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THE JOURNAL OF THE KANSAS BAR ASSOCIATION

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Don’t Miss Out!

ANNUAL MEETING 2018
Thurs. & Fri. June 14 & 15
DoubleTree Overland Park
Hope to see you June 15th at...

KBA Awards Luncheon

11:30 a.m. - 1 p.m.

DoubleTree by Hilton, Overland Park
To the Editor:

Lawyers and Judges alike need to be reminded that written documents need to be interpreted by the understood meaning of the words used in the document at the time it becomes binding. That includes contracts, laws, and the constitution.

Our courts with lawyer advocacy have too often gone outside that limitation to further client interests or political views. However, the answer is not to limit the balance of power placed in the judicial branch. Judges should be controlled through a better method of selection that does not include the executive branch or legislative branch, and there should be term limits.

Ted R. Morgan
Retired Attorney
Lakin, KS

Letters to the Editor

Letters to the Editor are invited on bar-related issues from KBA members who are licensed to practice in Kansas.

1. Letters to the Editor should be no longer than 200 words and the Board of Editors reserves the right to edit the letter for brevity and style.

2. Letters must be typewritten and signed, and include the author’s KBA member number.

3. Not more than three letters from any individual will be published within one year.

4. The editor reserves the right to choose which letters to publish. Unpublished letters cannot be returned unless accompanied by a self-addressed, stamped envelope.

5. Letters responding to a previously published letter, column, or article should address the issues and not be a personal attack on the author.

6. No letter shall be published that contains defamatory or obscene material, violates the Kansas Rules of Professional Conduct, or otherwise may subject the KBA or the Board of Editors to civil or criminal liability or to embarrassment.

7. No letter shall be published that advocates or opposes a particular candidate for a political or judicial office or that contains a solicitation or advertisement for a commercial or business purpose.

Editor’s Note:

This is the first time we have had a Letter to the Editor since I started with the KBA in October of 2016. Just so you know, we are open to receiving and printing letters as long as they adhere to the policy spelled out here to the right.

The letter above was not solicited; we will not engage in soliciting letters to the editor. It is very important for our readers to keep in mind that the opinion expressed above is that of the author and not necessarily of the Kansas Bar Association, the Journal, or its Board of Editors.

Responses to the above letter are welcome, again, as long as they fall in line with our stated policy.

Letters to the Editor may be emailed to: editor@ksbar.org or sent by U.S. Mail to: Kansas Bar Association
Attn: Journal Editor
1200 SW Harrison St.
Topeka, KS 66612

Thank you! — Ed.
Law professionals in Kansas can participate in the pro bono community through clinics, posted projects, or by volunteering to take on specific cases displayed on the site. Opportunities are regularly updated by Pro Bono Coordinators in the 11 statewide KLS field offices.

Please check back often for new and exciting ways to put your skills, experience and training to good use by helping your fellow Kansans.
Guidance is Available: The KBA Ethics Advisory Committee

by J. Nick Badgerow

What is This Committee?
The Kansas Bar Association provides a service to its members which is not widely publicized and therefore not extensively used. The KBA Ethics Advisory Committee is available to issue a written opinion in response to a request from a KBA member, addressing questions related to the Rules of Professional Conduct and other ethical issues. As the KBA website states:

The Ethics Advisory Committee provides advisory opinions to KBA members on questions concerning ethical standards and practices, and to otherwise help educate lawyers about their ethical obligations and provide professional guidance in the area of ethical conduct.[1]

Who Is On the Committee?
The Ethics Advisory Committee serves at the request and sufferance of the KBA President. It is comprised of senior, experienced lawyers who are well-versed in the Rules of Professional Conduct and the proper, ethical conduct of lawyers in this state. The current members of the Committee are listed in the endnote. ²

On What Matters May an Opinion Be Requested?
Requests may be made for opinions on any matter of ethics or professional conduct. The Committee will not answer pure questions of law, and the request must pertain to an actual, factual situation, rather than a hypothetical one.

Are There Limitations On What Can Be Requested?
Because ethics advisory opinions are not binding on any court, opinions will not be issued related to pending litigation. In addition, because the Committee does not bless or condemn prior conduct, the request must relate to intended, proposed or potential future conduct.
What Does the Committee Do?

Upon receipt of a written request for a formal written opinion, the Committee discusses the question, performs legal research on the rules of ethics, case law, treatises, and ethics opinions in Kansas and other jurisdictions. The Committee then drafts an opinion, discusses it, edits it, and votes on the final product. If a majority of the Committee approves, it is issued. If it is not approved by a majority, the work continues until there is a consensus. Sometimes, one or more minority members also prepare a dissent, which is also published with the opinion.

What Is the Form of the Resulting Opinion?

The Committee’s written opinions set out the facts and the request, with a summary of the conclusion reached by the Committee, followed by an analysis, with citations to the applicable Rules, case law, and other ethics opinions. All opinions are published, and are available to KBA members on Casemaker. The Office of the Kansas Disciplinary Administrator receives copies of the opinions, but does not comment on them.

Are the Opinions Confidential?

All opinion requests are kept confidential, as are the work and deliberations of the Committee. Final published versions of opinions are, of course, made public, but they do not identify the requesting attorney or any person by name.

How Does One Request an Ethics Advisory Opinion?

A member may send a letter to the KBA, stating the facts upon which the opinion is requested, and certifying (1) that the requester is a KBA member and is seeking the opinion for himself or herself, and no one else; (2) that the opinion is not for use in a litigation or a disciplinary matter; and (3) that the requester wants the information for guidance on future conduct. The request will be acknowledged, and the requester will receive the written opinion when it has been issued by the Committee.

About the Author

J. Nick Badgerow is a trial-lawyer partner with Spencer Fane LLP in Overland Park, Kansas. For thirty years, he has served as Chairman of the Johnson County Bar Ethics and Grievance Committee. He is Chairman of the KBA Ethics Advisory Committee; member of the Kansas Judicial Council; Chairman of the Council’s Civil Code Advisory Committee; Chairman of the Kansas Ethics 2000 Commission and Ethics 2020 Commission; and he was a member of the Supreme Court-KBA Joint Commission on Professionalism. He is the Editor and a co-author of the KBA’s Ethics Handbook, Third Edition (2015). For sixteen years, Nick was a member of the Kansas State Board of Discipline for Attorneys.

1. http://www.ksbar.org/group/ethics_advisory
2. J. Nick Badgerow, Chair; Timothy M. Alvarez; Gary M. Austerman; Ronald K. Badger; Hon. Terry L. Bullock; Brian S. Burris; David P. Calvert; Dennis D. Depew; D. Michael Dwyer; Autumn L. Fox; Gilbert L. Guthrie; Charles R. Hay; Robert D. Hecht; Mark D. Hinderks; Ann L. Hoover; Vernon L. Jarboe; Robert E. Keeshan; Kevin K. Kelly; Justice B. King; Katherine L. Kirk; Hon. Philip T. Kyle; Jack Scott McInteer; Eric B. Metz; Matthew Crane Miller; William S. Mills; Michael W. Murphy; Stanley R. Parker; David J. Rebein; Douglas R. Richmond; Ronald D. Smith; Nathan M. Sutton; Karen L. Torline; Joseph N. Molina III, KBA Staff Liaison.
4. Send letter requests to the attention of: Kansas Bar Association, Attention: Jordan Yochim, Executive Director, 1200 SW Harrison Street, Topeka, KS 66612. Informal opinions may also be requested by telephone by calling (785) 234-5696 and asking for Jordan Yochim, Executive Director.
REGISTER NOW
Law Students Welcome!

KBA Golf Tournament
Sycamore Ridge Golf Course

Enjoy a round of golf and networking with Kansas attorneys.

Thursday, June 14th

9:00 a.m.  Registration & practice range open
10:00 a.m. Shotgun start

The tournament will feature several traditional proximity prizes, including men’s & women’s longest drive, closest to the pin and longest putt. There will also be a “Hole-in-One” prize on a par 3, TBD.

Registration is $100, which includes lunch at the turn and two drink tickets. You have the option to purchase the golf “extra” package onsite. It includes four (4) mulligans, a 6’ foot string and the Gary Woodland Drive (hole TBD) on a par 5.

For more information please contact:
Joe Molina at 785-234-5696 or jmolina@ksbar.org

*The tournament is open to those accepted to law school for 2018-19, those currently in law school, as well as practicing and retired attorneys/judges.
The KBA: Why We Do What We Do

Not long ago, a KBA member who was going through some serious life issues called the KBA for information. Following is that person’s testimonial. It was a touching reminder to each of us on staff: we are here to help the men and women who make up our membership. We want to be a significant go-to resource for all our members.

This was one member’s experience:

I received an email about an upcoming CLE. Knowing that I was in need a few CLE hours for this compliance period, I called Deana Mead (Associate Executive Director of the KBA) to see if the CLE was being offered remotely or via webinar since I was in Western Kansas. When she stated that it was not, I explained to her that I was currently unemployed and not able to pay for CLEs in order to remain compliant.

She suggested I look into a couple of opportunities. Being in Western Kansas didn’t help my situation any, but she was able to recommend a couple of upcoming programs. She also advised me to let the CLE Commission know, and they might have some resources to help me. Deana was also able to offer me a hardship reboot of my KBA membership since I was without an income to pay the fee—something else I would not have received had I not called the KBA for assistance.

In calling the CLE Commission, I learned for the first time that scholarships were available for folks in my same situation, and that it would help cover 80 percent of the cost. It was suggested that I also make contact with attorneys who were involved with the Ellis Co Bar, as they had a huge CLE coming up. I did that, and that conversation also led to two job opportunities that I would have otherwise not known about.

Through the partnership of the KBA and its resources, not only was I able to sign up for a free CLE, I applied for two jobs, and got an interview for one of them. In the matter of a couple of hours on the phone and being directed to the appropriate contact persons, I was able to accomplish a TON that I know I would not have been able to accomplish without the help of Deana, the CLE Commission, and the contacts that resulted from what I could only term as a windfall of information and assistance.

Little did I know at the time I initially picked up the phone to call Deana that I would have received the immense help that I did.

— An appreciative KBA Member
This past year has gone by quickly. It has been a great honor to serve as President of the Kansas Bar Association. I began my term by looking back upon our history as an association and the foundations that have made the practice of law in Kansas the noble profession that it is today. As my term comes to an end, I would like to take a moment to look toward the future.

I had the privilege last month to attend the swearing in ceremony held by the Kansas Supreme Court and the United State District Court for the District of Kansas. I was particularly taken by the remarks made to these newly minted attorneys by Justice Carol Beier and, with her gracious permission, I would like to share some of her remarks with the Bar as a whole to remind us anew of our continuing charge as lawyers to display the courage and character that our profession demands:

You join a long line of proud and grateful Kansas lawyers who appreciate the responsibilities their law degrees and bar admissions have bestowed upon them. Now we are all members in the same communion of professionals, and I urge you to be more than purely pragmatic in the way that my use of the words "communion" and "professionals" suggests.

Your legal educations and your bar admission today have outfitted you for leadership. And there can be no question that we need you. We need you to participate in our most wrenching public and private debates.

We need you to do so in a civil tone, modeling respect for the values and opinions of others even as you stand your ground. We need you to remember that, when resolution of today’s problem is achieved, there will be a tomorrow in which we must all live together peacefully. Making and preserving that peace—which is what you are trained to do as a lawyer—is a noble calling. On your worst day, remember that, and you will have answered that call.

Know also that sometimes your education and training for leadership will require you to risk disapproval—because you must carry a controversial banner for another who lacks the power to do so, because you must tell a client no, because you must move forward on a difficult decision when they are paralyzed by inertia or by fear.

The best Kansas lawyers have always done these things. They have done them as colleagues. They have done them as worthy and cordial adversaries. They have understood that, from the time they took their oath, it was their charge to serve the Constitution and their communities, and to personify civic courage. This is their legacy to you. And such courage—not your bank balance—will be the ultimate measure of your character and your professional success.

... Your role as a Kansas lawyer is to help your clients do everything important in life: make a home and a family, make a living, make a payroll, enjoy nature’s bounty and survive its wrath, live with their neighbors in as much peace as they and you can muster.

These remarks apply to all the members of our communion of professionals. Our communities, our state and our nation need us to lead by example and demonstrate that problems and issues can be resolved through civil and reasoned discourse. Our clients deserve representation that is responsive, competent and professional. The Bar is in good hands and will continue to evolve to address new challenges. Our charge as we move forward is to make sure that we do not lose sight of why we have undertaken the practice of law and ensure that we continue to serve as colleagues and professionals.

Thank you for the opportunity to serve as President of the Bar; I hope that I have fulfilled the trust given to me during the past year.

