s note: This article was first published in the winter edition of the Practice Pointers newsletter, which is published by the KBA Family Law Section.

If you are interested in joining this or any other KBA section, you may register online at www ksbar org or call (785) 234-5696.
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These Kansas Bar Association CLE seminars are being submitted for accreditation to the Kansas CLE Commission. Potential walk-in participants should call the KBA office at (785) 234-5696 prior to the seminar to check for possible schedule changes.

For updates on CLE credit approval, check our Web site at www.ksbar.org/public/cle.shtml.

APRIL

5 Brown Bag Ethics – Confidentiality in the Wide, Wide World of the Internet
       Video replays offered June 25-28
9 The Casemaker Explosion
       (2 sessions: 12:10 & 2:10 p.m.)
       Johnson County Central Resource Library, Overland Park
11 Brown Bag Ethics – Reading Changes to the Kansas Rules of Professional Conduct
       Video replays offered June 25-28
13 Family Law Institute
       Wyndham Garden, Overland Park
13 Litigation All-Stars
       Best Western Airport, Wichita
16 Brown Bag Ethics – Allocation of Authority in Criminal Cases (includes box lunch)
       Prof. David J. Gottlieb, Univ. of Kansas School of Law
       Topeka & Shawnee Co Public Library, Topeka

FEATURED SEMINAR

20 Appellate Practice Symposium
       Kansas Appellate Practice Handbook, Fourth Edition
       (New publication provided by the Kansas Judicial Council as seminar materials)
       Capitol Plaza, Topeka

21 Keeping the “Gold” in the Golden Years – Elder Law Video Replay
       Multiple sites statewide
24 The Casemaker Explosion
       10:10 a.m. – Neosho County Community College, Chanute
       2:10 p.m. – Crawford County Courthouse, Pittsburg
27 Bankruptcy Law: Teaching the Old Dogs Some New Tricks
       Courtyard by Marriott, Wichita

MAY

4 Intellectual Property
       Wyndham Garden, Overland Park
11 Kansas Workers’ Compensation Insurance Law Update
       (co-sponsored by Kansas Insurance Department)
       Marriott, Overland Park
16 Real Estate Foreclosure & Litigation
       Brad Finkeldei
       Telephone CLE
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PACKING HEAT: 
The Personal and Family Protection Act

By Mary D. Feighny

I. Introduction

On July 1, 2006, Kansas joined 46 other states in allowing “law-abiding” citizens to carry concealed handguns, pistols, or revolvers. Attorneys should familiarize themselves with the Personal and Family Protection Act (Act) and be aware of circumstances that may impair their clients’ ability to obtain or retain a license. Attorneys representing business or property owners and employers should be prepared to address clients’ concerns regarding the presence of concealed handguns on their premises.

Kansas law has generally prohibited individuals from carrying handguns “concealed on one’s person,” except in limited situations. During the 10 years immediately preceding enactment of the Act, the Kansas Legislature struggled with balancing the desires of some Kansans to carry concealed handguns for self-defense with the concerns of other citizens and law enforcement that doing so would result in daily shoot-outs at the “O.K. Corral.” In 2006, proponents of carrying concealed handguns won the battle.

Overriding Gov. Kathleen Sebelius’ veto, the Act was approved on March 23, 2006, with an effective date of July 1, 2006, and a target date of Jan. 1, 2007, for issuance of the first licenses. The Kansas attorney general, charged with administering the Act, established committees composed of gun owners, firearm trainers, employers, and business and property owners to address the various facets of the new law. A trailer bill, 2006 H.B. 2118, addressing issues such as mental illness and substance abuse, carrying a concealed handgun while intoxicated, confidentiality of license records, prohibited places for carrying concealed handguns, and sign requirements was approved by the governor on May 24, 2006.

At the time this article went to press, the 2007 Legislature was considering amendments to the Act. (See the Postscript at the end of this article.

(continued on next page)

FOOTNOTES
1. K.S.A. 2006 Supp. 75-7c17(a).
2. K.S.A. 2006 Supp. 75-7c01 et seq.
II. Eligibility for Licensure

An applicant must be at least 21 years old and a U.S. citizen. Applicants apply for licensure at the sheriff’s office in the county where the applicant resides. In addition to being a resident of the county of application, the applicant must also have been a resident of the state for at least six months prior to applying.

III. Disqualifiers for Licensure

A. Permanent disqualifiers

The following disqualifiers will result in the denial of licensure and, if the disqualifying event occurs during the licensure period, revocation of licensure.

K.S.A. 2006 Supp. 75-7c04(a) sets forth the following permanent disqualifiers:

1. A physical infirmity preventing safe handling of a weapon;
2. a felony conviction or diversion for a felony charge in Kansas;
3. unless expunged, adjudication as a juvenile offender for committing an act that would be a felony if committed by an adult;
4. diversion for or conviction of an act in another jurisdiction that would constitute a felony in Kansas;
5. adjudication as a juvenile offender in another jurisdiction for an act that would constitute a felony in Kansas if committed by an adult;
6. court-ordered treatment for mental illness, alcohol, or substance abuse unless the court restored the person’s ability to legally possess a handgun at least five years prior to applying for licensure;
7. adjudication as a disabled person in Kansas or another jurisdiction under laws relating to the appointment of a guardian/conservator unless the person has been restored to capacity for at least three years;
8. dishonorable discharge from the military;
9. contempt of court in a child support proceeding; or
10. subject of a restraining order issued in any of the following circumstances:
   a. Protection from Abuse Act or Protection from Stalking Act;
   b. interlocutory restraining orders in a divorce;
   c. protective orders in a child in need of care proceeding; or
d. restraining order from any other jurisdiction that is entitled to full faith and credit in Kansas.

B. Time limited disqualifiers

The following disqualifiers apply at the time of application only if the event occurred within five years of the date of application for licensure. However, revocation is warranted if the disqualifying event occurs during the licensure period. These time limited disqualifiers are found at K.S.A. 2006 Supp. 75-7c04(a)(5):

1. Diversion for or conviction of a misdemeanor under the Uniform Controlled Substances Act (UCSA), K.S.A. 65-4101 et seq.;
2. unless expunged, adjudication as a juvenile offender of committing an act that would be a misdemeanor under the UCSA;
3. diversion for or conviction of an act in another jurisdiction that would constitute a misdemeanor under the UCSA;
4. adjudication as a juvenile offender in another jurisdiction for an act that would be a misdemeanor under the Uniform Controlled Substances Act if the act had been committed by an adult;
5. two diversions or convictions of Driving Under the Influence (DUI) in Kansas or another jurisdiction;
6. diversion for or conviction of a domestic violence misdemeanor;
7. diversion for or conviction in another jurisdiction of an act that would constitute a domestic violence misdemeanor;
8. adjudication as a juvenile offender in Kansas or another jurisdiction of committing an act that would be a domestic violence misdemeanor if committed by an adult;
9. this disqualifier applies regardless whether the diversion or conviction was expunged.
10. this disqualifier applies regardless whether the diversion or conviction was expunged.
12. the references in K.S.A. 2006 Supp. 75-7c04(a)(13) identify sections in the Child in Need of Care Code that were repealed on Jan. 1, 2007. The subjects of these repealed sections can now be found at K.S.A. 2006 Supp. 38-2242, 38-2243, and 38-2255; however, it is questionable whether restraining orders issued pursuant to these new statutes will disqualify an applicant or constitute grounds for revocation.
14. This disqualifier applies regardless whether the diversion or conviction was expunged. K.S.A. 2006 Supp. 21-4619(i)(15).
15. Supra note 10.
16. This disqualifier applies regardless whether the diversion or conviction was expunged. K.S.A. 2006 Supp. 12-4516(h)(12); K.S.A. 2006 Supp. 21-4619(i)(15). Expungement of a conviction for a federal domestic violence offense may not be a disqualifier. See 18 U.S.C. §§ 921(a)(33)(A) and 922(g)(9). At the time this article went to press, 2007 H.B. 2528 was pending. If enacted, it would make convictions or adjudications for misdemeanor crimes of domestic violence, as defined in federal law, a permanent disqualifier.
9. diversion for or conviction of a violation of the new law prohibiting carrying a concealed weapon while under the influence of alcohol and/or drugs (CUI); 17
10. diversion for or conviction of an act in another jurisdiction that would constitute a CUI; 17
11. adjudication as a juvenile offender in Kansas or any other jurisdiction of committing an act that would constitute a CUI if committed by an adult; 17
12. diversion for or conviction of carrying a concealed firearm without a license in Kansas or another jurisdiction; 18 or
13. adjudication as a juvenile offender in Kansas or another jurisdiction for carrying a concealed firearm without a license.

C. Criminal charges
An applicant who is charged with a crime that would make the applicant ineligible for licensure will not be granted a license until the charges are disposed of. 19 In the event that a licensee is similarly charged, the license can be suspended until final disposition at which time the license may be reinstated if the person is otherwise eligible for licensure. 20

D. Carrying a concealed handgun while under the influence of alcohol/drugs
Carrying a concealed handgun while under the influence of either alcohol or drugs, or both, may, like DUI, result in both criminal prosecution and license revocation. 21 The procedures for testing and law enforcement certification of test results or test refusal are similar to the procedures for DUI found in K.S.A. 2006 Supp. 8-1001 and 8-1567. 22

A licensee is presumed to have given consent to breath or bodily fluid tests to determine the presence of alcohol or drugs. 23 If the concentration of alcohol or drugs is 0.08 or greater, the license is to be revoked for three years. Refusal to submit to testing also results in a three-year revocation.