About the Author

Gregory P. Goheen is a shareholder at McAnany, Van Cleave & Phillips, P.A., where he has practiced since graduating from Southern Methodist University’s Dedman School of Law in 1993. He received his bachelor’s degree in 1990 from the University of Kansas. Greg is past President of the Kansas Association of School Attorneys and Fellow and past Trustee of the Kansas Bar Foundation.
Supreme Court Update
TOBY CROUSE
STEPHEN MCALLISTER
Approved for 1.0 hour of CLE credit in KS and MO

Appellate Update
HON. KAREN ARNOLD-BURGER
HON. MICHAEL BUSER
HON. MELISSA STANDRIDGE
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The New Tax Act:
Summary of Key Changes for 2018
DAVE BERSON
SUSAN BERSON
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Where the Green Grass Grows:
A Look at the Rapidly Changing Legal Landscape Surrounding Medical and Recreational Cannabis
DANIELLE AUGUSTINE
ADAM BRILLHART
Approved for 1.0 hour of CLE credit in KS and MO
This isn’t the column that takes an in-depth, logical, and well-researched position on a thorny legal issue. No, this is the column by someone who is, or soon will be, a lame duck president who sees the hook coming from backstage. My time, my space, and your attention are limited. Here are just some things that I think need to be said:

1. Thank you so much to the attorneys who have stood up for judges who needed it—especially when we couldn’t speak for ourselves. I’ve said it before, but I can’t say it enough. I know—we know—it has cost you money, time, and comfort.

2. Thank you to the Kansas Bar Foundation staff for making my job as president easier. You have been so cognizant of what I can, and cannot, do as judge and as president. You are true professionals and wonderful to work with.

3. Access to public discipline should be fair—whether it is a judge or lawyer who is disciplined.

4. We all have preconceived notions. The Black Lives Matter and Me Too movements have influenced most people—lawyers and judges included—to reflect in a focused way on our biases. Most fair people, and most of us are fair people, assume we don’t let biases affect us unfairly. But now we know that any one of us can be unfair at any given moment about any given person. Biases can affect us to favor, or disfavor, someone. The more we exercise focused reflection, the smarter we’ll be about what we should do—as fair-minded people. That is a powerful step in the right direction.

5. Thank you to all the lawyers who have thought about making my life easier when I try to do my work. Some of those things have included:

   a. A hyperlink in your brief to the case or statutory authority you cite in support of your legal argument;
   b. Critical information in the title of your uploaded document, such as the name of the person making a waiver of hearing in an estate matter;
   c. Page and line citations to assertions of fact;
   d. Being prepared;
   e. Correcting me when I’m wrong, because it is so much easier for me to fix at that time.

6. If you know someone you think would make a good judge, tell him/her. It is a nice thing to hear, and it may just be the impetus needed for that person to apply. ■

That’s it for now.

All the best,

Evelyn

About the Author

Hon. Evelyn Z. Wilson is Chief Judge of Kansas’ Third Judicial District (Shawnee County). Before taking the bench in 2004, she practiced law for 19 years—seven years in northwest Kansas and 12 years in Topeka. Judge Wilson graduated from Bethany College and Washburn Law School.
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Refine and Refocus

by Clayton Kerbs

It would be too predictable if I wrote a column that was sunshine and rainbows about the YLS. However, it would not give a complete picture about the challenges young lawyers face, including the YLS board members and YLS board itself.

Most young lawyers find themselves swimming. Swimming in debt, in a challenging new career, and trying to meet the needs of a family and some semblance of a social life. This past year of the YLS has seen the impact of such demands as board members juggle the demands placed upon them. We all have certainly learned a lot about ourselves and our profession.

Nevertheless, to say that I am proud of the YLS board would be an understatement. From the beginning, the board has been pressing for more results. The members of the board have been focused on engaging law students and young lawyers through professional and social events. I believe their presence has been felt and their commitment to the profession has not gone unnoticed.

This has been a year to refine and refocus. We have attempted to refine our mission of reaching young lawyers and refocus our current and future efforts on that mission. One thing our board has learned is the gem that is the high school mock trial competition the YLS puts on every year. Year after year, our mock trial coordinators put in countless stressful hours organizing and carrying out regional and state competitions. Going forward, our board needs to have a laser focus on creating greater involvement in the mock trial competitions from KBA membership as a whole.

We need to continue the dialogue with law students to connect them to the KBA while they are still in school, so that they may see a benefit in KBA membership and establish lifelong personal and professional relationships. Given the prevalence of substance abuse and depression in practicing attorneys, the YLS can make a concerted effort to connect young lawyers to one another and to more experienced attorneys who can provide mentorship through the more challenging seasons we all will encounter.

I truly cannot say enough good things about the steady, seasoned leadership that Greg Goheen has provided to the Board of Governors.

I want to conclude by giving high praise and many thanks to the KBA staff. We are truly blessed by this group of professionals who do so much more work than we know or give them proper credit for.

Now the curtain closes on my tenure as YLS president, but I could not be more excited for the year ahead as Sarah Morse takes the reins. I have all the confidence in the world that Sarah will build on what the YLS presidents of the past have started and continued on, always refining and refocusing along the way.

About the Author

Clayton Kerbs currently practices in his hometown of Dodge City with his father, Glenn. Clayton’s practice consists of domestic and municipal law cases. He attended Creighton University and Washburn University School of Law. Prior to practicing law, Clayton worked for U.S. Senator Jerry Moran. Clayton is married to Leah; they have two sons, Porter and Chandler.
ckerbs@kerbslaw.com
The Inaugural (will it become annual?)
KBA Photography Contest

Categories:

The Law – Shots that depict people, places, things that embody the law for the photographer

The Land – Kansas landscapes, cityscapes, lakes, rivers, wildlife

The Life – Activities and hobbies, family and friends, things that make life outside the courtroom enjoyable and worth living

The Look – Abstracts reflecting the photographer’s unique view, offering those who see it a new way of looking at an object or place or individual

Judging will take place during October with decisions to be announced in the Nov/Dec Journal.

All participants will be listed in the Journal.

Photos may be used in the Journal throughout 2019 with photo credit to the photographer.

Requirements

- Open to All KBA Member Attorneys (sorry, no family members)
- Photos must be taken during July, August or September 2018
- Must be submitted in hi-res format (300 dpi or better)
- Photographers MUST provide full contact info AND sign a release
- Photographers may submit a maximum of 1 photo per category
- Photographer will select the category in which each photo will be judged

Photos & signed release to be submitted to: editor@ksbar.org
All entries MUST be in by midnight, Sunday, Sept. 30th.

- One winner in each category
- One overall winner with 1st, 2nd and 3rd runners-up
- Judges and prizes will be announced in the September Journal
I am reminded of the old aphorism: Give a man a hammer and every problem looks like a nail. I am a divorce lawyer, so when asked how to use math in a law practice, I answer from that point of view.

The intent of this article is to assist all lawyers who read it (and perhaps their paralegal assistants and secretaries) in dealing efficiently, accurately and economically with mathematical aspects of divorce cases.

The Child Support Guidelines have made calculation of child support much less a factor in divorce. This article does not address that issue, except to point out that it is important for private practitioners to be able to calculate interest on unpaid child support judgments.

**Income Calculation – Time is Money**

First, it’s important to understand that there are not four weeks in a month. In fact, there are four weeks only in one month, February. In every other month there are between four weeks and two days (4.2857 weeks) and four weeks and three days (4.4286 weeks). While a small-looking difference, the use of only four weeks for a month can result in a mathematical error of more than $400 in a year when calculating minimum wage. To properly calculate monthly income, mul-
Comparing Apples to Apples and Maintenance Lump Sum Values—Calculating Present Value, Future Value and Pension Interest on Judgments—Money Left on the Table

Second, twice a month is not “every two weeks”. There are 24 pay periods per year for people paid twice a month; there are 26 pay periods if paid every two weeks. Many of our clients will tell us that they or their spouse “get paid twice a month”, when in fact they get paid every two weeks. Don’t take their word for it. Look at the pay stubs. A mistake will cost nearly 8% of annual income—$1,200 for a minimum wage earner.

Interest on Judgments—Money Left on the Table

The calculation of interest on judgments, especially child support judgments, will pay the cost of the typical stand-alone legal math calculator ($150) in one case. Allowing judgment debtors, usually payor parents, to use the sum of the unpaid judgments as the arrearage is error and probably malpractice. With the special treatment of non-dormancy of child support judgments, the use of simple spreadsheet mathematics to calculate interest, using the current judgment rates as stated in K.S.A. 16-204(3), (10%), can result in recovery for payees of interest on the judgments sufficient to pay the attorney fees incurred in collecting.

Calculating Present Value, Future Value and Pension and Maintenance Lump Sum Values—Comparing Apples to Apples

The calculation of present day values is best left to the specialized software available to all practitioners. I use a product found at legalmath.com called Legal Math. It calculates the present value of maintenance, the present value of pension plans or any other future money payment situation, will calculate the present value of a lump-sum to be received in the future, and will calculate the future value of any periodic payment or investment. It likewise calculates the future value of a lump sum invested over time. It calculates the monthly payment available over time from a known lump sum. It has a module to do calendar math, adding or subtracting days from an unknown date and calculating the number of days between dates. It also tracks interest on sporadic/irregular payments on judgments, applying the payments to accrued interest then to the oldest judgment, unless the payee directed otherwise as the payments made were received.

Recognizing situations in which math and software tools can and should be used is essential. In addition, the lawyer has to understand the concepts well enough to explain them to clients.

Most people have some vague understanding that streams of payments may have different values from the sum of the payments, because they learned about it when they read how much the lottery pays for the “cash option”. The lottery is a handy tool to help clients understand the concepts. Ask your client: “Would you rather win $1 million in a lottery that pays one dollar a year for 1 million years, or a lottery that pays $1 million the day you win?” No one gets that one wrong. Then I show the calculation in my Legal Math calculator, on my computer screen, by filling in the blanks. How much is the monthly payment? How long does it last? What is the number of months the payments will be made? What is the assumed investment interest rate per year?

The interest rate according to most economists I have used as expert witnesses over the years has been an average of 7% over the past 65 years. It is difficult to convince most clients that they can earn 7% in any easy or safe investment, and most right now think that 3% to 5% is the most they could expect over the short-term. I use math to show them what the ranges are, which is most heavily influenced by the interest rate, of course. I then ask them a simple question: “If I ask you which you would rather have, $100 per month for 240 months assuming you could invest that money at an interest rate of 5% per annum, or $15,215.67, which would you take?” After they ponder that for a moment I tell them that the correct answer is “either”, because they are exactly equal. In other words, if I give you $15,215.67 today, you invest it at 5%, and withdraw it at the rate of $100 per month, after 240 months, you will have spent it all and you will have zero left.

Calculation of the value of pensions is dependent upon whether the pension is a defined benefits or defined contributions plan. The primary error made by lawyers regarding pension plans is not understanding that some plans are defined benefits plans. Those have a definite present day value. The calculation of the value of those plans is dependent on the following factors: 1) The periodic payment to be received, assuming no further contributions to the plan; 2) the frequency of payment, usually monthly; 3) the number of months until the payments began (how far away is the pension owner from being able to receive the monthly payments); 4) the number of months over which the payments are to be received (See Kansas PIK Civil mortality tables for life expectancy); and 5) the assumed investment interest rate per year.