E. Restraining orders
Restraining orders issued pursuant to the Protection from Abuse or Stalking acts, interlocutory restraining orders in a divorce, restraining orders in child in need of care cases, 24 and similar orders from other jurisdictions that are entitled to full faith and credit not only disqualify an applicant but, if issued during the period of licensure, result also in summary revocation. 25

The sheriff of the county where the restraining order is issued must notify the attorney general “immediately upon receipt of such order.” 26 K.A.R. 16-11-8 fleshes out the process of notification and revocation, in addition to providing an opportunity for a hearing. Stays of revocation orders are not possible. However, reinstatement is available once the restraining order is dissolved, if the person is otherwise eligible.

IV. Weapons Safety and Training
In addition to having a relatively crime-free past, applicants, other than certain retired law enforcement officers, 27 must complete an eight-hour weapons safety and training course approved by the attorney general and taught by similarly approved instructors. 28

V. Fingerprints, Law Enforcement Input, and Application Processing Deadlines
As part of the application process, the sheriff will obtain a set of fingerprints from the applicant and submit them to the attorney general. The attorney general will then submit the fingerprints to the Kansas Bureau of Investigation for a state and federal criminal history records check. 29

To assuage some law enforcement officials, the Legislature provided an opportunity for law enforcement to provide input into the application vetting process where there is evidence that an applicant “poses a significantly greater threat to law enforcement or the public at large than the average citizen.” 30 The report must contain “readily discoverable information” that can be “corroborated through public records.” 31 In such event, the attorney general, for good cause, may deny the application subject to the applicant’s right to request a hearing pursuant to the Kansas Administrative Procedure Act (KAPA). 32

In order to curtail any future attorney general hostile to the “carry concealed” philosophy thereby resulting in overzealous scrutiny of licensure applications, the Legislature included a provision prohibiting the attorney general from taking “subjective or arbitrary actions” or enacting “rules and regulations” that would “encumber the issuing process by placing burdens on the applicant” beyond the requirements in the Act. 33

Moreover, for applications received prior to July 1, 2007, the attorney general must either grant or deny applications within 180 days from the date of receipt and 90 days for applications received after July 1, 2007. 34

Applicants denied licensure will be notified and given an opportunity for a hearing pursuant to the KAPA. 35 Revocations on the basis of one or more disqualifiers are also subject to KAPA notice and an opportunity for a hearing. 36 However, in the event a petition for judicial review is filed pursuant to the Act for Judicial Review and Civil Enforcement of Agency Actions, 37 a court cannot stay a revocation. 39 Venue for all petitions is in Shawnee County. 40
VI. The License and Licensure Records

A license is valid for four years and may be renewed upon completion of a two-hour requalification course and payment of a fee. The license itself can be either a separate card resembling a driver’s license or simply a notation on the person’s Kansas driver’s license or Kansas nondriver’s identification card. Once the attorney general approves the application, the applicant then supplies the appropriate documentation to the Kansas Department of Revenue, which provides the license in whichever form the licensee selects.

When making this choice, licensees should be cognizant that if they choose the notation approach and their driver’s license is taken away for some traffic-related offense, they will no longer have the carry-concealed license.

This is important because a licensee must have the license when in possession of a concealed handgun and, upon demand of a law enforcement officer, must be able to produce it. Failure to do so may result in a minimum suspension of 30 days for a first violation and revocation for a minimum of five years for a second or subsequent violation. It may also subject the person to prosecution for carrying a concealed handgun without a license.

Failure to notify the attorney general within 30 days of a change of address or the loss of a license may subject the licensee to a fine or license suspension. If the license is lost or destroyed, it is invalid.

Unless a license has been suspended or revoked, records relating to licensees and license applicants are not open to public inspection. However, law enforcement agencies in Kansas and other jurisdictions can access a list of licensees.

VII. License Reciprocity for Nonresidents

Carry-concealed licenses issued in other states are valid in Kansas provided the holder is a nonresident and the attorney general has determined that the standards in the issuing jurisdiction are “equal to or greater” than the requirements in the Act. Those jurisdictions are identified on the attorney general Web site at www.ksag.org/concealed_carry.shtml.

VIII. Prohibited Places

Acknowledging the concerns of local governments and business and property owners, the Legislature established a list of places where licensees cannot carry concealed handguns. Those places generally include state and local government buildings, schools, athletic events, public libraries, bars, day care facilities, churches, and temples. Violation of the prohibition is a class A misdemeanor.

Employers can restrict or prohibit employees licensed to carry a concealed handgun from doing so on the employer’s premises or while engaged in employment. Additionally, business owners, and operators and property owners can restrict or prohibit licensees from carrying concealed handguns on their premises provided the premises are posted in accordance with K.A.R. 16-11-7. This regulation and the graphic can be accessed at www.ksag.org/concealed_carry.shtml. Carrying a concealed handgun in violation of these restrictions is a class B misdemeanor.

IX. City Ordinances and County Resolutions

The Act pre-empts local regulation of carrying concealed handguns. City ordinances and county resolutions that regulate, restrict, or prohibit the carrying of concealed handguns do not apply to licensees. However, as cities and counties are employers, they may restrict or prohibit their employees who are licensed from carrying concealed handguns while on the job. Moreover, as cities and counties are property owners, they may, pursuant to K.S.A. 75-7c11(a)(3), restrict or prohibit licensees from carrying concealed handguns on city or county-owned properties that are properly posted.

X. The Attorney General Concealed Carry Unit

Information regarding the Act and the unit is available at www.ksag.org/concealed_carry.shtml. Charles “Chuck” Sexson is the director of the unit and Charles “C.W.” Klebe, assistant attorney general, is the unit’s attorney. Contact information can be found at www.ksag.org/Concealed_Weapon/Unitcontact.PDF.

41. K.S.A. 2006 Supp. 75-7c03(a); 75-7c04(c), 75-7c08; K.A.R. 16-11-6.
42. K.S.A. 2006 Supp. 75-7c03(b).
43. Id.
44. Id.
46. K.S.A. 2006 Supp. 75-7c06(e).
47. K.S.A. 2006 Supp. 75-7c06(f). The licensee can obtain a duplicate license by paying a $15 fee and supplying a notarized statement that the license was lost or destroyed.
48. K.S.A. 2006 Supp. 75-7c06. If the license has been suspended or revoked, the records are subject to inspection pursuant to the Kansas Open Records Act.
49. K.S.A. 2006 Supp. 75-7c03(c).
53. K.S.A. 2006 Supp. 75-7c02(c).
55. K.S.A. 2006 Supp. 75-7c10(b).
56. K.S.A. 2006 Supp. 75-7c11(a)(1). But see 2007 H.B. 2528, which would repeal this provision.
57. K.S.A. 2006 Supp. 75-7c11(a)(2) and (3). But see 2007 H.B. 2528.
61. Id.
XI. Postscript/2007 H.B. 2528 and S.B. 185

At the time this article went to press, two bills were under consideration in legislative committees. The provisions include:


2. The 22 locations identified in K.S.A. 2006 Supp. 75-7c10 where concealed handguns are prohibited would have to be posted before criminal penalties attach. 2007 H.B. 2528, § 5. Currently, there is no posting requirement.

3. 2007 H.B. 2528 repeals the provisions relating to employers and property owners who post signs prohibiting licensees from carrying concealed handguns. Current law makes it a class B misdemeanor to violate such prohibitions. Criminal penalties would attach only to those licensees who enter a “private business” that posts a sign prohibiting carrying a concealed handgun. 2007 S.B. 185 retains the current provisions but adds a posting requirement for employers (www.kslegislature.org/bills/2008/185.pdf).

4. In an attempt to halt some cities from enacting ordinances allowing for prosecution in municipal court for violations of K.S.A. 2006 Supp. 75-7c10 and 75-7c11, the pre-emption provision of K.S.A. 75-7c17 is amended to remove any perceived ambiguity. 2007 H.B. 2528, § 7(a).

About the Author

Mary D. Feighny earned her B.A. in English from the University of Missouri-Kansas City (UMKC) in 1974 and her J.D. from UMKC School of Law in 1981. She worked for the Office of the Special Public Defender in Kansas City, Mo., and was in private practice in Salina and Topeka until she joined the Kansas Attorney General’s Office in 1992 as an assistant attorney general in the Legal Opinions and Government Counsel Division. In that capacity, she is responsible for advising public officials and drafting legal opinions in the areas of municipal law, juvenile law, social welfare, and the courts. She also serves as general counsel for the Kansas Board of Accountancy and the Kansas Board of Emergency Medical Services.
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I. General Subject Matter Jurisdiction

The term “general jurisdiction” has at least two different meanings. In the context of subject matter jurisdiction, general jurisdiction means that the court has subject matter jurisdiction over any kind of case except those cases that are expressly excluded, or cases over which some other court has exclusive jurisdiction.1 “General subject matter jurisdiction” is the opposite of “limited jurisdiction.” The latter term means that the court can hear only those cases that it has been expressly empowered to hear. The Kansas district courts, thus, are courts of general subject matter jurisdiction. The federal district courts, on the other hand, are courts of limited jurisdiction. A Kansas district court would have subject matter jurisdiction over a suit between a citizen of Japan against a citizen of Saudi Arabia concerning a tort committed in Brazil. A federal court would not have subject matter jurisdiction over such a case, however, because federal courts are not empowered to entertain a suit between two aliens that does not arise out of federal law (except for some admiralty claims).