In addition, the client should consider the probable tax rates on the monthly benefits. The result will be the present value of the future right to receive the payments. It is determined by first calculating the lump-sum amount needed as of the date of retirement to fund the periodic payments, and then, to account for the delay before the benefits are received, the lump-sum is discounted back to the present date. The monthly assumed benefit is usually calculated by the employer or the plan administrator. The annual statements from most pensions have that information. It’s worth the effort, as a defined benefits plan can easily have a present day cash value of $18,000 per $100 of monthly benefits. In other words, a run-of-the-mill KPERS plan of $1,000 per month can be valued at $180,000.
Present day values of maintenance/alimony are more difficult to calculate and are also worth the effort. Soon, because of the new Federal Tax Code, maintenance will no longer be tax deductible by the payor or includable by the payee, but any maintenance award ordered by any court prior to the end of 2018 will still receive that favorable treatment. Even after the end of 2018, maintenance will be a handy tool to help balance distributions of assets in a situation in which one party receives income-generating assets and is not able to borrow enough to buy out the departing spouse. Maintenance can be terminable on events not within the control of the payor, including death of either party, remarriage, or the passage of a finite period of time. To calculate the value of the payments, and to do an apples-to-apples comparison with a lump sum, many of the same factors in making the earlier calculations are necessary. The monthly maintenance amount to be paid, the frequency of payment, the number of months until those payments begin, the number of months over which the payments are to be received, and the assumed investment interest rate per year are the crucial ones. To know how many months the payments are to be received, it is necessary to know also what contingencies might result in the payments not being received, either totally or in part. The death of the payor can be and often is eliminated as a factor by an agreement to provide life insurance to cover the remaining payments. It’s interesting to note that many people are willing to agree to an acceleration of the payments, with no discount for the present day value. If you represent the payor, it will be worth the trouble of calculating present value if an accelerating event occurs. The number of months for which the payments are to be received is also potentially influenced by the death of the payee, which is usually not a large factor for recipients, as, to put it bluntly, why do they care if monthly payments are received if they aren’t here to spend them? In situations where the payments are being made in lieu of substantial payments of assets, though, it is important to know whether the payments will continue to be received or paid in some lump sum, as the estate of the payee is then affected. The third major contingency—remarriage—while theoretically entirely within the control of the payee, has a certain discount value to some. On the one hand, the payor who thinks that his ex-wife is only getting the divorce so that she can quickly remarry, is often willing to agree to maintenance and bet on the power of new love to relieve him of the future payments. A divorcing person who is negotiating to receive maintenance almost never thinks that they intend to remarry. I use mathematics and statistics to show these people that they are betting against the odds. The majority of people who have divorced, close to 80%, go on to marry again. On average, they remarry within 48 months after divorcing, with younger adults tending to remarry more quickly than older adults. There is little data to show how influential the existence of a maintenance decree is on remarriage, but there is no question that, at the very least, having cash in hand as opposed to a potentially evanescent maintenance entitlement affects decisions. The use of co-habitation as a terminating factor makes calculation of the true value of a maintenance entitlement even more complex. In all those events, in order to at least have a starting point, it is necessary to be able to use math (or a simple software program), to show the client what the present day value of a stream of payments is.

Math Can Go Out the Door When Emotion Rules

All of the adroit calculations in the world will not overcome the toxic effects of pathological personalities in divorce cases, and so it becomes ultra-important that clients understand the true present day value of money in hand versus the promise of payments by a person who may intend to never cooperate and may, in fact, be willing to forego income or even be incarcerated in order to avoid payment of monthly judgments. It’s important to remind clients as the mathematical analysis is done that there is truth in the old saying: A bird in the hand is worth two in the bush.

About the Author

John T. Bird, native of Hays, Kan., is Senior Partner in the law firm of Glassman Bird Powell L.L.P. Hays. He is a graduate of both Washburn University and Washburn University School of Law. Proud to have appeared in the courthouses of 97 of Kansas’s 105 counties in his 44 years of practice, John has practiced law in Hays since 1974. He has a civil practice with an emphasis on family law cases involving complex issues and large marital estates. As a member of the Kansas Supreme Court Child Support Guidelines Committee from 1983 to 2012, John helped develop the Child Support Guidelines.
The University of Kansas has a helpful three day orientation that new law students are required to attend before the start of fall classes. When I attended this orientation (lovingly dubbed “Bootcamp”) in 2015, I had just moved from California to Kansas after graduating from a California university and spending the summer in Hong Kong. I did not know anyone in Kansas, and I had never even been to the state before packing up and driving there for law school. This was my first time on my own, living away from home. And on the last day of Bootcamp, a panel from the Kansas Lawyers Assistance Program (KALAP)1 was invited to speak to all of the new 1Ls.

The representatives from KALAP proceeded to give us the statistics on depression and substance abuse in the legal profession, among students and practicing attorneys. An ABA Journal article from that summer helpfully summarizes some of the statistics that I am certain were shared:

A 1990 Johns Hopkins University study examined more than 100 occupations for anxiety-related issues and found that lawyers suffer from depression at a rate 3.6 times that of the other professions studied. A National Institute for Occupational Safety and Health study – based on data from 1984-1998 – concluded that white male lawyers are more likely to turn to suicide than nonlawyer professionals. Falling Through the Cracks, a 2014 survey of Yale Law School students, found that 70 percent of them have struggled with mental health issues during their time at law school.2

The KALAP representatives also told us about Counseling and Psychological Services (CAPS) on campus, and that one in three of us law students would graduate from law school with a JD and some kind of mental health or substance abuse issue. We were urged to seek counseling as soon as possible, before the stress of law school got to us and we really needed it. In that moment, I had to resist the urge to turn to the students sitting on either side of me and to say “Don’t worry; I’ve got you covered on this one.” I was the lucky one-in-three who already had depression going into law school.

I had received that diagnosis about a month before graduating and flying to Hong Kong for a summer internship. The initial diagnosis was given to me by a school counselor who confirmed that my lethargy, exhaustion, emotional numbness, body aches, fleeting memory, and general hopelessness were not normal experiences. The psychologist I met with shortly afterwards confirmed that diagnosis, and urged me to seek counseling in a few months once I was back on U.S. soil and attending law school. All I was given in preparation for my trip were a few handouts about depression that described simple techniques to combat it. In the meantime, I was supposed to handle it the best that I could on my own. On one hand, I finally knew why I was so miserable despite being at the top of my class and all of the other objectively good things in my life. And on the other hand, I was going to be fighting my mental illness, in a foreign country, with only the assistance of some flyers.

That was the experience I took with me into Bootcamp and the first semester of law school. In addition to reading my
first day class assignments, I was calling the Counseling and Psychological Services to set up my first counseling appointment. My first semester in law school was essentially the first time I got real help with my mental health. I was able to meet with a counselor who helped teach me the skills I needed to recognize and manage my symptoms. Honestly, there was a lot going against me that semester but I survived it. And as I continued to get counseling and to actively work on my mental health, my depression got better. Other issues have come up as different stressors have entered my life, but my mental health has largely improved since coming to law school.

I can attribute this to two things: access to care and awareness of symptoms. At KU, Watkins Health Services and CAPS are a wealth of resources for me. I have access to psychological services and medication that might be hard to come by outside of a school environment. And since that summer in 2015, I have had an increased awareness of the symptoms for depression and anxiety. The Student Lawyer recently published an article titled You’re Right: Law School Stress is Different that lists some questions to ask yourself if you think you might be experiencing problems.

- Are you sleeping poorly or not enough?
- Is your nutrition suffering either because you’re grabbing junk food or your appetite has diminished?
- Does your daily and weekly life seem to be devoid of gratification?
- Are you barely able to drag yourself out of bed in the morning?
- Are you missing classes and isolating yourself from peers and professors?
- Are you often immobilized by anxiety?
- Do you no longer enjoy law school and other things in life that you used to find pleasurable?
- Do you find yourself yearning each day for the time when you’ll be able to drink or get high?
- Are you feeling distant from those you care about?

Throughout my time at law school, I have been able to answer “yes” to a lot of these questions. And so have many of my peers. As I become more open about the problems I was facing, I began to get feedback from a lot of my peers that they were either currently or had in the past had similar difficult experiences with their mental health. For most people, law school is the stressor that pushes any preexisting issue to the forefront where it becomes a problem. This can manifest as depression, anxiety, burnout, or any number of things. But for me, law school was the place where I could get help and where my mental health actually improved.

One of the things that I and my fellow law students have often speculated about is whether or not there are more people in law school with mental health issues because law school exacerbates those issues or because people with mental health issues are naturally drawn to law school. I cannot personally say for certain which it is, although I suspect it is a combination of the two. Regardless of the reason why, if you read this and related to some of my experience or could answer “yes” to the questions above, please seek out the resources available to you for help. Things can get better, even in law school.

“But I don’t want to go among mad people,” Alice remarked.

“Oh, you can’t help that,” said the Cat: “we’re all mad here. I’m mad. You’re mad.”

“How do you know I’m mad?” said Alice.

“You must be,” said the Cat, “or you wouldn’t have come here.”

— Lewis Carroll, Alice’s Adventures in Wonderland

About the Author

Amanda Vescovi is a 3L from Fremont, California. She received her undergraduate degree in business administration from San Jose State University, and she decided to attend law school in order to be part of an honorable profession. She enjoys traveling, gardening, baking, and helping others. After graduation, Amanda would like to live near the mountains with her husband.

2. Leslie A. Gordon, How Lawyers Can Avoid Burnout and Debilitating Anxiety, Am. Bar Ass’n (July 1, 2015, 6:00 AM), http://www.abajournal.com/magazine/article/how_lawyers_can_avoid_burnout_and_debilitat ing_anxiety.
3. Shawn Healy & Jeffrey Fortgang, You’re Right: Law School Stress is Different, 46 STUDENT LAW., no. 4, Mar.-May 2018, at 10, 11.
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KANSAS LEGAL SERVICES

Through the CRHA grant program, the KBF has awarded $625,000 to Kansas Legal Services. KLS projects include providing direct legal assistance to the public for services involving foreclosure prevention and providing outreach and education about housing stability issues that include foreclosure prevention, loan modification and working with lenders to implement reasonable payment plans. KLS is also providing legal assistance to individuals facing barriers to stable housing and assistance to neighborhood organizations working on creating safer and more secure neighborhoods.

KLS held an expungement clinic on April 20 at the Kansas Expocentre in Topeka. Over 125 individuals received assistance in filing petitions. KLS will be holding future clinics. If you would like to volunteer, contact Christine Campbell at campbellc@klsinc.org

“Because of the generous funding from the Kansas Bar Foundation, Kansas Legal Services and bar association partners have been able to assist Kansans in expunging their records and eliminating barriers to housing and employment. We could not do this without the bar foundation assistance, and the help of attorneys across the state. We hope to help more people this year through the expungement clinics that this funding has made possible, so look for a clinic where you can volunteer!” Christine Campbell, Statewide Pro Bono Coordinator, Kansas Legal Services.
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- Metropolitan Organization to Counter Sexual Assault (MOCSA)
- Kansas Bar Foundation
- Midwest Foster Care and Adoption Association
- In addition, we will fund Ethics for Good Scholarships to each of the KU, Washburn and UMKC Law Schools and the Johnson County Community College paralegal program.

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The Nelson-Atkins Museum of Art, Atkins Auditorium
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Questions?
Contact Deana Mead, KBA Associate Executive Director, at dmead@ksbar.org or at (785) 861-8839.

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People in Crisis: A Poverty Simulation CLE

by Eunice Peters

I lost my job. I lost my house. I had no food for my kids.

That was me at the People in Crisis: A Poverty Simulation CLE.

The Kansas Federal Public Defender’s office offers a poverty simulation program, which provides participants a glimpse into the lives of low-income individuals and families and the obstacles they face, the decisions that are made, and the consequences that impact these families every day.

The Kansas Bar Association Diversity Committee and Kansas Women Attorneys Association, together with Women in Law, the Public Interest Law Society, and the Faculty & Staff Committee on Diversity at the University of Kansas School of Law, hosted this worthy program on April 13, 2018, at The Oread Hotel in Lawrence. We had over 70 people participate! Because of this collaboration, we were able to offer this 2-hour CLE for free.

Tim Burdick and Che Ramsey, assistant federal public defenders in the Kansas City Office of the Federal Public Defender District of Kansas, led the program.

Attorneys, judges, law professors, and law students participated.

Participants navigated through four virtual weeks (a 15-minute period represented one week), contending with transportation, housing, food stamps, child care, employment, and other needs. Members of families “lived” in a variety of
situations: some were newly unemployed, some were recently deserted by the "breadwinner," some were homeless, and some were senior citizens receiving disability or retirement or grandparents raising their grandchildren.

This interactive immersion experience was conducted in a large room with the "families" seated in groups in the center of the room. Around the perimeter were tables representing community resources and services for the families. Services included a bank, community services, employer, utility company, pawn broker, grocery, social service agency, interfaith community services, payday and title loan facility, mortgage company, public school, community health center, and child care center.

Coming into this program, I honestly didn’t know what to expect. I thought I would review the rules, prioritize what needed to be done, and finish the simulation with some duties selectively unfinished. Instead, my sort-of plan (and I’m a very good pre-planner) was thrown out the window after the first seven minutes, which was the time it took for me to "work" and collect my check.

Most of my actions ended up being reactive and not proactive. I was constantly asking for transportation vouchers from my spouse and 16-year-old pregnant daughter. I lost my job for being tardy, I paid what I thought was my mortgage at the bank when I should have paid it at the mortgage company, I got my family evicted, and my children were left hungry all four weeks. I was definitely a burden to my spouse (sorry Teri!).

I was extremely grateful when the fourth week finished. My middle child was just found by a police officer wandering the streets, and there was no way I would have been able to afford the ticket or court fines associated with my alleged absentee parenting.

During the debriefing period, we shared our experiences and observations about the cycle of poverty. I was most surprised to find out that during the entire simulation, only one person visited the health center. This resonated with me because preventative health care was not even on my radar. I was too busy trying to find a job, making it through the slow lines of the bank and grocery store before the week ended, and getting assistance from the social and community services. We also found out that some families were able to navigate the system more successfully—Sunee’s family started out homeless and ended up with a home. And one participant mentioned that his role as a single senior citizen was lonely during the simulation, but he was also somewhat of a relief, because he didn’t have to worry about taking care of a family.

This simulation brought up memories for many—those who grew up knowing these struggles, those with an elder parent, and those coming to a realization that they might have misunderstood their client’s situation.

If presented the opportunity, I encourage you to participate in this program. It is a humbling experience and makes you rethink your preconceptions. Maybe there are reasons why a client doesn’t return your call or why an employee has tardiness issues or why a party can’t make it to all his or her court-ordered appointments and keep a job.

Thank you to the people who supported this program:

- Tim and Che and their 25 volunteers for putting together this program, which included set up and tear down. We can’t thank you enough!
- KBA Diversity Committee and KWAA for sponsoring the networking reception and providing swag for the attendees.
- Arturo Thompson, Assistant Dean of Career Services at the University of Kansas School of Law, for helping us collaborate with KU Law’s organizations who sponsored the location, provided program registration student volunteers, and created the advertisements.
- Amanda Stanley, Ivery Goldstein, and Deana Mead for helping organize the event.
- Lydia Hiesterman, Thrivent Financial, lydia.hiesterman@thrivent.com, for working with me to sponsor “thank you” volunteer goodie bags and provide swag for the attendees.

About the Author

Eunice Peters is the at-large member on the Kansas Bar Association Board of Governors. She also serves on the Kansas Women Attorneys Association Council as co-chair of the outreach and education committee. She currently works as a staff attorney for the state of Kansas. She is a proud mama of an 18-month old daughter, two 16-year-old puppies, and a 3-year-old cat.

peterse28@gmail.com.
Can the New Digital Assistants Do More than Sort Playlists and Tell You the Weather?

by Larry Zimmerman

Amazon Alexa Skill Blueprints

Adoption of digital assistants like the Amazon Echo (Alexa) or Google Home is still relatively low with only about 22% of U.S. homes using them. That figure continues to grow, however, as new players like the Apple HomePod arrive and the big two, Amazon and Google, roll out new devices, features, and lower price points.

Digital assistants are capable of managing a universe of smart home devices like heating and air conditioning, security systems, lights and power, and a host of specialized indoor/outdoor gadgets. However, the primary use of digital assistants is still for entertainment – summoning favorite music playlists on command. In a close second for digital assistant use is obtaining information like weather, traffic, and news. Amazon is hoping to continue building on that information-gathering feature through new personalization features in Alexa Skill Blueprints.

Skills (aka Apps)

Amazon started offering “skills” for the Echo shortly after release. These skills, such as an app for a smartphone, enabled new features that could be triggered by voice command. There were skills including Trivial Pursuit or a much more specialized quiz on the U.S. Constitution using actual bar preparation flash cards, for example. Sophisticated users could obtain a developer account and create their own skills with some programming required, but Alexa Skill Blueprints eliminates the programming requirement opening up skill creation to anyone and allowing true personalization of the Echo.
Skill Blueprint Templates

Accessing the Skill Blueprints starts at www.blueprints.amazon.com where users are presented with a series of templates. The templates are similar to those in Word or PowerPoint. The design and formatting elements are all laid out allowing the user to concentrate on content alone. One Skill Blueprint called Houseguest allows users to set up custom answers to common questions a house-sitter or guest might have. For example:

- How to find certain things in the house (“Alexa, where is the toilet paper?”).
- How to do certain tasks (“Alexa, how do I reset the router?”)
- Who to contact in an emergency (“Alexa, what is the contact info for the alarm company?”)

The Houseguest template can be expanded to add as much content and instruction as a guest or sitter might need and the prompts can provide additional guidance to help retrieve it. Once enabled, the new skill is active only on your Echo and the information provided is private. The Blueprints are not shared to the broader skill store available for Echo users obviously.

Another Skill Blueprint is called Custom Q&A. This Blueprint is much more open-ended than Houseguest which hard-wires several categories of information. Custom Q&A is an open-ended template that allows a user to create any question and set a specific answer. A sample question in the template is “Alexa, who is dad’s favorite kid?” to which the Echo would respond, “The dog.” The commands must be relatively short, complex names for people or places can be problematic, and obscenity is blocked but otherwise the Custom Q&A Blueprint is truly open-ended.

Practice Use

While playing with the Custom Q&A Blueprint, its potential as a quick list of practice-related questions became apparent. You could plug in the phone number for all court clerks’ offices or the contact email address for some clients. If there are statutes that you need to recall in relation to a particular issue, those could be entered into the Blueprint. For example, “Alexa, what’s the cite for statutes of limitation?” The full customization allowable can turn the Echo into the “reminder binder” many lawyers have making retrieval quicker and centralized for everyone in the office.

The Houseguest Blueprint template is also office-friendly as a “While I’m Away” guide. Every position in a law firm has some frequently asked questions related to performing its duties. Those just happen to be organized around the same categories in the Blueprint. “Alexa, where are the shared forms saved?” “Alexa, how do I file a foreign judgment in eFlex?” “Alexa, who do we call for office supplies?” Because the Blueprint can be renamed, a separate Blueprint could be configured for different positions like receptionist, paralegal, efiling clerk, etc.

Such information can be (and should be) kept in reminder binders but surveys of computer users show that 62% prefer voice access to certain simple types of information. The hands-free access to information is favored and is quicker while being perceived as more accessible. If there are doubts, just count the times you are asked a question that you know is in the reminder binder if the person would just pick it up and flip through it. Organization by voice activation also solves the indexing problem that is inherent as reminder binders grow and develop.

Consider Confidentiality

The usual caveats about the Echo apply. It is a listening device and there is some level of information that is not totally clear to users passed between those users and Amazon. It may not be an appropriate device for all information or even for all law firms. (It is important to realize that all smartphones and Windows 10 machines already have digital assistants built in; and depending on how they were configured, they may be listening already.) It is worth noting that Amazon is planning on dropping some Alexa-enabled business offerings later this year which, hopefully, can address some of the privacy concerns and provide more user control and disclosures on data exchanged—for a fee no doubt.

About the Author

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Legal writers aspire to craft clear, concise, and persuasive briefs. Nearly every article on legal prose acknowledges that crafting a persuasive argument requires some variation of an accepted organizational scheme -- CREAC, IRAC, TREAT, or some variant. Novices often complain that using these structures constrains their style and renders their writing formulaic and stilted.

But excellent legal writing need not be boring. “In a profession whose writing suffers from verbal arteriosclerosis, some thinning of the blood is in order.” A quick search of electronic databases provides colorful examples from court opinions.

For example, in *Dart Cherokee*, the Supreme Court declined to address whether a presumption "is proper in mine-run diversity cases." Justice Ginsburg has used the phrase "mine run" several times in opinions. This variant of "run of the mill" and "run of the kiln" arose from the coal industry and, “like its cousins, is an extraordinary way of saying ‘ordinary.’”

In *United States v. Jones*, the Supreme Court found that attaching a small GPS device to the underside of a vehicle constituted a search. The majority reasoned that “the law enforcement officers in this case engaged in conduct that might have provided grounds in 1791 for a suit for trespass to chattels.” In the concurrence, Justice Alito disagreed, asserting
that any analogous situations from the late–18th-century “would have required either a gigantic coach, a very tiny con-
stable, or both.”

The late Justice Antonin Scalia’s writing brims with vivid phrases, both short and long. In his dissent in King v. Bur-
well he dismissed the majority’s reading of a statutory pro-
vision with two words: “Pure Applesauce.” In Cruzan, he wrote that “the point at which life becomes ‘worthless,’ and the point at which the means necessary to preserve it become ‘extraordinary’ or ‘inappropriate,’ are neither set forth in the Constitution nor known to the nine Justices of this Court any better than they are known to nine people picked at random from the Kansas City telephone directory.

But the Supreme Court does not have a monopoly on col-
orful language. In Day v. Corner Bank, Chief Judge Royce C. Lamberth dismissed for lack of jurisdiction a case “pitting a Nevada citizen against a Swiss bank and its Bahamas-based subsidiary . . . where the prize is $14 million that once pur-
poredly belonged to a Kansas woman.” Judge Lamberth wrote that the plaintiff “may be a helpless victim tilting against powerful and shadowy international banking forces, or, as a Las Vegas resident, may be simply drawing blind, hoping to come up Aces.”

And finally, Judge Kent of the Southern District of Texas took counsel to task for a variety of failings with a creative ac-
count of an imagined “secret pact.”

This case involves two extremely likable lawyers, who have together delivered some of the most amateurish pleadings ever to cross the hallowed causeway into Galveston, an effort which leads the Court to surmise but one plausible explanation. Both attorneys have ob-
vously entered into a secret pact—complete with hats, handshakes, and cryptic words—to draft their plead-
ings entirely in crayon on the back sides of gravy-stained paper place mats, in the hope that the Court would be so charmed by their child-like efforts that their utter dearth of legal authorities in their briefing would go un-
noticed.

These cases demonstrate that colloquialisms, metaphors, similes, and other literary devices enliven legal writing, thus adding style to substance. ■

1. See, e.g., Richard Wydick, Plain English for Lawyers (2005), at 34.
2. See, e.g., Tonya Kowalski, Mentoring New Legal Writers, J. Kan. Bar Ass’n, Jan. 2012, at 12 (mentors should suggest that mentees keep elements and other units of analysis in separate proofs—“think IRAC or the increasingly popular ‘CREAC’ (conclusion-rule-explanation-application-conclusion”).
3. Rebekah Hanley, Becoming — or Hiring — A Capable Legal Writer, The Formula, Or. St. B. Bull., June 2011, at 11 ("Beginning legal writers are sometimes frustrated because they see no opportunity for creativity in a structured legal argument.").
5. Bryan A. Garner, Colloquiality in Law, 3 Scribes J. Legal Writing 147 (1992) (“In formal legal writing, occasional colloquialisms may give the prose variety and texture; in moderation, they are entirely appropriate even in judicial opinions.”).
7. See id.
9. Id.
10. Id. at 958 & n.3.
11. See Nolan D. McCaskill, The Ten Most Memorable Scalia Quotes, Politico Online (Feb. 14, 2016); available on line at https://www.politic-
co.com/story/2016/02/best-antonin-scalia-quotes-219274.
15. Id.
16. Boudhaw v. Unity Marine Corp., 147 F. Supp. 2d 668, 670 (S.D. Tex. 2001) (after taking defendant to task for utterly failing to address a complex Erie problem, stating that “a more bumbling approach is dif-
"... but wait folks, There's More! Plaintiff responds to this deft, yet minimalistic analytical wizardry with an equally gossamer wisp of an argument.”).
“[T]he Declaration of Independence[] recognizes the inherent
dignity and worth of all people. It states that all men are created
equal and that they are endowed by their Creator with certain un-
alienable rights. The right to be free from slavery and involuntary
servitude is among those unalienable rights.”

A Review of Human Trafficking

by Merideth J. Hogan
Antebellum slavery was moored in the assumption that black people were inherently worth less than white people. Enslavement was not only justified, but moral, as white people could teach black people and keep them safe. The buying and selling of humans was reduced to a trade in commodities, the bull rising and the bear falling—leaving the broken bodies of millions in the wake of the stampede. Even when antebellum slavery was made illegal in the United States and around the globe, millions continued living in subjugation via a scheme commonly known as human trafficking. Where the owning of a slave was once a symbol of status, it is now largely seen as abhorrent. Unfortunately, the social stigma of trafficking has proven insufficient to curb the demand for cheap labor and sex-by-the-hour, and thus, human trafficking continues.

1. What, why, who, and how?

The United Nations defines human trafficking as:

the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

Included in this definition are two types of modern slavery: labor and sex trafficking. While both forms of slavery are prevalent in modern society and many people are subjected to both, this article focuses on the issue of sex trafficking.

Sex trafficking occurs when an adult engages in a commercial sex act (like prostitution) as the result of force, threats of force, fraud, or coercion; or when a person under the age of 18 engages in a commercial sex act. The results of having been trafficked are often long lasting and may include a variety of physical and mental symptoms. Survivors may have contracted sexually transmitted infections, been exposed to HIV/AIDS, and may have been subject to unsafe abortions at the hands of their traffickers. The physical and psychological abuse associated with sex trafficking often leads to serious mental and emotional health consequences. Survivors may experience post-traumatic stress disorder, feelings of guilt, depression, anxiety, substance abuse, and eating disorders.