A Kansas district court could not actually entertain such a case, however, unless it also had “personal jurisdiction” over the defendant. That would probably be impossible in the hypothetical case, unless the Saudi Arabian defendant consented to jurisdiction in Kansas, or had very extensive “presence” in Kansas. In other words, the defendant would have to be subject to what we now call “general personal jurisdiction” in Kansas.

II. General Personal Jurisdiction

The term “general personal jurisdiction” is of fairly recent origin. Its usage began with a highly influential article by professors Arthur T. von Mehren and Donald T. Trautman in 1966.2 “General jurisdiction,” in this sense, means personal jurisdiction to entertain a suit against a defendant that does not arise from the defendant’s connection with the forum state. It is contrasted to “specific jurisdiction,” which would support a suit against the defendant only if the cause of action arose from the defendant’s contact with the forum state.

Before the landmark decision in International Shoe v. State of Washington,3 the distinction between what we now call specific and general personal jurisdiction was not part of our general theory of jurisdiction. Under the territorial power theory of jurisdiction reflected in Pennoyer v. Neff,4 personal jurisdiction meant general jurisdiction. Only three bases for personal jurisdiction were possible: consent, domicile, or physical presence. The state of the defendant’s domicile or residence could exercise jurisdiction over him or her for any cause of action. Likewise if the defendant consented to jurisdiction, or if the defendant could be found by a process server (continued on next page)

FOOTNOTES
4. 95 U.S. 714 (1878).
while physically present in the state, he or she could be sued there regardless of where the cause of action arose.

Some special statutes, the nonresident motorist statutes, could provide personal jurisdiction over a nonconsenting nonresident even without personal service in the state for causes of action arising from the operation of a motor vehicle in the state.5 Widespread recognition of the distinction between what we now call general and specific personal jurisdiction really began with International Shoe. There, in attempting to determine the limits on state court jurisdiction imposed by the 14th Amendment’s due process clause, the U.S. Supreme Court adopted the current “minimum contacts” test as a limit on a state court’s ability to subject a defendant to its authority. In the course of the majority opinion, the Court re-examined a great many prior decisions dealing with due process and personal jurisdiction over nonresidents. The opinion organized those older cases into four categories. The distinction between the categories turned on two factors: the extent of the defendant’s contact with the state and the geographical

source of the cause of action. If the defendant had substantial contact with the state and the cause of action arose from that contact, the Court said, jurisdiction has always been upheld. On the other hand, if the defendant had only slight contact with the state and the cause of action did not arise from that contact, jurisdiction has always been denied.

But where the cause of action arose from the defendant’s in-state contact, even if the defendant had only limited contact with the state, jurisdiction had sometimes been upheld and sometimes not. And where the defendant’s contacts with the state were substantial, continuous, and systematic, jurisdiction was sometimes upheld even if the cause of action did not arise from the defendant’s contact with the state. This fourth category is what von Mehren and Trautman used the term “general jurisdiction” to describe.

In analyzing cases falling in these two indefinite categories, the courts were directed to weigh and balance several factors to determine whether the defendant’s contacts satisfied the “minimum” necessary for “specific jurisdiction” or whether they were sufficiently “substantial, systematic, and continuous” to satisfy the constitutional standard for “general jurisdiction.”6

III. Doing Business Statutes

In most of the cases the Supreme Court looked at in framing its decision in International Shoe, the ostensible question the courts were looking at was whether the defendant’s activity in the state constituted “doing business” under statutes designed to permit the exercise of jurisdiction over foreign corporations doing business in the state. These “doing business” statutes were enacted at a time when Pennoyer power theory of jurisdiction prevailed.

Fitting jurisdiction over corporations into that theory, which recognized only consent, domicile, or physical presence as permissible bases for jurisdiction, required the exercise of some legal fiction. If the corporation was chartered by that state, it could be considered a domiciliary, and thus subject to jurisdiction on that basis. If a foreign corporation consented to jurisdiction, then it could be subject to jurisdiction on that basis. If the foreign corporation did not consent, however, the only other permissible basis was physical presence. But a corporation, unlike an individual human, has no physical body. Where can a corporation be physically present? To resolve this problem, state legislatures enacted statutes requiring all foreign corporations “doing business” in the state to formally qualify. As part of the qualification process, the corporation was required to designate some agent within the state who would be authorized to receive service of process on the corporation’s behalf. Some states, including Kansas,7 also required the corporations to consent to jurisdiction based on service of process on some designated public official, usually the secretary of state. The fact that the “consent” thus obtained was not really a product of the corporation’s own decision did not seem to trouble anyone.

A foreign corporation could not avoid jurisdiction by simply refusing or failing to qualify. Other statutes treated the corporation’s activity in “doing business” in the state as manifesting the corporation’s “presence” there. Such statutes permitted the exercise of jurisdiction over such nonqualifying foreign corporations by service in the state on some designated official or agent. Usually these “doing business” statutes did not limit jurisdiction to cases arising from the corporation’s in-state activity.

Our current Kansas statutes authorizing jurisdiction over qualifying corporations8 do not expressly limit jurisdiction to causes of action arising within the state, and the Kansas Supreme Court has now held that they are not so

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5. The nonresident motorist statutes were early instances of specific jurisdiction.
6. In World-Wide Volkswagen v. Woodson, 444 U.S. 286, 292 note 10, (1980), the Supreme Court listed five interests to consider: (1) the burden on the defendant, (2) forum’s interest in adjudicating the case, (3) plaintiff’s interest in obtaining convenient and effective relief, (4) interstate judicial system’s interest in obtaining the most efficient resolution of controversies, and (5) the shared interests of all states in advancing fundamental substantive policies.
8. Id.
limited. Our statute authorizing jurisdiction over nonqualifying corporations expressly states that it is not limited to causes of action that arise within the state. It applies to any cause of action that arose while the corporation was doing business here, i.e. a cause of action that arose while the corporation was “present” in the state. So corporations, domestic or foreign, qualifying or nonqualifying were subject to general personal jurisdiction in Kansas if they were “doing business” here.

There have been many judicial decisions concerning the meaning of “doing business” in these statutes. Precise definition of the term was not possible, but one thing was clear: “doing business” required some systematic, ongoing, business activity by the corporation’s agents in the state. A single transaction was not “doing business,” even if the cause of action arose from that transaction. Moreover, mere solicitation of business for interstate commerce, even if continuous and ongoing, could not be “doing business.” Cases had held that extending a state’s jurisdiction over a foreign corporation in such mere solicitation cases would be a denial of due process of law.

The issue actually argued in the International Shoe case was whether the corporation’s activity in the state of Washington constituted “doing business” under the Washington statute and if so, whether it would be a denial of due process to extend that state’s jurisdiction over a corporation whose activity in the state was solicitation for interstate commerce. The Court’s solution to the problem was to strip away the legal fictions of “consent” and “presence” and to frame a new theory of jurisdiction. The foundation of jurisdiction is not the state’s coercive power, as had previously been believed, but “fundamental fairness.”

To determine whether it is fair for a state to exercise jurisdiction in a given case, a court must look at the interests that are at stake in the issue: the interests of the plaintiff and the defendant, the interest of overall litigational convenience, the interests of the states involved, etc. It would be unfair to subject a defendant to jurisdiction in a state where the defendant had no contact. There had to be at least a “minimum” of contact or it would be a denial of due process. Defining that minimum required the interest balancing referred to above. If the cause of action arose from the contact, a single transaction might be enough, even if that contact was solicitation for interstate commerce. If the cause of action did not arise from the defendant’s in-state contact, however, much more connection between the defendant and the state was required. The Court noted that if the defendant’s contact was substantial, systematic, and continuous, it would not necessarily be a denial of due process to subject that defendant to the state’s jurisdiction even if the cause of action did not arise in the state. The Supreme Court, thus, declared that what

10. K.S.A 17-7307(c).
we now call general personal jurisdiction over nonconsenting nonresidents could be constitutional.12

IV. The Long-Arm Statutes

The somewhat delayed reaction of the states to the International Shoe decision was to enact some new statutes authorizing the exercise of jurisdiction over nonconsenting nonresidents even if they were not found in the state by a process server. These statutes, authorized service of a state court’s process to be made outside the state in certain circumstances. These statutes started appearing in the middle 1950s, nearly 10 years after International Shoe. Our Kansas “long-arm statute” was first adopted in 1963, 18 years after International Shoe. The statute authorized the exercise of specific personal jurisdiction over defendants that might have only a single contact with Kansas in six specifically described types of cases.13 Process could be served on the defendant outside the state in such cases.

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The Kansas statute was still phrased in terms that would be consistent with the older coercive power theory of jurisdiction. It declared that persons who did any of the enumerated acts thereby “submitted” the person; and if the person was an individual, the individual’s personal representative, to jurisdiction for any cause of action arising from the doing of the acts. The basis for jurisdiction was thus described in terms of consent (submission): a fictitious implied consent.