Who are the victims of this horrific crime? Although commonly thought to affect only girls and women, a large number of boys and men are also trapped in sex trafficking. Too frequently, men are not identified as victims of trafficking due to bias and stereotype, and the misconception that sex trafficking affects solely women. As a result, there is a lack of government and other programs directed at
assisting male victims in recovery. Additionally, male victims are more likely to be penalized or face fines for offenses related to their being trafficked, like drug, loitering, and prostitution charges.¹¹

Trafficking victims come from diverse socioeconomic backgrounds, urban and rural areas, and a variety of other differing circumstances.¹² Populations at heightened risk of becoming trafficking victims include children who have run away from home, people who have experienced violence or trauma, and refugees.¹³ In the United States, one in seven reported runaway children in 2017 were likely victims of child sex trafficking when they disappeared, and of those, 88% were in the care of social services when they went missing.¹⁴ Runaway youth are especially at risk because they are often poor, have a history of abuse, are unemployed, and may have mental health issues that make them likely targets for traffickers.¹⁵ Additionally, armed conflict increases the risk of human trafficking by “increasing economic depression, weakening [the] rule of law, decreasing the availability of social services and forcing people to flee for their safety.”¹⁶ One commonality between the populations at risk for trafficking is the presence of some disruption and a lack of stability.

What causes a person to sell another or to treat them like nothing more than a commodity? As in many other contexts, money is a known driving factor. Trafficking in humans is highly lucrative and, depending on the location, has relatively low risk of punishment.¹⁷ In 2014, the International Labor Organization (“ILO”) reported that sex traffickers made approximately $99 billion in 2012.¹⁸ The profits from sex trafficking were highest in Asia and developed nations, $32 billion and $26 billion respectively. The ILO believes this is due to the high number of victims in Asia and the high profit per victim in developed countries.¹⁹ Further, the 2012 average global profit per victim of sex trafficking was $21,800 per year. This was six times more profitable than all other forms of forced labor.²⁰ Sex trafficking is likely more profitable because of the high demand for services and the price customers are willing to pay, and that there are low operating costs or capital investment associated with this activity.²¹

How can such a pervasive problem take place so frequently without being noticed? Traffickers often hide their actions in plain sight by disguising their real purpose under the façade of a legitimate business or aid.²² For example, a trafficker may own a massage parlor and use victims both for legal purposes (massages) and for the commonly humored “happy endings” clients may request.²³ Additionally, to hide their proceeds, traffickers might set up money laundering schemes to give the appearance of a legitimate business venture.²⁴

II. Difficulty Addressing Human Trafficking

Human trafficking has been difficult to address for numerous reasons, including victim reluctance to participate in investigations, issues in identifying victims, and inadequate prosecution. Victims may be reluctant to participate in an investigation because they do not feel or understand that they have been trafficked.²⁵ The victim may also refuse to leave the trafficking situation due to shame, emotional attachment to the trafficker, or drug addiction.²⁶ Complicating prosecutions further, some victims are reluctant to seek justice against their trafficker who may be their spouse, parent, or other family member.²⁷ Alternatively, a victim may be afraid to report what is occurring because the trafficker has threatened their life or loved ones.²⁸

Additionally, law enforcement and others who may come into contact with trafficking victims may not possess adequate training to identify victims. Many law enforcement agencies do not have the resources to train, staff and thoroughly investigate all potential human trafficking cases.²⁹ Law enforcement may not have the foreign language skills necessary to effectively facilitate identification of a trafficker, and may be unprepared to address the trauma a victim has suffered.³⁰ Survivors often need rehabilitative services for longer periods than law enforcement is able to provide, which can be frustrating and cause law enforcement to resort to information extraction tactics they would normally use on suspects—including using arrest to secure victim cooperation.³¹ As a result, victims often go unidentified and are not provided with the rehabilitative services they may need.³²

Even when a victim is identified or cooperates, relatively few human trafficking cases are prosecuted. Fewer than 10,000 human trafficking convictions were achieved worldwide in 2016.³³ After conducting interviews of prosecutors in the United States involved in 140 closed human trafficking case records, the National Institute of Justice found that “State prosecutors were reluctant to use new human trafficking laws and instead charged offenders with offenses they were more familiar with, such as rape, kidnapping or pandering.”³⁴ In addition to issues of funding and non-cooperative victims, prosecutors have pointed to a lack of precedent in regard to human trafficking cases, a lack of clarity in the relevant elements they would be required to prove, and a lack of guidance on prosecutorial techniques, common defense tactics, or jury instructions for these cases.³⁵
III. International Laws Related to Human Trafficking

A. Palermo Protocol

Prior to 2000, there was little to be said for the global response to human trafficking. Finally, in 1998 and 1999, high-ranking officials from over 100 countries convened in Vienna, Austria to develop a global response to the problem of human trafficking. The delegates’ first agreement was the United Nations Convention against Transnational Organized Crime, and the second (a supplement to the first) was The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. This Protocol became known as the Palermo Protocol, named for the Italian city where it was ceremonially opened for signatures in December 2000.

The purposes of the Palermo Protocol are “(a) To prevent and combat trafficking in persons, paying particular attention to women and children; (b) To protect and assist the victims of such trafficking, with full respect for their human rights; and (c) To promote cooperation among States Parties in order to meet those objectives.” These purposes are known together as the “3Ps” (Prevention, Protection, and Prosecution) and are used as the basic framework for promoting a global response to the human trafficking crisis.

The Palermo Protocol was created to provide all nations with a starting point for addressing human trafficking within their own borders. Much like a model code, countries can wholly or partially adopt the language of the Palermo Protocol, and further define terms left purposefully vague in consideration of their distinct issues. To that end, signatories to the Palermo Protocol sought to define “trafficking in persons” as broadly as possible, ultimately agreeing upon:

(a) “Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation or the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.

This definition applies to anyone who facilitates, actively or passively, the trafficking of a human being with the mens rea of exploitation.

By defining “trafficking in persons” vaguely, signatory countries have the flexibility to identify and address means of coercion specific to their populations, while still adhering to a global definition which facilitates discussion and study of this world-wide crisis. Traffickers all over the world employ varying methods of convincing or coercing victims to comply with their orders, including trans-cultural means like promises of free passage to a new land for a job that does not exist, to culturally specific means like using the victim’s fear of voodoo to motivate action.

When the victim is a minor, the Palermo Protocol does not require a showing of coercion, abduction, fraud, deception, or abuse of power. Rather, it only requires a showing of recruitment, transportation, transfer, or harbouring of the minor for the purpose of exploitation. This is made clear by Article 3(c) of the Palermo Protocol, which states: “The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered ‘trafficking in persons’ even if this does not involve any of the means set forth in subparagraph (a) of this article.” The Palermo Protocol defines “child” as “any person under eighteen years of age.”

The Palermo Protocol also addresses whether adult victims could “consent” to being trafficked for the purpose of exploitation and decided in the negative. It states “(b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used.” This means that once the elements of a trafficking case are established, the victim’s consent is irrelevant.

Countries that ratify the Palermo Protocol are obligated to adopt laws and measures to criminalize human trafficking, and attempting, aiding, or directing human trafficking as defined by the Protocol. As a result of the Palermo Protocol, over 130 nation-states have laws to combat human trafficking. Since December 2000, 117 nation-states have signed the Palermo Protocol, meaning they agree to work toward its goals without agreeing to be legally bound by its terms. Since then, several of those who signed and additional nation-states (173 nation-states total) have noted their ratification, acceptance, approval, or accession of the Palermo Protocol.

As these terms apply to international treaties, “ratification” means the nation-state consents to be bound by the treaty.
A review of human trafficking

Urged by the Senate Committee on Foreign Relations, which believed the Palermo Protocol to be in the interest of the country, the United States signed the Palermo Protocol on December 13, 2000. However, the Executive Branch recommended three reservations to the terms of the Palermo Protocol, which were ultimately adopted. First, the United States reserved its right to effectuate its obligations under the Palermo Protocol in a manner consistent with its fundamental principles of federalism. This was because the Protocol called for criminalizing conduct which was prohibited by federal law, but not by every state, such that a situation could arise in which the United States would be unable to fulfill its obligation under the Palermo Protocol. The second reservation related to the Protocol’s requirement that parties establish jurisdiction over a list of offenses committed in its territory, on board a vessel flying its flag, or an aircraft registered under its laws. Because the United States’ laws do not extend jurisdiction over all these crimes committed on board United States vessels and aircraft traveling outside of its territory, the United States could not be certain it would be able to exercise jurisdiction over crimes arising under the Palermo Protocol. The third, and final, reservation made by the United States addressed dispute settlements with other parties. Under the Palermo Protocol, disputes between parties as to the interpretation or application of the Protocol that could not be settled through negotiation would be referred to arbitration or the International Court of Justice. The United States reserved the right to opt out of this requirement.

B. International Laws Legalizing Prostitution

Since the Palermo Protocol and the increased attention to human trafficking, countries have been adopting novel and differing policies to reduce instances of human trafficking within their borders. One policy that has drawn attention and curiosity is the idea of legalizing prostitution to decrease human trafficking. The idea is that legalization of prostitution would improve working and safety conditions for sex workers, which would allow legitimate businesses to recruit and hire women who voluntarily participate in this type of work. Those who were participating in the purchase of sex from a victim of human trafficking would be rerouted to participating in a legal commercial structure with consenting adults providing the services they seek. The government would then be able to gain tax revenue from this new economic development and use it for various purposes including providing counseling to sex workers.

Although this theory appears viable at first glance, it ignores the likelihood that demand would quickly outpace the number of sex workers who would voluntarily enter that field. Despite becoming a legal form of work, it’s unlikely that becoming a prostitute would be a desirable job. Additionally, currently, the risk associated with purchasing sex from a prostitute has a deterrent effect on those who would otherwise be inclined to do so. Television shows are replete with stories of high profile men meeting women in seedy hotel rooms and ultimately experiencing the humiliation associated with having ones’ most personal moments exposed to the entire nation. When prostitution is legalized, people who were previously dissuaded from purchasing sex may enter the market, celebrating birthdays, promotions, and engagements. While purchasing sex has not generally been considered a quintessential masculine rite of passage in the United States, legalizing the practice could create such a ritual.

Additionally, when a country has legalized prostitution, it becomes a popular sex tourism spot for vacationers. The number of women who would voluntarily enter prostitution is unlikely to keep up with the number of local buyers and those who would travel to the United States, for example, on a “sex-cation.” The disproportionate market would create a need for additional sex workers, motivating pimps to continue coercing women and children into the sex trade. This is supported by a 2013 study which found that countries with legalized prostitution had higher rates of human trafficking influx than countries where prostitution remained illegal. That study also found that countries with a higher GDP per capita, larger population, larger stock of pre-existing migrants, and a democratic political regime reported higher incidence of human trafficking inflows.

Germany, Sweden, and Denmark provide an opportunity to analyze different methodologies with respect to legalized prostitution. In 1999, Sweden outlawed all forms of prostitution, where it had previously allowed self-employed prostitution. Also in 1999, Denmark legalized self-employed prostitution, but prohibited brothel operation. In 2002, Germany adopted a more liberal scheme than its previous treatment of prostitution, which allowed only for self-employed prostitution. Germany legalized prostitution for self-employment and allowed third-parties to legally participate in the selling of another with permission. One study found that Sweden and Denmark had similar rates of human trafficking when their population differences were accounted for, suggesting more
liberal prostitution laws had little effect on reducing human trafficking. Germany, however, which had the most liberal laws related to prostitution, had higher incidents of human trafficking than both Denmark and Sweden. This supports the conclusion that legalizing prostitution tends to increase the rate of human trafficking.

IV. The United States’ Laws Related to Human Trafficking: National and State Laws

A. Federal Laws

In 2000, President George W. Bush enacted the “Victims of Trafficking and Violence Protection Act of 2000” (“TVPA”), the purposes of which are “to combat trafficking in persons, a contemporary manifestation of slavery whose victims are predominantly women and children, to ensure just and effective punishment of traffickers, and to protect their victims.” The TVPA supplemented existing laws related to Peonage, and Trafficking in Persons. The TVPA was also the first piece of legislation in the United States which explicitly required government action to address human trafficking. In enacting the TVPA, Congress hoped to bolster the nation’s weak and incomprehensive laws, which it found failed to adequately punish traffickers.

Additionally, the TVPA required the President to take direct action in addressing human trafficking. Per that enactment, in 2002, President Bush created an Interagency Task Force to Monitor and Combat Trafficking. The Taskforce is chaired by the Secretary of State, and includes the Attorney General, Secretary of Health and Human Services, Secretary of Homeland Security, and the Federal Bureau of Investigation, among other federal agencies.