In describing the effect of service outside the state, the statute declared that if such service was made “upon a person domiciled in this state or upon a person who has submitted to the jurisdiction of the courts of this state, it shall have the force and effect of service of process within this state; otherwise it shall have the force and effect of service by publication.”14 The statute thus kept alive the language of the older theory: presence, consent, and domicile were the permissible bases, but the consent was implied from the doing of the acts.

The reference to the distinction between effect of service of process within the state and service of publication meant merely that the service would authorize in personam jurisdiction over domiciliaries or persons who had submitted to jurisdiction, but in any other situation it would allow only in rem jurisdiction over any property the defendant might have within the state. At that time lawyers and judges did not analyze the basis element of jurisdiction and the process of invoking it separately as we do today. The two concepts were mingled. Scarcely anyone believed in 1963 that in personam jurisdiction could be obtained by publication service, but we now know that in personam jurisdiction can constitutionally be obtained that way if no address for the defendant to which mail can be sent is discoverable with reasonable diligence.15

One of the acts that could lead to specific jurisdiction under the original 1963 statute (and still today) was “transaction of any business.” This did not mean the same thing as “doing business” under the older statutes. Ongoing activity was required for “doing business,” but “transaction of business” could be a single act.

The long-arm statute specifically declared, “Nothing declared in this section limits or affects the right to serve any process by any other manner provided by law.”16 Thus, it left unimpaired the right to serve process on foreign corporations under the older “doing business” statutes. The long-arm statute applied to corporations as well as to individuals, so two different methods of serving process on foreign corporations were available in some cases. They could be served out-of-state under the long-arm statute if the case arose from one of the now 11 enumerated acts, or they could be served in the state in accordance with the “doing business” statutes.

Although the long-arm statute was expressly limited to cases of specific jurisdiction, where the cause of action arose from the enumerated act, the “doing business” statutes, as we have seen, were not limited to specific jurisdiction cases. In a proper case, they would permit the exercise of general jurisdiction over the corporation for a cause of action that did not arise within the state. A plaintiff might obtain general jurisdiction over a corporation by service inside the state under the doing business statutes, but such jurisdiction could not be obtained by service of process outside the state under the long-arm statute. This presented an anomaly. If the corporation was subject to general jurisdiction in the state, why should it make any difference how the process was served? The problem was made more difficult than necessary by a line of cases, mostly by Kansas federal courts, which took the position that the Kansas long-arm statute extended jurisdiction to the outer limits of due process, and, accordingly, that the only question in long-arm cases was the constitutional one.17
This “one-step” approach derives from some language in an early Kansas Supreme Court decision. This approach ignores the specific terms of the long-arm statute. The Kansas Supreme Court, in Kluin v. American Suzuki Motor Corp., denounced the “one-step” approach. In the course of the opinion, the court noted that the statute does not extend jurisdiction to the limits of due process. Due process would allow the exercise of general jurisdiction, whereas our long-arm statute is expressly limited to specific jurisdiction cases. What the court in the earlier case meant was simply that the terms of the long-arm statute are to be broadly interpreted, not that those terms were to be ignored.

The Court in the Kluin case noted that general jurisdiction might be available under one of the “doing business” statutes, but not under the long-arm statute. Nevertheless, some courts, focusing on the statement in Kluin that the long-arm statute does not authorize general jurisdiction, took the position that Kansas does not recognize general jurisdiction at all. That position conflicted with the cases that had upheld general jurisdiction under the “doing business” statutes.

To resolve these conflicts and to eliminate the anomaly posed by making the availability of general jurisdiction depend on whether process was served in the state or outside the state, the Kansas Judicial Council recommended a change in the long-arm statute that would expressly authorize general jurisdiction in cases where that would be consistent with the 14th Amendment due process clause. The resulting statute became effective July 1, 2006. As enacted it is somewhat different from the Judicial Council’s version.

K.S.A. 60-308(a)(1) was amended to read: “Service of process may be made on any party outside the state. If upon a person domiciled in this state or upon a person who has submitted to the jurisdiction of the courts of this state, such service shall provide personal jurisdiction over that party; otherwise it shall provide in rem jurisdiction over specifically identified property that person may have in the state.” The italicized portion replaces the following language in the previous section: “it shall have the force and effect of service of process within this state; otherwise it shall have the force and effect of service by publication.” The change was needed to bring the statutory language up to contemporary jurisdictional usage. The older language was that of the “power theory” of Pennoyer, which required personal service in the state for personal jurisdiction over nonconsenting nonresidents. What the statute really meant was that out-of-state service could provide personal jurisdiction over residents and also nonresidents in certain circumstances. The “circumstances” were defined in subsection (b), but the statute retained the older explanation, casting the circumstances in the language of constructive consent. The new statute retains the constructive consent language but eliminates the unnecessary reference to “service within the state.”

Similarly, the older reference to the effect of service on one who had not “submitted” was expressed in terms of “service by publication.” In 1963, hardly anyone would have believed that service by publication could have produced anything but in rem jurisdiction over Kansas-based property in the case of nonresidents. The present language simply eliminates the unnecessary reference to service by publication.

K.S.A. 60-308(b)(b) is now divided into subsections. Subsection (1) retains all of the references to specific acts that can subject a nonresident to specific jurisdiction. Subsection (2) is new and provides as follows: “A person may be considered to have submitted to the jurisdiction of the courts of this state for a cause of action, which did not arise in this state if substantial, continuous and systematic contact with the state is established that would support jurisdiction consistent with the Constitution of the U.S. and of this state.”

Thus, K.S.A. 60-308(b)(1) authorizes specific jurisdiction for purposes of causes of action arising from the enumerated contacts with the state. K.S.A. 60-308(b)(2) authorizes general jurisdiction for causes of action not arising within the state if the defendant has substantial, continuous, and systematic contact with the state.

K.S.A. 60-308(c) preserves the right to serve process in any other manner provided by law, specifically referring to K.S.A. 17-7301 (service on qualifying foreign corporations generally), 17-7307 (service on nonqualifying foreign corporations) and 40-218 (service on foreign insurance companies). The statute as enacted contains an unintended anomaly. It allows for specific jurisdiction over parties whose in-state contact gives rise to one of the causes of action enumerated in 60-308(b)(1). It allows general jurisdiction for causes of action that did not arise in the state if the defendant has substantial, continuous, and systematic contact with the state.

(continued on next page)

continuous, and systematic contact with the state. But what if the defendant has substantial, continuous, and systematic contact and the cause of action arose within the state, but not from one of the enumerated causes? The statute seems to exclude jurisdiction in such a case, but that result would make no sense. This anomaly was not a part of the statute as proposed by the Judicial Council.

Most courts would probably construe the statute to avoid the anomaly if a case like the one last suggested should arise. That is the way courts have treated a similar anomaly in Rules 13(a) and (b) of the Federal Rules of Civil Procedure, which also appears in K.S.A. 60-213(a) and (b). Under Rule 13(a) (compulsory counterclaims), a pleader must plead as a counterclaim any claim that it has against an opposing party that arose out of the same transaction as the opposing party’s claim. There are, however, a few exceptions, where counterclaims arising out of the same transaction are not compulsory. Rule 13(b) (permissive counterclaims) declares that “[a] pleading may state as a counterclaim any claim against an opposing party not arising out of the same transaction,” etc. But what of a claim that does arise out of the same transaction but is not a compulsory counterclaim? A strict reading of the text would indicate that such a claim would neither be compulsory since it falls within one of the exceptions to Rule 13(a), nor would it be permissive, since it does arise out of the same transaction. That result, however, would make no sense, so most courts have ruled that such counterclaims are permissive, despite the language of Rule 13(b).

Following that approach, courts should rule that jurisdiction should be proper over any party that has the constitutionally requisite substantial contact to Kansas, regardless of where the cause of action arose. However, to be safe, the Legislature might consider amending K.S.A. 60-308(b)(2) to read as follows:

A person may be considered to have submitted to the jurisdiction of the courts of this state if substantial, continuous and systematic contact with this state is established that would support jurisdiction consistent with the Constitution of the United States and of this state, whether or not the cause of action arose in this state.

V. Merriman v. Crompton Corp.

On Nov. 9, 2006, the Kansas Supreme Court announced its decision in Merriman v. Crompton Corp. The case was a class action brought against several defendants alleging a conspiracy to fix prices on some chemicals used in the production of automobile tires. The petition sought damages, attorneys’ fees and other relief under the Kansas Restraint of Trade Act. All the defendants were foreign corporations. The alleged price fixing conspiracy was formed out-

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**Access to Justice Grant Applicants Sought**

The Access to Justice Fund is administered by the Kansas Supreme Court and is intended as a source of grant funds for the operating expenses of programs that provide access for persons who would otherwise be unable to gain access to the Kansas civil justice system. Its purpose is to support programs that provide persons, who otherwise may not be able to afford such services, with increased access to legal assistance for pro se litigation, legal counsel for civil and domestic matters, as well as other legal advice and dispute resolution services.

Applications for grant funds will be due May 31. Grant application packets may be requested from the Office of Judicial Administration, 301 W. 10th St., Rm. 337, Topeka, KS 66612. Please direct telephone inquiries to Art Thompson at (785) 291-3748.
side of Kansas. The class representative plaintiff bought two tires in Kansas at a price that was alleged to be inflated due to the price-fixing conspiracy.