In 2002, President Bush also signed a National Security Presidential Directive mandating a zero-tolerance policy toward U.S. armed services, civilian government employees, and civilian contractors participating in the trafficking of humans. In furtherance of President Bush’s Directive, Congress reauthorized the TVPA in 2003, with a new provision which allowed the government to terminate contracts without penalty if the contractor or subcontractor engaged in trafficking of persons or procured a commercial sex act during the contract period, or if forced labor was used in performance of the contract. The 2003 amendments also introduced the possibility for survivors to recover civil damages against their traffickers, provided a criminal action had concluded and the civil action was brought within 10 years after the cause of action arose (or 10 years after a victim who was a minor attains the age of 18). In its 2005 reauthorization, Congress authorized the exercise of extraterritorial criminal jurisdiction, which allowed federal prosecutors to seek criminal penalties against contractors and U.S. government employees for trafficking crimes that were committed outside of the United States. Criminalizing involvement in human trafficking while extending jurisdictional reach established a higher level of risk for contractors and U.S. government employees than was previously felt.

As the United States’ understanding of human trafficking and how to address it continued to expand, so did the legislative response. In 2008, the legislature added new criminal penalties to punish those who knowingly benefited from participation in a venture that engaged in trafficking crimes, or who recruit, solicit, or hire people from outside the U.S. by use of false or fraudulent means. The legislature also expanded the definition of “force” to include the abuse or threatened abuse of the legal process, and eliminated the requirement that a prosecutor must prove the defendant knew a sex trafficking victim was a minor where the defendant had a reasonable opportunity to observe the victim. In 2013, the legislature enacted further penalties to discourage U.S. citizens and permanent resident aliens who reside overseas from abusing a sex trafficking victim under the age of 18, by imposing fines and criminal penalties.

In 2014, President Obama signed the Preventing Sex Trafficking and Strengthening Families Act. This Act requires states to develop policies and procedures for identifying, documenting, screening, and determining appropriate services for children in the child welfare system. Further, the Act requires law enforcement to report children missing within 24 hours to the National Crime Information Center and the National Center for Missing & Exploited Children. The National Advisory Committee on the Sex Trafficking of Children and Youth in the U.S., established under the Act, provides advice on policies to improve national response to trafficking of children. In order to do so, the Committee coordinates federal, state, local, and tribal government child welfare agencies, social services, mental health, victim services, courts, and others to develop programs to protect children from being trafficked.

Recently, in 2015, the legislature passed legislation making it “absolutely clear for judges, juries, prosecutors, and law enforcement officials that criminals who purchase sexual acts from human trafficking victims may be arrested, prosecuted, and convicted as sex trafficking offenders.” The 2015 legislation also directed any assets forfeited to be used in satisfying a victim restitution order. In addition to criminalizing forced labor and sex trafficking, this national legislation punishes the attempt or conspiracy to commit a trafficking offense in the same way and to the same degree as if the crime were completed. Importantly, this means both the conspiracy and the attempted trafficking are punishable by up to life imprisonment for sex trafficking, rather than restricted to the statutory maximum for general conspiracy (5 years imprisonment). In addition, in December 2015, President Barack Obama appointed 11 survivors to the U.S. Advisory Council on Human Trafficking. The Advisory Council uses the expertise and experiences of its members, as well as their ongoing work and leadership in various national, state, and local anti-human trafficking efforts.

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trafficking efforts, to advise the Task Force in addressing trafficking. As a result of these legislative strides and efforts to enforce them, the United States is considered to have met the minimum standards for the elimination of trafficking, according to the Department of State's 2017 Trafficking in Persons Report.

B. Kansas Laws

In 2009, Kansas's victim offices served only two survivors of human trafficking, and in 2011, Shared Hope International (a nonprofit working to end sex trafficking) gave Kansas an “F” on its state laws related to stopping and preventing child sex trafficking. By 2016, Kansas had served 463 survivors, and in 2017 was one of only eight states to receive an “A” grade from Shared Hope. Kansas has worked hard to improve its laws, some of which are described below.

In 2005, Kansas passed its first anti-human trafficking laws. In line with federal law, Kansas defined “trafficking” as “recruiting, harboring, transporting, providing or obtaining, by any means, another person knowing that force, fraud, threat or coercion will be used to cause the person to engage in force labor or involuntary servitude,” or as “benefitting financially or by receiving anything of value” from participating a trafficking venture. Aggravated trafficking was defined as trafficking involving kidnapping, intent to use the victim for the culprit’s or another’s sexual gratification, which results in death, or which involves a minor victim. In 2010, Kansas’s trafficking law was amended to specifically refer to “human trafficking” and to bring aggravated trafficking under the same statute as trafficking, recodified as Kan. Stat. Ann. § 21-5426.

In 2017, Kan. Stat. Ann. § 21-5426 was further amended to provide that it “shall be an affirmative defense [to prosecution for human trafficking] that the defendant: (1) Was under 18 years of age at the time of the violation; and (2) committed the violation because such defendant, at the time of the violation, was subjected to human trafficking or aggravated human trafficking, as defined by this section.” It is important to note that this affirmative defense is only available to those who were minors when they contributed to the exploitation of others. Additionally, the new amendment requires persons convicted of human trafficking or aggravated human trafficking to pay a fine into Kansas’s Human Trafficking Victim Assistance Fund.

Another important law related to human trafficking in Kansas is the Commercial Sexual Exploitation of a Child statute, passed in 2013. This law criminalized knowingly hiring a minor by exchanging “anything of value” in order to engage in sexual conduct with the minor. Importantly, it also criminalizes establishing, owning, maintaining, or managing property where sexual relations with a minor are being sold or offered, or allowing property to be used for that purpose. This law provided the Kansas Attorney General with authority to coordinate human trafficking training for law enforcement agencies throughout the state.

The Human Trafficking Victim Assistance Fund, referenced above, was created in the same bill as the Commercial Sexual Exploitation of a Child statute. The Fund provides survivors of human trafficking and commercial sexual exploitation with care, treatment, and other services. Victims may also gain restitution directly from their convicted trafficker. A defendant convicted of human trafficking, aggravated human trafficking, or commercial sexual exploitation of a child is required to pay restitution to the victim after the criminal proceeding (even if the victim is unavailable to accept payment) for expenses incurred by the victim as a result of the offense, and “three times the greatest of the following, with no reduction for expenses the defendant incurred to maintain the victim:

(a) The gross income to the defendant for, or the value to the defendant of, the victim’s labor or services or sexual activity;
(b) the amount the defendant contracted to pay the victim; or
(c) the value of the victim’s labor or services or sexual activity, calculated under the minimum wage and overtime provisions of the federal fair labor standards act . . . .”
If the victim does not claim the restitution within five years, it is paid into the Fund for the assistance of others. Additionally, Kansas has provided a civil action for victims of human trafficking, aggravated human trafficking, or commercial sexual exploitation of a child to seek “actual damages, exemplary or punitive damages” against their trafficker “if the victim suffered personal or psychological injury as a result of the conduct.” Under this civil action, a prevailing victim-plaintiff is deemed to have sustained damages of at least $150,000. As of yet, no cases have been brought under this statute.

More recently, the 2017 legislative session brought many additional changes to Kansas’s laws. For example, beginning July 1, 2018, applicants for a new or renewed commercial drivers’ license (“CDL”) in Kansas will be required to complete training on identification and prevention of human trafficking prior to such issuance or renewal of a CDL. Additionally, a new crime of “Trading in Internet Pornography” makes it a severity level 5, person felony when an offender 18 years of age or older knowingly causes child pornography to be viewed by someone other than the offender or person depicted by use of any device connected to the internet. This is important in the context of human trafficking because receiving child pornography is receiving “something of value” sufficient to meet the conditions for the commercial aspect of sex trafficking. Importantly, under this law, an offender may be prosecuted wherever the depiction may be viewed instead of wherever the offense occurred. This gives law enforcement much broader power to prosecute offenders, and refocuses use of investigative techniques on the point of consumption.

Additionally, currently pending before the Kansas legislature is a bill which would allow survivors of human trafficking to get a protective order against their trafficker in the same manner as a victim of stalking or sexual assault. Additionally, this bill would allow others to seek an order on behalf of a minor child who is alleged to be a human trafficking victim, including the child’s parent, an adult residing with the minor child, a county or district attorney, or the attorney general.

V. What can the legal community do to address human trafficking?

Prosecutors can address human trafficking by ensuring accused traffickers are charged and tried under the anti-trafficking statutes. While these cases can be daunting, there are resources available to provide support and education as to how to prosecute human trafficking cases. For example, The Warnath Group published a “Practice Guide” for prosecutors preparing victim-witnesses to testify against their alleged trafficker. Achieving prosecutions will require traffickers to contribute to the Human Trafficking Victim Assistance Fund and open the possibility for the victim to seek civil restitution from the trafficker.

Education is also an important first step to helping combat human trafficking. The Attorney General’s Office provides presentations to firms and businesses who request one, including on the topic of human trafficking. Additionally, the Attorney General’s website includes several resources regarding identification of victims, victim services, and posters to display in your office. Further information is available through well-known human trafficking resources like the Polaris Project and Shared Hope International. Attorneys can also sign up through Kansas Legal Services to work with victims of human trafficking on a variety of matters, or can volunteer in a non-legal capacity at a homeless or domestic violence shelter in their area, as populations who use these services are at a higher risk of being targeted by traffickers.

VI. Conclusion

Human trafficking affects millions every year, both globally and locally. Recent legislative enactments have pushed the issue to the forefront of public awareness. This article is intended to be a primer on the history, scope, and current status of the legal response to human trafficking—and to sex trafficking in particular. Kansas has relatively recently enacted several pieces of legislation enhancing its response to the issue, and as a result, the Kansas legal community may encounter both the traffickers and the victims of sex trafficking with more regularity. Thus, it is important for us all to gain a better understanding of what human trafficking is, who is affected, and the numerous legal problems that may arise.

About the Author

Merideth J. Hogan graduated from Washburn University School of Law in May 2016. She aspires to work with victims and survivors of human trafficking to achieve justice and healing, and to promote education in the community and legislative progress.

mericline@gmail.com or 785-383-3004.
1. 22 U.S.C. § 7101(b)(22) (excerpt from the “Purposes and Findings” section of the Trafficking Victims Protection Act).


3. The last country to officially abolish slavery, Mauritania, did not do so until 1981. Jason Rezaian, Slavery is still alive in Mauritania. Can a new court ruling help change that?, The Washington Post (Feb. 7, 2018), https://www.washingtonpost.com/news/worldviews/wp/2018/02/07/slavery-is-still-alive-in-mauritania-can-a-new-court-ruling-help-change-that/?utm_term=.fc4736f25f04. In 2007, Mauritania passed its first law to enforce the abolition of slavery. Id. In 2011, the law was used to successfully convict a former slave master for the first time, and only, time. That former slave master, Hassine, had enslaved two young brothers and deprivied them of schooling. Id. Hassine was sentenced to two years in prison and ordered to compensate the brothers the equivalent of $4,700. Id. In 2011, both Hassine and the prosecutor each appealed the sentence, and Hassine was released pending further decision. No further action has been taken in the case. Id. The brothers’ lawyers took the case to the African Committee of Experts on the Rights and Welfare of the Child, a regional court, and argued the Mauritania government owed the brothers compensation for failing to enforce the anti-slavery law. In what will hopefully prove to be a landmark decision in a country where an estimated 1 out of every 100 people is enslaved, the regional court ruled in favor of the brothers. Id.


6. Trafficking in Persons Report, United States Department of State, at 16 (June 2017) [hereinafter 2017 Trafficking Report], available at https://www.state.gov/j/tip/rls/tiprpt/. Physical force is not a necessity in trafficking. A Romanian trafficker in the United Kingdom was convicted of the crime of trafficking in persons and sentenced to 14 years for his role in the forced sexual exploitation of two young men. Id. Researchers from Loyola University New Orleans’ Modern Slavery Research Project interviewed homeless youth in 10 cities across the United States and Canada from 2014-2016. Laura T. Murphy, Labor and Sex Trafficking Among Homeless Youth: A Ten-City Study Executive Summary, Loyola University New Orleans Modern Slavery Research Project, available at https://covenanthousestudy.org/landing/trafficking/docs/Loyola-Research-Results.pdf (2016). Of the 641 homeless youth interviewed, 19% had been victims of human trafficking. Id. at 4. Additionally, 30% of those interviewed reported they had been involved in the sex trade in some way—either through trafficking or as adult prostitutes. Id. This included sleeping with strangers in exchange for shelter. Id. at 6. Further, the study found that while 20% of cis-gender women had experienced a situation that the researchers considered sex trafficking, men were found to have been trafficked at a higher rate than expected also. Id. Ten percent of cis-gender men were found to have been sex trafficked, while 21% of LGBTQ men were considered to have been sex trafficked. Id. Although a high percentage of these heterosexual men were found to have been trafficked, they reported that they had not been offered the same services as other victims of sexual exploitation or trafficking. Id.

7. Id. at 18.


9. Id. These resulting mental health and emotional issues may be difficult to address. Survivors may have difficulty trusting others, may wish to avoid facilities that lock them inside for treatment, and there may be cultural or linguistic difficulties in seeking treatment. Id.