Some of the defendant corporations were qualified to do business in Kansas and were served in accordance with K.S.A. 17-7301. Some were not qualified but were nevertheless doing business here, and they were served in accordance with K.S.A. 17-7307(c). Others were served outside the state under K.S.A. 60-308.

The defendants objected to personal jurisdiction on the ground that they lacked sufficient contact with Kansas to be subject to jurisdiction here. The trial court and the Court of Appeals agreed and dismissed the case for lack of jurisdiction. The Court of Appeals opinion ruled that since the cause of action did not arise from any contact with the state, the Kansas long-arm statute did not authorize jurisdiction. Plaintiff argued that K.S.A.17-7301 and 17-7307(c) authorized general jurisdiction, but the Court of Appeals rejected that contention, declaring that Kansas law did not authorize general jurisdiction.

The Kansas Supreme Court granted a petition for review and reversed the Court of Appeals’ decision. In a very thorough opinion by Justice Marla J. Luckert, the Supreme Court unanimously ruled that both K.S.A. 17-7301 and 17-7307(c) do authorize general jurisdiction. The Court then decided that the exercise of general jurisdiction in the case did not offend due process of law. The qualifying defendants had expressly consented to jurisdiction, and so no further examination of the scope of their in-state activity was necessary to satisfy due process. In the case of the non-qualifying defendants, the Court had to look further to determine whether their contacts with the state were sufficiently substantial to satisfy the constitutional standard for general jurisdiction. Quoting Wright and Miller’s “Federal Practice and Procedure,” the Court stated the test as follows:

In order for general jurisdiction to lie, a foreign corporation must have a substantial amount of contacts with the forum state. In assessing contacts with a forum, courts consider (1) whether the corporation solicits business in the state through a local office or agents; (2) whether the corporation sends agents into the state on a regular basis to solicit business; (3) the extent to which the corporation holds itself out as doing business in the state, through advertisements, listings, or bank accounts; and (4) the volume of business conducted in the state by the corporation.25

The Court found that only one of the nonqualifying corporations had sufficient contact to satisfy that standard.

The Court nevertheless upheld specific jurisdiction over the other defendants who were served under the long-arm statute. The Court ruled that price-fixing was a “tortious act” within the meaning of K.S.A. 60-308(b)(2). Although the conspiracy may have been formed outside the state, the tort occurs where the injury is incurred. The injury occurred in Kansas when the plaintiff had to pay an inflated price for the two tires. The tires were not manufactured in Kansas, but they entered Kansas through the stream of commerce, and the Court found that the defendant that manufactured them had sufficiently directed that commerce to Kansas to satisfy even the more restrictive view of the “stream of commerce” theory of purposeful availment.26

Although only that one defendant had contact with Kansas that would satisfy the long-arm statute, the Court ruled that the contact of that defendant in pursuance of the conspiracy could be imputed to the other co-conspirators. The Court found that such exercise of specific jurisdiction was constitutional.

So now, the combination of subsection (b)(2) of the new long-arm statute and the Merriman case, which clarifies the availability of general jurisdiction under the “doing business” statutes make it very clear that Kansas does authorize general personal jurisdiction.

About the Author

Robert C. Casad is the John H. and John M. Kane Professor of Law Emeritus at the University of Kansas, where he taught for more than 37 years, mostly in the areas of civil procedure, federal courts, and conflict of laws. A native Kansan, he holds B.A. and M.A. degrees from the University of Kansas; his J.D. degree from the University of Michigan, and SJ.D. degree from Harvard University.
Supreme Court

Attorney Discipline

IN RE LARRY E. BENGTSON
ORIGINAL PROCEEDING IN DISCIPLINE
DISBARMENT
NO. 06,160 – FEBRUARY 6, 2007

FACTS: Respondent, a private practitioner in Wichita, filed a motion to intervene and oppose a name change petition at the request of Wichita attorney Paul Arabia. The complaints involved an automobile personal injury case, a personal injury and property damage case, post-conviction felony representation, and a sentencing appeal. The panel found violations of KRPCs 1.3 (diligence), 1.4(a) (communication), and 3.2 (expediting litigation). Several mitigating and aggravating factors were present, and the panel recommended a four-year period of conditional supervised probation.

The hearing panel praised respondent for developing a workable, substantial, and detailed plan of probation, providing it to the Disciplinary Administrator’s Office months before the hearing, and putting it into effect prior to the hearing.

HELD: The Supreme Court adopted the panel’s findings of facts and rules violations. However, it modified the sanction. Respondent’s license is suspended for one year effective June 1, 2006; however, the suspension is stayed during a four-year period of conditional supervised probation as recommended by the panel.

IN RE RUSSELL W. HASENBANK
ORIGINAL PROCEEDING IN DISCIPLINE
FOUR-YEAR SUPERVISED PROBATION
NO. 97,218 – FEBRUARY 2, 2007

FACTS: Respondent, previously a judge of the district court in Geary County, entered a guilty plea to a felony offense of presenting a false claim, KSA 21-3904, and a guilty plea to six misdemeanor offenses for official misconduct, KSA 21-3902. In a letter dated Dec. 21, 2006, respondent surrendered his license to practice law pursuant to SCR 217.

HELD: The Supreme Court examined the files of the Disciplinary Administrator’s Office, accepted the surrender, and disbarred respondent effective Dec. 21, 2006.

IN RE STANLEY L. WILES
ORIGINAL PROCEEDING IN DISCIPLINE
INDEFINITE SUSPENSION
NO. 97,221 – FEBRUARY 2, 2007

FACTS: Respondent, a private practitioner in Kansas City, Mo., was admitted to practice in Missouri in 1969 and in Kansas in 1985. He faced a disciplinary hearing based on notices of insufficient funds in his trust account, a complaint arising from his failure to comply with discovery orders and three cases of discipline from Missouri. The panel found violations of KRPCs 1.4(a) (communication), 1.15(a) (safekeeping property), 3.2 (expediting litigation), 3.4(d) (fairness to opposing party), 8.4(c) (misconduct involving deceit or misrepresentation), and 8.4(d) (misconduct prejudicial to the administration of justice). The panel also found five aggravating factors, including three prior disciplinary sanctions in Kansas and Missouri. The panel found intentional misconduct or published censure if it found negligence. He falsely advised the court in an ex parte proceeding that the requested name change would “not hinder, delay, or defraud petitioner’s creditors or defeat other legal obligations.” The petitioner actually had four prior felony convictions for sexual assault crimes and was a fugitive from justice from a Colorado criminal conviction for felony attempted sexual assault on a child, facts known to Arabia who had prepared the petition and documents for respondent’s signature.

At the disciplinary hearing, the deputy disciplinary administrator requested a three-month suspension of respondent’s license if the panel found intentional misconduct or published censure if it found negligence. The panel found violations of KRPCs 3.3(d) (candor to the tribunal – ex parte communication) and 8.4(d) (misconduct prejudicial to the administration of justice) and identified one aggravating factor and five mitigating factors. Based on its finding of negligence, the panel recommended published censure.

HELD: The Court adopted the uncontested findings of fact and conclusions of law as well as the recommended discipline.
Civil

EMINENT DOMAIN AND JURISDICTION
MILLER V. BARTLE ET AL.
DOUGLAS DISTRICT COURT – APPEAL DISMISSED
NO. 95,418 – FEBRUARY 2, 2007

FACTS: The Bartles appeal from a jury award in an eminent domain proceeding initiated by Kansas Department of Transportation for the partial taking of their property for a highway improvement project in Douglas County. The Bartles did not appeal the jury determination of the fair market value of the property taken, but claim on appeal that they have been denied equal protection and due process of law under the U.S. Constitution. They base their claim upon legislation authorizing a payment of 125 percent to those persons whose property was taken to construct the Kansas Speedway in Wyandotte County. The district court rejected both of the Bartles’ constitutional claims.

ISSUES: (1) Eminent Domain Procedures Act (EDPA) and (2) jurisdiction

HELD: Court stated the only issue to be determined in an appeal from a condemnation award is the compensation required by K.S.A. 26-513(e), the fair market value of the property taken. Court held consistent with the plain language of the EDPA, the very nature of an eminent domain proceeding, and the past decisions of the court interpreting the EDPA. The Court concluded like the district court that there was no jurisdiction in the proceeding to address the constitutional or attorney fee claims raised.


FAMILY LEAVE, ERISA, AND STATUTE OF LIMITATIONS
BURNETT V. SOUTHWESTERN BELL TELEPHONE
CERTIFIED QUESTION FROM THE U.S. DISTRICT COURT FOR THE DISTRICT OF KANSAS
NO. 96,793 – FEBRUARY 2, 2007

FACTS: Burnett filed suit in federal court against her former employer, Southwestern Bell, alleging she was wrongfully terminated and thus barred by the two-year statute of limitations. Burnett countered that the proper date of termination was more than two years after she was terminated and thus barred by the three-year period of limitations, which applied to dismiss Burnett’s ERISA claim on the basis that it was brought under § 510 of ERISA. Southwestern Bell moved to dismiss the claim brought under § 510 of ERISA. The court, that the claim involved brought under § 510 of ERISA is based upon a liability created by statute. Thus, the three-year limitation period applies.

ISSUES: (1) ERISA, (2) family leave, and (3) statute of limitations

HELD: Court held, under the facts submitted by the certifying court, that the claim involved brought under § 510 of ERISA is based upon a liability created by statute. Thus, the three-year limitation period applies.

STATUTES: K.S.A. 22-2521, -2522, -2523; and K.S.A. 60-511(1), -512(2); -513(a)(4), -3201 et seq.

GARNISHMENT
LSF FRANCHISE REO I LLC. V.
EMPORIA RESTAURANTS INC. ET AL.
LYON DISTRICT COURT – REVERSED AND REMANDED
COURT OF APPEALS – REVERSED
NO. 93,622 – FEBRUARY 2, 2007

FACTS: LSF obtained a journal entry of judgment and foreclosure against Emporia Restaurants, Polaris Restaurants, and North Star holdings on March 18, 2004, for more than $2 million. LSF garnished accounts Polaris had with Commerce Bank on July 23, 2004. Commerce answered that it was holding more than $33,000 pursuant to the order. Polaris filed a motion to quash the garnish-ment arguing that money in one of its accounts, although not specifically designated, consisted of “earned wages and payroll taxes known as a payroll account” and that it had scheduled more than $8,000 to be taken out of the account for payroll at the time of the garnishment for tax purposes. Polaris argued it had set up an electronic funds transfer (EFTPS) for July 23, 2004, before the garnishment action was filed. The trial court held the funds in the account were actually payroll taxes withheld, they were “held in trust” for the taxing authorities, and the funds did not belong to Polaris. Therefore, the tax money was not subject to garnishment. The Court of Appeals affirmed.

ISSUE: Garnishment

HELD: Court held Polaris bore the burden of proof to demonstrate that it did not actually own the funds in its accounts, either because the funds actually consisted of employee taxes, or alternatively, because they had been previously assigned to the taxing authorities by way of the EFTPS transfer request. Court held Polaris failed to meet this burden. Court stated that Polaris could not demonstrate what proportion of the money in either account was held in trust for employee taxes. Because there was no evidence in the record that would support the trial court’s finding that the accounts were composed entirely of payroll taxes, or that the money in Polaris’s accounts was “held in trust” for taxing authority, these findings were not supported by substantial competent evidence and were reversed. As to the account transfer and the EFTPS transfer request, Court held the record did not support the trial court’s conclusion that Polaris did not own the funds in its Commerce accounts and they were subject to garnishment.

STATUTE: K.S.A. 60-719 et seq., 721(a)(3),(4), -729-731, -733(c), (d), (g), -735(b), (c), -738

HABEAS CORPUS
BLEDSOE V. STATE
JEFFERSON DISTRICT COURT – AFFIRMED
NO. 95,396 – FEBRUARY 2, 2007


ISSUES: (1) Waiver of prosecutorial misconduct claim and (2) ineffective assistance of counsel

HELD: Bledsoe failed to raise issue of prosecutorial misconduct in direct appeal and no exceptional circumstances required review of issue in post-conviction proceeding. Six general categories of ineffective assistance of counsel examined. Constitutionally deficient performance found in defense strategy of introducing exculpatory but unreliable and incompetent hearsay statement of a 2-year-old, which opened door to child’s damaging hearsay statement against Bledsoe. Error also found in voir dire questioning, in failing to object to testimony that invaded province of jury, and in failing to object to prosecutorial misconduct during closing argument. However, prejudice standard not satisfied under facts. Convictions are affirmed.

STATUTES: K.S.A. 60-417, -456, -456(b), -459(b), -459(g)(3), -460(d), -460(l)
INVERSE CONDEMNATION
KORYTKOWSKI ET AL. V. CITY OF OTTAWA ET AL.
FRANKLIN DISTRICT COURT – AFFIRMED
NO. 95,483 – FEBRUARY 2, 2007
FACTS: Korytkowski and others filed an inverse condemnation action against the city of Ottawa and the secretary of Kansas Department of Transportation alleging that a highway construction project so unreasonably increased indirect travel to their properties and so unreasonably restricted access from their properties to the system of state highways that it constituted a taking of their property without just compensation. The district court granted summary judgment to the city finding there was not a taking as provided under the laws of Kansas or the U.S. Constitution.
ISSUES: (1) Motor fuel tax and (2) Indian tribes.
HELD: Court interpreted the Kansas motor fuel tax laws to impose the incident of tax upon the distributor of first receipt of the motor fuel. Court concluded that the Nebraska tribal corporation was not a distributor and it did not receive the motor fuel in Kansas. Court, therefore, held that under the facts submitted by the certifying court, the answer to the certified question was no.

PATERNITY AND PROBATE
REESE V. MURET ET AL.
COWLEY DISTRICT COURT – AFFIRMED AND REMANDED
NO. 92,809 – FEBRUARY 2, 2007
FACTS: This is a paternity action in the context of probate proceedings involving Wade Samuel (Sam) Waldschmidt Jr. Heather Reese sought a determination that she is the child of Sam. Sam's spouse, Sandra, opposed Heather's claims as a child in Sam's intestate estate and filed a motion for genetic testing. Heather filed a paternity action pursuant to the Kansas Parentage Act, claiming that Sam was her presumptive father. Sandra intervened in the paternity action and moved for genetic testing. The district court denied Sandra's motions in both the probate and paternity actions after a hearing where the court determined that it was not in Heather's best interests to conduct genetic testing. Court granted an interlocutory appeal.
ISSUES: (1) Paternity and (2) probate.
HELD: Court held the relevance of who is Heather's biological father is questionable given the strong presumption that Sam was her father. The presumption of Sam's paternity existed for many years prior to the filing of the paternity action. Court stated this case demonstrated a set of circumstances in which an adult child may be forced to establish paternity pursuant to the Kansas Parentage Act even though a strong presumption of paternity already exists. Court found that Sandra did not contest the district court's determination that it is not in Heather's best interest to conduct genetic testing. Court held the district court did not err in denying Sandra's motions. Court remanded for further proceedings.

PHYSICIANS, KANSAS CONSUMER PROTECTION ACT,
AND EXPERT TESTIMONY
WILLIAMSON V. AMRANI
SEDGWICK DISTRICT COURT – AFFIRMED IN PART, REVERSED IN PART, AND REMANDED WITH DIRECTIONS
NO. 95,154 – FEBRUARY 9, 2007
FACTS: Dr. Amrani performed back surgery on Williamson, but her pain did not subside. Williamson sued Amrani, including a claim that Amrani engaged in deceptive and unconscionable acts and practices under the Kansas Consumer Protection Act (KCPA) by making representations to Williamson that the surgery he would perform would have benefits that, in fact, it did not have. The district court granted summary judgment to Amrani holding that the KCPA does not apply to a physician's professional treatment of a patient.
ISSUES: (1) Physicians, (2) KCPA, and (3) expert testimony.
HELD: Court held that under the KCPA, a physician providing care or treatment to a patient can be found to have engaged in deceptive and unconscionable acts and practices in violation of the KCPA. Court also held that under the KCPA, proof of an allegation that a physician has willfully failed to state a material fact or has willfully concealed a material fact requires expert testimony to establish the disclosures that would be made by a reasonable medical practitioner under the same or like circumstances. The Court reversed the district court's order granting summary judgment in favor of Amrani. The Court affirmed the district court's decision that expert testimony would be helpful in determining whether the disclosure is one that would be made by a reasonable medical practitioner under the same or like circumstances.
DISSENT (J. Davis with C.J. McFarland joining): The dissent argues the majority has rendered a narrow reading of the KCPA that undervalues the importance of the Kansas regulatory and statutory scheme relating to health care professionals.

Criminal

STATE V. HOGE
SEDGWICK DISTRICT COURT – AFFIRMED
NO. 94,774 – FEBRUARY 9, 2007
FACTS: Hoge filed a pro se motion for correction of an illegal sentence raising complaints of sufficiency and jurisdiction. The district court did not appoint counsel for Hoge and did not hear oral argument before denying the motion. The court found the complaint was not jurisdictionally defective, the jury instructions were proper, and the motion did not present any substantial issue of fact for the court.
ISSUES: (1) SCR 183(j), (2) appointment of counsel, and (3) evidentiary hearing.
HELD: Court held the trial court made adequate findings of fact and conclusions of law to allow meaningful appellate review. Court held the trial court did not err in summarily dismissing Hoge’s motion because the motion, files, and records of the case conclusively show that Hoge was entitled to no relief.

STATUTES: K.S.A. 22-3504, K.S.A. 2005 Supp. 22-3201(b), and K.S.A. 60-1507

STATE V. HORTON
JOHNSON DISTRICT COURT – REVERSED
NO. 93,982 – FEBRUARY 2, 2007


ISSUE: Evidence of prior bad acts

HELD: State failed to establish Joy’s testimony was relevant to prove any disputed material fact. Error to allow Joy to testify without requiring sufficient similarity between disappearance and death of Liz and the prior bad act alleged by Joy. State v. Grissom, 251 Kan. 851 (1992), is factually distinguished. Under facts, error was not harmless, and insufficient evidence was presented at preliminary hearing to find probable cause to bind Horton over for trial. Horton’s conviction for felony murder is reversed and complaint against him is dismissed. Horton’s challenge to admission of other evidence is also examined, finding no error.