10. Human Trafficking Task Force e-Guide § 4.5, Male Victims, https://www.ovctac.gov/taskforce-guide/eguide/4-supporting-victims/45-victim-populations/male-victims/ (last visited Apr. 22, 2018). In Afghanistan, for example, adolescent boys are sold as “dancers” in a practice known as bacha bazi, which literally means “playing with boys.” Cultural restrictions in Afghanistan which restrict the actions of women gave rise to these bacha bazi, who are hired to dress and dance as young women. After entertaining at parties and weddings, bacha bazi are often taken back to guests’ hotel rooms or homes and are paid to perform sexual acts with adult men. Rustam Qobil, The sexually abused dancing boys of Afghanistan, BBC News (Sept. 8, 2010), http://www.bbc.com/news/world/south-asia-11217772.

In an interview with the BBC, one 15 year old boy revealed that he had been gang raped on several occasions, but could not report the abuse because the men were wealthy and powerful. Id.


13. Id. Traffickers may smuggle foreign nationals across the border and then threaten to report them to government officials, or traffickers may pay for the unsuspecting victim’s travel and then demand the debt be paid under brutal circumstances. The Victims & Traffickers, Polaris, https://polarisproject.org/victims-traffickers (last visited Apr. 24, 2018).

14. Katherine Burgess, Runaway foster kids raise sex-trafficking fears in Kansas, The Wichita Eagle (Feb. 16, 2018), available at http://www.kansas.com/news/local/article200579429.html. Children who previously had contact with the child welfare system are at an even higher risk for commercial sexual exploitation. Missing Children, State Care, and Child Sex Trafficking: Engaging the Judiciary in Building a Collaborative Response, National Counsel of Juvenile and Family Court Judges & National Center for Missing and Exploited Children 7 (2015), available for download at https://www.njcfcj.org/DCST-TAB. Additionally, studies have found that 70-90% of children who have been trafficked have histories of sexual abuse. Id.

15. See Human Trafficking, The Victims, National Human Trafficking Hotline, https://humantraffickinghotline.org/what-human-trafficking/human-trafficking/victims (last visited Apr. 24, 2018). Runaway youth often do not have a strong support network and may be unfamiliar with their surroundings. Traffickers have been known to target them in public and in shelters. Id. Researchers from Loyola University New Orleans’ Modern Slavery Research Project interviewed homeless youth in 10 cities across the United States and Canada from 2014-2016. Laura T. Murphy, Labor and Sex Trafficking Among Homeless Youth: A Ten-City Study Executive Summary, Loyola University New Orleans Modern Slavery Research Project, available at https://covenanthousestudy.org/landing/trafficking/docs/Loyola-Research-Results.pdf (2016). Of the 641 homeless youth interviewed, 19% had been victims of human trafficking. Id. at 4. Additionally, 30% of those interviewed reported they had been involved in the sex trade in some way—either through trafficking or as adult prostitutes. Id. This included sleeping with strangers in exchange for shelter. Id. at 6. Further, the study found that while 20% of cis-gender women had experienced a situation that the researchers considered sex trafficking, men were found to have been trafficked at a higher rate than expected also. Id. Ten percent of cis-gender men were found to have been sex trafficked, while 21% of LGBTQ men were considered to have been sex trafficked. Id. Although a high percentage of these heterosexual men were found to have been trafficked, they reported that they had not been offered the same services as other victims of sexual exploitation or trafficking. Id.


ties, and manufacturing industries yielded a profit of $4,800 per trafficked person. Id. It used data which estimated 21 million people were victims of forced labor at that time, either trafficked for labor or sexual exploitation, or held in slavery-like conditions. Profits and Poverty: The Economics of Forced Labour, INTERNATIONAL LABOR ORGANIZATION, at 7 (2014), available at www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_243391.pdf.

20. Id. at 13.

21. Id. In comparison, forced labor in the construction, mining, utilities, and manufacturing industries yielded a profit of $4,800 per trafficked person. Id. at 16. Agriculture yielded $2,500 per trafficked person, and domestic work yielded only $2,300 per trafficked person. Id.

22. For example, one woman, Oksana, agreed to work for the man who paid her way to the United States from the Ukraine, and found instead that he was physically and sexually abusing the women he gave little or no pay. Caroline Reilly, Human Trafficking: A Crime Hard to Track Proves Harder to Fight, PBS (July 29, 2015), https://www.pbs.org/wgbh/frontline/article/what-is-human-trafficking-and-why-is-it-so-hard-to-combat/. Oksana and the other women cleaned big box stores like Targets and Wal-Marts throughout the Northeastern part of the United States.


24. Bryan Yurcan, Are human traffickers hiding in your bank’s data?, AMERICAN BANKER (Mar. 29, 2017), https://www.americanbanker.com/news/are-human-traffickers-hiding-in-your-banks-data. In recent years, banks have become more actively involved in identifying the proceeds of human trafficking and reporting these instances to police. Id. Banks may implement systems similar to those used in identifying fraud, to identify suspicious financial patterns. Id. Financial patterns that may indicate human trafficking include (1) credit card purchases on certain classified-ad sites, (2) several people with a common address depositing money into the same account, or (3) multiple people sending money to the same beneficiary. Id. By using cross-referencing analytics to, for example, identify customer phone numbers that also appear on classified-ad pages where illegal services might be sold, banks can identify what a customer might be spending their money on, or how they are making money. Id. In addition, some banks are training tellers to identify potential victims and traffickers in an effort to more actively combat human trafficking. Id.


27. Id. at 8. One survivor, interviewed by the advocacy organization Polaris, had four children and a sixteen-year relationship with her trafficker who was physically abusive and forced her into commercial sex when money was tight. Id.


30. Id.

31. Id. To improve human trafficking investigations, the NIJ recommended (1) law enforcement agencies provide “adequate and comprehensive” services to victims, including shelters; (2) “[d]evelop long term plans to assist survivors in reentering society”; (3) “[i]mproving law enforcement training and interviewing techniques”; and (4) “establishing open relationships between police and prosecutors.” Id.

32. Clawson, Addressing the Needs of Victims, supra note 25, at 5.

33. 2017 Trafficking Report, supra note 6, at 6.

34. NIJ, Improving the Investigation, supra note 29.


38. Human Trafficking Law and Policy, supra note 36, at 130.


40. 2017 Trafficking Report, supra note 6, Ambassador-at-Large to Monitor Susan Cappodge’s initial comment.

41. Human Trafficking Law and Policy, supra note 36, at 135.

42. Palermo Protocol, supra note 37, at Article 3(a). Essentially, the Palermo Protocol’s definition of “trafficking in persons” includes situations where a person is acquired for, held in, or used for some form of forced activity, including sex and labor. This expansive definition encompasses a variety of actions, from recruiting children into exploitative relationships with adults, to recruiting people into debt bondage with promises of work across the border. Importantly, this definition also includes those who perform more passive roles in trafficking, like harbouring victims or providing transportation for the purpose of trafficking.

43. Human Trafficking Law and Policy, supra note 36, at 133.

44. Id. at 134.

45. Id. at 135. Some countries have explicitly included adoption as one of the methods of acquiring a child for the purpose of trafficking, allowing those countries to respond to a surprising and horrifying crisis for its
a review of human trafficking

orphaned children. Id. at 138. 46. Palermo Protocol, supra note 37, at Article 3(d).
47. Id. at Article 3(b).
48. Id at Article 5.
49. HUMAN TRAFFICKING LAW AND POLICY, supra note 36, at 143.
51. Id.
53. Id
54. Id.
57. U.N. Status of Treaties, supra note 50. The federalism reservation states:

The United States of America reserves the right to assume obligations under this Protocol in a manner consistent with its fundamental principles of federalism, pursuant to which both federal and state criminal laws must be considered in relation to conduct addressed in the Protocol. U.S. federal criminal law, which regulates conduct based on its effect on interstate or foreign commerce, or another federal interest, such as the Thirteenth Amendment’s prohibition of “slavery” and “involuntary servitude,” serves as the principal legal regime within the United States for combating the conduct addressed in this Protocol, and is broadly effective for this purpose. Federal criminal law does not apply in the rare case where such criminal conduct does not so involve interstate or foreign commerce, or otherwise implicate another federal interest, such as the Thirteenth Amendment. There are a small number of conceivable situations involving such rare offenses of a purely local character where U.S. federal and state criminal law may not be entirely adequate to satisfy an obligation under the Protocol. The United States of America therefore reserves to the obligations set forth in the Protocol to the extent they add [sic] conduct which would fall within this narrow category of highly localized activity. This reservation does not affect in any respect the ability of the United States to provide international cooperation to other Parties as contemplated in the Protocol.

Id.
59. Id. at 5. This second reservation states:

(1) The United States of America reserves the right not to apply in part the obligation set forth in Article 15, paragraph 1 (b), of the United Nations Convention Against Transnational Organized Crime with respect to the offenses established in the Trafficking Protocol. The United States does not provide for plenary jurisdiction over offenses that are committed on board ships flying its flag or aircraft registered under its laws. However, in a number of circumstances, U.S. law provides for jurisdiction over such offenses committed on board U.S.-flagged ships or aircraft registered under U.S. law. Accordingly, the United States will implement paragraph 1 (b) of the Convention to the extent provided for under its federal law.
U.N. Status of Treaties, supra note 50.
60. Id.
61. Id.
62. Id. Palermo Protocol, Article 15(2), which the U.S. refused to be bound by, states:

Any dispute between two or more States Parties concerning the interpretation or application of this Protocol that cannot be settled through negotiation within a reasonable time shall, at the request of one of those States Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court.
Palermo Protocol, supra note 37, at Article 15(2).
65. This is referred to as “substitution effect,” wherein demand for sexual relations from victims of human trafficking is substituted for legal relations with consenting prostitutes. Seo-Young Cho, Axel Dreher & Eric Neu-mayer, Does Legalized Prostitution Increase Human Trafficking?, 41 WORLD DEVELOPMENT 67, 68 (2013) [hereinafter Cho, Does Legalized Prostitution Increase Human Trafficking?]. Legalized prostitution is supposedly less expensive than illegal prostitution services because there is no longer a “premium” to compensate for the risk of engaging in illegal activity. Id. at 69.
68. Id. at 69.
69. See id.
70. In a 2013 study, only 1% of men in the United States reported having purchased sex in the past year, while 14% reported having purchased sex at some point during their life. Martin A. Monto & Christine Milrod, Ordinary or Peculiar Men? Comparing the Customers ofProstitutes with a Nationally Representative Sample of Men, 58 INTERNATIONAL JOURNAL OF OFFENDER THERAPY AND COMPARATIVE CRIMINOLOGY (2014), available at http://journals.sagepub.com/doi/pdf/10.1177/0306624X13480487.
73. Id. at 69. Despite its legality, human trafficking would remain lucrative for the pimps even if prostitution were legalized. By avoiding the legalized prostitution system, pimps could retain all profits made from those they exploit. Additionally, men purchasing these human trafficking victims may be unable to distinguish them from voluntary prostitutes, because of the system in place and because victims are often trained not to look suspicious. Id.
74. Id. at 68.
75. Id. at 72.
76. Id. at 75.
77. Id.
78. Id.
79. Id.
80. Id.
81. Id.
82. Id.
83. Victims of Trafficking and Violence Protection Act of 2000, Pub. L.
Sex Trafficking Statutes Enforced

UNITED STATES DEPARTMENT OF JUSTICE, amendment added 18 U.S.C. § 1593A, which stated:

The TVPA defines “sex trafficking” as “the recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person for the purpose of a commercial sex act.” 22 U.S.C. § 7102(10). A “commercial sex act” is “any sex act on account of which anything of value is given to or received by any person.” 22 U.S.C. § 7102(4).


91. 18 U.S.C. § 1595 (“(a) An individual who is a victim of a violation of this chapter may bring a civil action against the perpetrator (or any transferred assets “shall not reduce or otherwise mitigate the obligation of a person convicted of a violation of this chapter to satisfy victim restitution orders arising from violations of this chapter.” Id. Any transferred assets “shall not reduce or otherwise mitigate the obligation of a person convicted of a violation of this chapter to satisfy the full amount of a restitution order through the use of non-forfeited assets . . . .” Id.

96. Id.


105. Id. Stating that “the Attorney General shall transfer assets forfeited pursuant to this section, or proceeds derived from the sale thereof, to satisfy victim restitution orders arising from violations of this chapter.” Id.

106. 18 U.S.C. § 1584(a)-(c); Human Trafficking Law and Policy, supra note 36, at 231.


109. Id.

110. 2017 Trafficking in Persons Report, supra note 6, at 415.