STATUTES: K.S.A. 2005 Supp. 22-2902(3); K.S.A. 22-3601(b)(1), 60-261, -401(b), -404, -455, -460(g); and K.S.A. 1973 Supp. 21-3401, -3420(b), -3503

STATE V. JONES
WYANDOTTE DISTRICT COURT – AFFIRMED
NO. 93,643 – FEBRUARY 9, 2007

FACTS: Jones was convicted of one count of first-degree premeditated murder and one count of second-degree intentional murder. Police found roommates Childs and Brown dead inside Childs’ apartment. Brown was lying on a bed and his wrists and ankles were tied behind his back with an electrical cord. Both Childs and Brown had been shot in the head. Jones’ DNA was found on the electrical cord. Jones was interviewed multiple times, initially not as a prime suspect, but later as a suspect after the DNA results were discovered. Jones and Marcus Kyea were tried and convicted. Kyea testified at Jones’ trial that he obtained a shotgun for Jones and Jones shot both of the victims.

ISSUES: (1) Suppression, (2) interrogation, and (3) jury misconduct, (4) jury instructions, and (5) hard 50 sentencing

HELD: Court held that based upon the evidence before the trial court, Jones’ interview with police merely constituted an investigatory interrogation, not a custodial interrogation. There was no requirement for Miranda warnings to be issued. The trial court did not err by denying Jones’ motion to suppress his pre-Miranda statements. Court held there was no evidence that the juror in question was unable to reach a decision or that she could not be fair and impartial. Jones failed to show, or even to argue, that he was prejudiced by the trial court’s decision to allow the juror to serve on the jury. Court held Jones did not meet his burden of establishing substantial prejudice and there was no reasons to conclude that the trial court abused its discretion. Court agreed with the state that there was no evidence to support a reckless second-degree murder instruction with respect to the death of Childs. Brown was hog-tied to the bed and shot, and Childs ran screaming down the stairs. Jones wrestled Childs to the ground, the weapon used was a pump action shotgun that had to be pumped before each shot, and Childs was shot twice. Court again held the hard 50 sentencing scheme was constitutional and imposition of the sentence against Jones was supported by the trial court’s findings that Childs’ murder was committed in an especially heinous, atrocious, or cruel manner. Court rejected Jones’ claim of cumulative error.

STATUTES: K.S.A. 21-3208(2), -4636(e), (f), -4637; K.S.A. 22-3101, -3104; K.S.A. 2005 Supp. 21-3402(b), -4635(b), (d), (f), -4636(f)(7); and K.S.A. 2005 Supp 22-3412(c), -3414(3)

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- Each active attorney will be issued a midterm transcript of hours for the 2006-2007 compliance period in early March. This transcript will be mailed to the address of record in the Kansas CLE Commission office.
- Twenty-four hour access to your CLE transcript is available by registering for online access. There is no charge for this service. If you haven’t already submitted the required paperwork, you can print the Application for Online Access from our Web site at www.kscle.org. The form must be mailed or dropped off at our office. E-mails and faxes are not accepted.
- Attorneys who have already registered for access may visit www.kscle.org 24 hours a day, seven days a week to review hours. Please allow 30 days from the time of attendance for the sponsor to file the required paperwork with the commission and posting to your record. It is the attorney’s responsibility to report the attendance for out-of-state seminars.
- Annual Registration Forms will be mailed on or about May 1. This will be the only notice issued. All active attorneys are responsible for the $20 annual registration fee. This fee is due July 1 and considered delinquent on Aug. 1.
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**Civil**

**BOARD MEMBER, ELECTIONS, HOME OWNERS ASSOCIATION, QUORUM, AND RIGHT TO VOTE**

**PICARD ET AL. V. SUGAR VALLEY LAKES HOMES ASSOCIATION**

**LINN DISTRICT COURT – AFFIRMED**

**NO. 96,225 – FEBRUARY 16, 2007**

FACTS: Sugar Valley was incorporated in 1973. In 1974, Hidden Valley Lakes Association merged into Sugar Valley and the merger was filed with the secretary of state. In 1978, Sugar Valley amended its bylaws changing board membership to five, three from Sugar Valley and two from Hidden Valley. In 1996, substantial amendments were made to the bylaws, including restrictions based on payment of association dues. At the 2004 annual meeting, there was an election for four members to the board. Robert Lowe was one of the candidates. Proxies were mailed to all association members and the ballots stated that only members in good standing would be counted. Plaintiffs, including Lowe, filed an action in district court alleging multiple variations of the Kansas corporation statutes. The district court held that Sugar Valley correctly met the quorum requirements at the annual meeting, that the amended bylaws concerning association rights had been used continuously for 10 years, failure to amend the articles of incorporation was a technicality overcome by many years of ratification, and that failure to pay association dues can result in loss of membership rights, including the right to vote.

ISSUES: (1) Board member, (2) elections, (3) home owners association, (4) quorum, and (5) right to vote

HELD: Court held that the district court correctly concluded that the members of Sugar Valley ratified the election of five members to the board despite the fact that the articles of incorporation were not timely amended. Court stated that Lowe failed to demonstrate any harm or prejudice by the oversight of the board in failing to timely amend the articles of incorporation. Court stated the limitation on membership rights based on payment of association dues or assessments had been in the bylaws since inception. Court held that failing to pay assessments does not result in the loss of membership. Instead, it results in the loss or suspension of a membership rights. Court found the district court correctly determined the quorum requirements for the January 2004 annual meeting and the court did not err in granting summary judgment to Sugar Valley. Court also held Lowe failed in his burden to prove the invalidity of the 1996 annual meeting before it could be disregarded.

STATUTES: K.S.A. 2006 Supp. 17-6301(b); K.S.A. 17-6009(b), 6505(b), (c); and K.S.A. 60-211(a)

**HABEAS CORPUS**

**PORTER V. STATE**

**LABETTE DISTRICT COURT – AFFIRMED**

**NO. 95,975 – FEBRUARY 23, 2007**

FACTS: Porter entered guilty plea in which state dismissed charges and agreed to recommend 60-month downward departure sentence. At sentencing, Porter agreed criminal history was C rather than D as thought when plea entered. District court denied motion for downward departure and imposed 107-month presumptive sentence. Supreme Court found no jurisdiction to consider Porter’s appeal from the denial of that motion. Porter filed no appeal from district court’s summary denial of Porter’s subsequent motion to withdraw plea for noncompliance with plea agreement. Porter then filed 60-1507 motion claiming state did not honor plea agreement and district court erred in not sentencing pursuant to the agreement. Porter appealed from district court’s denial of relief.

ISSUES: (1) Plea agreement and (2) sentencing

HELD: Porter fails to specify how state failed to honor plea agreement. Issue has been waived.

Under facts, substantial competent evidence supports district court’s finding that Porter’s plea was knowing and voluntary. Also, Porter cannot use 60-1507 motion as substitute for an appeal from district court’s summary denial of Porter’s earlier motion to withdraw his plea.

STATUTE: K.S.A. 60-1507

**HABEAS CORPUS AND PRISON DISCIPLINARY PROCEEDINGS**

**WASHINGTON V. ROBERTS**

**BUTLER DISTRICT COURT – AFFIRMED IN PART, REVERSED IN PART, AND REMANDED WITH DIRECTIONS**

**NO. 96,429 – FEBRUARY 23, 2007**

FACTS: Washington received a disciplinary report for undue familiarity by asking if he could “scribe” to the reporting officer. Washington was fired from his position in the prison kitchen. At the disciplinary hearing, both Washington and the reporting officer testified. The hearing officer found Washington guilty of undue familiarity and he received segregation, restrictions, and was ordered to pay a fine. Washington appealed claiming a violation of his due process rights because the hearing officer did not require the charging officer to be present or allow certain essential witnesses at the hearing, his conviction was not supported by the evidence, he was not provided with sufficient statement of the evidence and reasoning relied on by the hearing officer, and the hearing officer was not impartial. The district court summarily dismissed Washington’s motion.

ISSUES: (1) Habeas corpus and (2) disciplinary proceedings

HELD: Court held there was no due process violation where the hearing officer denied the request that the charging officer be present at the hearing and allowed the charging officer to testify by telephone. Court held the charging officer was placed under oath and Washington was able to question her concerning the incident. However, court held there was a due process violation where the hearing officer failed to call the supervisor to testify and to contact the prison investigation unit. Court stated the record is devoid of the reasons why the hearing officer refused to call the supervisor or contact an investigator. Court stated that a writ should issue on the sufficiency question was rendered moot. Court held the hearing officer’s decision satisfied the due process requirements of providing a sufficient statement of the evidence and reasoning relied on by the hearing officer. Court found no evidence submitted by Washington to support a claim that the hearing officer was not impartial.

STATUTE: K.S.A. 60-1501, -1503

**THE JOURNAL OF THE KANSAS BAR ASSOCIATION**

APRIL 2007 – 39
FACTS: In 1993, Four Seasons entered into an oral contract with AAA Glass Service for the purchase and installation of new doors in one of Four Seasons apartment buildings. The fire department inspected the apartments for building code violations on three separate occasions, but failed to notice that the doors did not meet building code regulations until March 17, 2005, and it did not notify Four Seasons until April 1, 2005. On May 13, 2005, Four Seasons sued AAA for breach of implied warranty of fitness and later included claims for violation of the Kansas Consumer Protection Act (KCPA). After a bench trial, the district court ruled the three-year statute of limitations began to run in 1993 and Four Season’s 2005 claims are now time barred.

ISSUES: (1) Statute of limitations and (2) consumer protection

HELD: Court held that Four Season’s KCPA claim was time barred. Court stated the three-year statute of limitations does not contain a discoverability provision and there was no justifiable basis for creating one where none exists. Court stated that even if there were a discoverability provision, Four Seasons’ KCPA claim would have been extinguished before commencement by any possible period of repose. Court held the district court did not err in finding that Four Season’s breach of an implied warranty of fitness was time barred as well by the three-year statute of limitations. Court stated the breach occurred at the time the doors were sold and installed in 1993, since the claimed implied warranty related to their compliance with the local building code at that time.

STATUTES: K.S.A. 50-623 et seq., -626(b)(1)(D) and K.S.A. 60-508, -512, -513(b), -515, -523, -524

TORTS

Muhl v. Bohi

Franklin District Court – Affirmed in Part, Reversed in Part, and Remanded

No. 96,262 – February 23, 2007

FACTS: Muhls and Bohi owned properties with common boundary and a partition fence in disrepair with ingrown trees. Bohi hired Davis to remove the fence with backhoe, cut down trees, and pile cut trees on Bohi’s property. Muhls sued for trespass, conversion, and conspiracy. District court granted summary judgment to Bohi and Davis. Muhls appealed on trespass and conversion claims.

ISSUES: (1) Trespass and (2) conversion

HELD: No Kansas case on this exact issue. A duty to build, maintain, or remove a partition fence confers on a landowner the privilege to lawfully enter onto the adjoining landowner’s property at reasonable times and in a reasonable manner to build, maintain, or remove the fence. Because genuine issue of material fact exists regarding actual distance of the encroachment onto Muhls’ property, district court erred in granting summary judgment. Reversed and remanded on this claim.

No error to grant summary judgment on conversion claim. Trees removed from Muhls’ property stated claim for trespass rather than conversion. Johns v. Schmidt, 32 Kan. 383 (1884), is compared.

STATUTE: K.S.A. 29-301, -302, -303, -304, -305, -308, and -316

Criminal

State v. Anguiano

Seward District Court – Reversed

No. 95,716 – February 16, 2007

FACTS: Anguiano was convicted of possession of cocaine. On appeal, he claimed (1) district court should have denied motion to suppress incriminating evidence seized during illegal detention, (2) his later consent to a search was not voluntary and did not purge taint of the illegal detention, and (3) he was not advised of Miranda rights before being interrogated.

 ISSUES: (1) Stop and detention, (2) consent as purging taint of illegal detention, and (3) Miranda warning

HELD: Under facts, officer had no particularized and objective basis for suspecting Anguiano was involved in criminal activity. Mere
“semifit” of individual to a description of a wanted person described only as a Hispanic man wearing a coat with “dark type” green pants is so nonspecific or generic in nature as to defy reasonable suspicion of criminal activity. Likewise, a direction of travel seemingly inconsistent with stated location of origin, standing alone, fails to provide reasonable suspicion of involvement in criminal activity.

Under totality of circumstances, Anguiano’s consent did not purge taint of the illegal stop and detention. There were material discrepancies between officer’s testimony at suppression hearing and at trial, and intervening events between detention and consent consisted only of a short conversation wherein officer asked for identification, initiated a wants and warrants check, and then asked whether defendant had been purchasing drugs from nearby apartments. Motion to suppress should have been granted. Conviction is reversed.

Miranda claim is moot.
STATUTE: K.S.A. 65-4160

STATE V. BASTIAN
BUTLER DISTRICT COURT – AFFIRMED IN PART, REVERSED IN PART, VACATED IN PART, REMANDED NO. 95,651 – FEBRUARY 2, 2007

FACTS: Bastian arrested when officers investigated suspicious parked pickup truck with lights on and driver slumped over steering wheel. Syringe and unspent pistol cartridge observed in console after Bastian was ordered out of the car, and search of Bastian disclosed methamphetamine. District court denied motion to suppress. Bastian convicted of possession of methamphetamine and possession of drug paraphernalia. Sentence included fine, restitution for Kansas Bureau of Investigation testing, reimbursement to Board of Indigents’ Defense Service (BIDS). Bastian appealed.

ISSUES: (1) Reasonable suspicion for detention, (2) search of pockets, (3) fine and restitution, and (4) assessment of BIDS fee

HELD: Although no substantial evidence supports trial court’s finding that officer saw syringe and cartridge before ordering Bastian out of pickup, under totality of circumstances, there was reasonable suspicion to justify ordering Bastian to get out of pickup. Syringe and cartridge then in plain view during legal search. Conviction for possession of drug paraphernalia is affirmed.

Under circumstances, Bastian’s disclosure of contents of pockets was not a voluntary act, but an inevitable response to officer’s show of authority. Initial pat-down search disclosed no weapons, and no probable cause to further search Bastian’s person. Conviction for possession of methamphetamine is reversed.

Notwithstanding failure to preserve issues on appeal, Bastian’s challenge to fine, restitution, and BIDS fee assessment are considered concerning the drug paraphernalia conviction. No findings by district court for fine as required by State v. Edwards, 27 Kan. App. 754 (2000), and state concedes financial resources were not considered for assessment of BIDS fees as required by State v. Robinson, 281 Kan. 538 (2006).

Fine and BIDS assessment are vacated and remanded.
STATUTE: K.S.A. 21-4607(3), 22-2402, -2402(2), 60-404

STATE V. GREEVER
RENO DISTRICT COURT – REVERSED NO. 95,303 – FEBRUARY 2, 2007

FACTS: Greever convicted on drug charges arising when police officer arrested Greever for not signaling intention to turn when construction prevented travel through a stop sign. Greever appealed on issues, including claim that motion to suppress should have been granted because there was no reasonable suspicion to justify seizure.

ISSUES: (1) K.S.A. 8-1548 and (2) reasonable suspicion

HELD: Under facts, a traffic stop was effected for traffic offense, but there was no reasonable suspicion to do so. Purpose of K.S.A. 8-1548 is discussed. Under circumstances, no evidence that approaching motorist could see closure of roadway on other side of highway before reaching intersection. No evidence from which officer could infer that Greever failed to signal 100 feet before an intended turn. District court should have suppressed evidence obtained as a result of the illegal seizure. Greever’s convictions, predicated upon legality of the stop, are reversed.

DISSENT (Buser, J.): Majority’s interpretation of K.S.A. 8-1548 is contrary to State v. DeMarco, 236 Kan. 727 (1998). Greever’s testimony established there was sufficient warning and sight distance for ordinary motorist to formulate intention to turn, and that Greever formulated such an intention upon his approach to the intersection.

STATUTE: K.S.A. 8-1548, -1548(b)

STATE V. HAWKINS
SEDGWICK DISTRICT COURT – AFFIRMED IN PART, REVERSED AND VACATED IN PART, AND REMANDED NO. 95,310 – FEBRUARY 16, 2007

FACTS: Hawkins convicted of driving under the influence of and various traffic charges. On appeal he claimed (1) error to admit evidence of his refusal to submit to breathalyzer test, (2) the additional traffic charges violated double jeopardy, and (3) error to order payment of Board of Indigents’ Defense Service (BIDS) application and attorney fees without first considering Hawkins’ ability to pay.

ISSUES: (1) Breathalyzer refusal and double jeopardy claims, (2) reimbursement of BIDS attorney fees, and (3) payment of BIDS application fee

HELD: Issues concerning admission of breathalyzer test refusal and related statements were not presented to district court or preserved for appeal. Convictions are affirmed.


Requirements in K.S.A. 2006 Supp. 22-4513(b), as interpreted by Robinson, do not apply to BIDS application fee. Plain reading of K.S.A. 2006 Supp. 22-4529 requires a criminal defendant to object to payment of BIDS application fee on basis of manifest hardship. Because Hawkins failed to present this issue to trial court, there is no conclusion that trial court erred in imposing BIDS application fee. On remand, Hawkins can raise issue and attempt to demonstrate the application fee constitutes manifest injustice.

STATUTES: K.S.A. 2006 Supp. 21-4603(b) and (i), 22-3717(m)(4) and (m)(5), -4503, -4504, -4513(a) and (b), -4529; and K.S.A. 21-4603, -4603d, 22-3717, -4529

STATE V. PATTON
DICKINSON DISTRICT COURT – APPEAL DISMISSED NO. 95,860 – FEBRUARY 2, 2007

FACTS: Patton entered guilty plea to drug charges, waived right to appeal or file 1507 motions, and did not appeal denial of his motion for dispositional departure sentence. District court later denied motion to correct illegal sentence, finding State v. McAdam, 277 Kan. 136 (2004), did not apply retroactively because issue not raised in a direct appeal. Patton then filed 60-1507 motion seeking leave to file direct appeal out of time. District court granted the motion pursuant to third exception in State v. Ortia, 230 Kan. 733 (1982).

Patton filed appeal, claiming he should have received lower severity level sentence, and should have been placed on probation.

ISSUE: Jurisdiction to appeal

HELD: Where a defendant bargained with state and knowingly and voluntarily agreed to waive right to appeal in exchange for sentence reduction and dismissal of additional charges, district court cannot ignore waiver because it stands as bar to defendant filing an appeal unless plea agreement is set aside. Because Patton did not withdraw plea agreement, his written waiver of right to appeal bars this appeal. Appeal dismissed.

STATUTES: K.S.A. 2005 Supp. 22-3200; and K.S.A. 22-3504, -3608(c), 60-1507, 65-4159, -4161(a)
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