112. Id. State Grades 2017, Shared Hope International, https://sharedhope.org/what-we-do/bring-justice/reportcards/ (last visited Apr. 24, 2018). In determining these grades, Shared Hope analyzes 41 legal components for each state and the District of Columbia. State laws are grouped into six categories: (1) Criminalization of domestic minor sex trafficking, (2) criminal provisions addressing demand for sex trafficking, (3) criminal provisions addressing the traffickers, (4) criminal provisions for people who facilitate trafficking, (5) protective provisions for child victims, and (6) criminal justice tools for investigating and prosecuting


115. Kan. Stat. Ann. § 21-3447(a) (2005) (repealed 2010). Aggravated trafficking was, and still is, a severity level 1, person felony, except where the offender was 18 or older and the victim was less than 14, it was an off-grid person felony. Kan. Stat. Ann. § 21-5426(c)(2), (3).

116. H.B. 2668, Ch. 136 (Kan. 2010), § 61. Additionally, the amendment added a subsection addressing labor trafficking, defining it as “knowingly coercing employment by obtaining or maintaining labor or services that are performed or provided by another person through” threats of injury, physical restraint, abuse or threatening to abuse the legal process, threatening to withhold food, lodging, or clothing; or destroying or taking possession of the victim’s government identification. H.B. 2339, Ch. 30 (Kan. 2011), codified at Kan. Stat. Ann. § 21-5426.


118. S.B. 40, Ch. 78 (Kan. 2017), codified at Kan. Stat. Ann. § 21-5426(c)(4). If convicted of human trafficking, a severity level 2, person felony, the defendant must pay $2,500-$5,000 into the Fund. Id. If convicted of aggravated human trafficking or attempted aggravated human trafficking, the defendant must pay at least $5,000 into the Fund. Id.

119. H.B. No. 2034, Ch. 120 (Kan. 2013).


122. H.B. No. 2034, Ch. 120 (Kan. 2013).


126. Id. § 22-3424(d)(2)(A).

127. Id. § 22-3424(d)(2)(C).

128. Kan. Stat. Ann. § 60-5003(a). It is important to make the monetary penalty severe enough to dissuade further similar action. In some countries, traffickers are required to pay a fine. Their business as traffickers has provided them with sufficient funds to handle this penalty, and paying the fine has simply become a part of doing business. 2017 Trafficking Report, supra note 6, at 4.

129. Kan. Stat. Ann. § 60-5003(b). The victim must bring suit within 10 years of being freed from the trafficking situation or attaining the age of 18. Id. § 60-5003(c). Additionally, the Attorney General may bring the civil action on the victim’s behalf. All proceeds would go to the victim, but the Attorney General could seek reasonable attorney fees and costs. Id. § 60-5003(d).


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Members in the News

New Positions

Joan Archer, former partner at Husch and Blackwell, has joined Farmobile, a leading agtech company, as its General Counsel. Archer has been recognized multiple times by Super Lawyers in the area of intellectual property litigation and has been named one of the top 50 female attorneys in the KC Metro area. Her legal accomplishments in food and agribusiness, including intellectual property counseling, data privacy and litigation, are well-recognized.

Kevin Weakley was elected to serve as the new managing partner for Wallace Saunders Law Firm in Overland Park, effective May 1, 2018. Weakley graduated with honors from Baker University and has been in private practice since he earned his law degree from the University of Kansas School of Law. Weakley’s practice focuses on civil litigation with an emphasis on personal injury defense. He is active with the Johnson County Bar Association and the KCMBBA.

Lisa Brown has joined Foulston Siefkin LLP as an associate in the firm’s Topeka office where she will serve with the health law group. A graduate of the Washburn University Law School, Brown brings a wide range of health care experience from her years in private practice, including representing hospitals, health systems and other health care providers with issues such as health care licensing and regulatory matters, provider reimbursement, health care contracts, transactions and financing, and insurance and medical malpractice defense. Brown was recognized in April as the Topeka Bar Association’s 2018 Outstanding Young Lawyer.

New Locations

Gilliland & Hayes LLC, after 59 years of practice across the state of Kansas, has dissolved its firm in order to form new, separate entities. Effective May 1st, the Hutchinson office began practicing under the name Gilliland Green LLC. At the Hutchinson office, 20 W. 2nd, will be Jim Gilliland, Jerry Green, Brad Dillon, Tracy Cole, Tad Dower, Melissa Moodie, Torrance Parkins and J. Stanley Hill.

The Wichita office began a new practice under the name Gibson Watson Marino LLC, also on May 1st. Lawyers in that office are John Gibson, Michelle Watson, Andrew Marino, Richard Samaniego, Justen Phelps and Patricia Dengler. They have retained the same location at Epic Center, 301 N. Main, Suite 1300, in Wichita.

Carol Smith and James Nelson of the former Gilliland & Hayes office in Overland Park have joined the established Kansas City law firm of Dysart Taylor Cotter McMonigle & Montemore, P.C. located at 4420 Madison Ave., Suite 200, in Kansas City, Mo.

Lisa Ward, formerly with Gilliland & Hayes LLC, has joined the law firm of Addair Thurston, Chtd., in Manhattan to lead that firm’s business and estate planning division. Addair Thurston, Chtd., is located at 103 S. 4th, Suite 201, Manhattan.

Gusenius Law Office, P.A., of Lindsborg, Kan., has merged to become part of Karstetter & Bina, L.L.C. in McPherson, Kan. Members of the firm are Tim R. Karstetter, Brian L. Bina, Donald H. Snook and Amie L. Bauer. William E. Gusenius will be of counsel to the firm which now has offices in McPherson, Lindsborg and Marion, Kan.

Notables

Diane L. Bellquist, of Joseph, Hollander & Craft LLC, was elected President of the Topeka Bar Association of which she has been a member since 2011 and for which she most re-
cently served as president-elect. In 2012, Bellquist was recognized as the TBA’s Outstanding Young Lawyer, and she is past president of the TBA’s Young Lawyers’ Division. She practices primarily in the areas of professional licensure and professional liability defense. Bellquist earned her Juris Doctor from the University of Kansas School of Law and, with 15 years of military service, holds the rank of lieutenant colonel with the Kansas Air National Guard.

Jennifer Brunetti, previously in private practice in Frontenac, Kan., has been appointed to the bench in the 11th District by Gov. Jeff Colyer; her appointment is Colyer’s since assuming the office of Governor. Before going into private practice, Brunetti served as Frontenac City Attorney for 22 years and served as interim city administrator as well. Brunetti is a graduate of Pittsburg State University and earned her law degree from the Washburn University School of Law. The 11th District is comprised of Cherokee, Crawford, and Labette counties.

F. William Cullins has declared his intent to seek re-election to the Division 1 bench of the 14th Judicial District (which is comprised of Montgomery and Chautauqua counties.) First elected judge in 2006, Cullins was appointed chief judge by the Kansas Supreme Court in 2015. Before becoming a judge, Cullins served as Montgomery County Attorney, Coffeyville city prosecutor and was in private practice. Cullins attended Emporia State University before earning his law degree from the University of Oklahoma College of Law.

Carey Hipp has announced her intent to seek the district judge position in the 20th Judicial District which includes Barton, Ellsworth, Rice, Russell and Stafford counties. Hipp holds degrees from Fort Hays State University and Oklahoma University School of Law. She is currently a partner with Sherman, Hoffman & Hipp, LC, and serves as Barton County Counselor and city attorney/prosecutor for Ellsworth, Kanopolis and Holyrood.

Ross A. Hollander of Joseph, Hollander & Craft LLC has been ranked among the top tier of labor and employment lawyers by Chambers USA 2018. This is the 10th year Hollander has received the top ranking.

Stephen Jones, Labette County Attorney, was presented the Outstanding Criminal Justice Victim Service Award for Prosecution by Kansas Attorney General Derek Schmidt. Jones is an active member of the A.G.’s Batterer Intervention Program Advisory Board and currently chairs the Kansas Domestic Violence Offender Assessment subcommittee. The award was presented as part of the Crime Victims’ Rights Conference in Topeka in April.

Bryan K. Joy (Burlington), Robert Wayne Lattin (Independence), Elizabeth Lee Oliver (Baldwin City) and Shannon D. Rush (Osage City), were interviewed along with one non-attorney candidate by the Fourth Judicial District Nominating Commission on May 9th at the Osage County Courthouse in Lyndon. The five nominees are in line to fill a district magistrate judge vacancy in Osage County.

Dwight D. Keen was confirmed by the state senate to a four-year term as a commissioner on the Kansas Corporation Commission. His term will expire March 15, 2022. Keen served as a securities attorney with the National Association of Securities Dealers Inc. in Washington, D.C. and practiced corporate and securities law with two prominent Wichita law firms. He spent six years as Kansas Securities Commissioner, two terms on the Kansas Commission on Veterans’ Affairs and a four-year term as a member of the Kansas Board of Tax Appeals. He holds three degrees from Wichita State University, including a Master of Science in business and a Master of Arts in Economics. Keen also holds a Juris Doctor degree in law from the University of Kansas School of Law. He is a U.S. Army Vietnam veteran.

Joslyn M. Kusiak will be recognized at the Kansas Bar Association’s Annual Meeting in Overland Park in June as the KBA Outstanding Young Lawyer, as reported in the May 1 edition of the Independence Daily Reporter. Kusiak was nominated by the Wichita Women Attorneys Association. She was selected, she was told, in part because she chose to leave a large firm in Wichita to move to Independence and serve a small firm in a small town with few lawyers, and in part for her continuous community service efforts. Kusiak is a Kansas Bar Foundation fellow and trustee and serves the KBA as the Kansas Young Lawyer delegate to the American Bar Association. As the Young Lawyer delegate, Kusiak is on the KBA Board of Governors, which meets five times a year, and she represents Kansas Young Lawyers at the American Bar Association annual and mid-year meetings.


Stephen Ochs of the Ochs Law Firm of Colorado Springs, Colo., has been hired to represent Reno County in a lawsuit against the manufacturers and distributors of opioids for damages related to the growing national opioid crisis. Initially approved by three other firms that have initiated suits, the county selected Ochs because of his unique qualifications and approach to the lawsuit. Ochs is a medical doctor as well as an attorney. He intends to break down the actual damages suffered in the county, rather than rely on a national model. Ochs is associated with the Skikos Crawford Skikos Joseph & Millican law firm in San Francisco which is lead counsel in a planned class action lawsuit in the matter.

James Patton, Marshall County District Court Judge, has filed for re-election to another four-year term. Patton, a Hi-
members in the news

awatha Republican, serves as the chief judge in the 22nd Judicial District which includes Marshall, Nemaha, Brown and Doniphan counties. Patton is a graduate of Kansas State University with a degree in English literature and of the Washburn University School of Law. He spent 30 years in the National Guard and retired in 2001 at the rank of colonel as the state’s judge advocate general.

Tom Pickert was murdered last October in front of his home, just after walking his child to school. In April, 80-year-old multimillionaire farmer and baby furniture maker, David Jungerman, was arrested and charged with first degree murder in the case. Jungerman had been in jail since March 8 of this year when he shot at another individual he thought stole from him.

F. James Robinson and Gaye Tibbets, Wichita lawyers, are the 2018 recipients of the Kansas Appleseed Champions of Justice Award for their commitment and leadership for the public good.

Joan Ruff was praised in the March 26 issue of the Clay Center Dispatch for her efforts to improve the quality of life for women and for senior citizens. A graduate of Clay Center High School, Ruff earned a Bachelor’s Degree in journalism, a Juris Doctor from the University of Kansas School of Law, an LLM in taxation from New York University and an MBA from Rockhurst University. She is currently board chair for AARP and has served on a variety of boards for charitable organizations including the Mid-continent Council of Girl Scouts, the MCGS Human Resources and Capital Campaign committees, and has lent her expertise to Habitat for Humanity and the Kansas City Red Cross.

Sherri Schuck, Pottawatomie County Attorney, was successful in lobbying the Pott County Commission for a second assistant attorney to assist with an increasing caseload. The county attorney’s office presented comparisons with five other counties of similar population which all had a lower attorneys-to-caseload than Pott County.

David Seely, General Counsel for the Southwest Kansas Royalty Owners Association and an attorney with Fleeson, Gooring, Coulsen and Kitch law firm in Wichita, and Seth K. Jones, SWKROA Assistant Executive Secretary and attorney with Kramer, Nordling and Nordling, LLC, in Hugoton gave presentations at the SWKROA 70th Annual Meeting in Hugoton in late April. Seely provided an update on litigation while Jones reviewed clauses in oil and gas leases which help a lessee to maintain its lease.

Spigarelli Law Firm of Pittsburg and Coffeyville, Patrick C. Smith, a Pittsburg attorney, the firm Kapke and Willerth and the Wichita-based law firm Prochaska, Howell and Prochaska made presentations to the Montgomery County Commission in late March to represent the county in civil litigation against opioid manufacturers. Many counties across the nation are considering lawsuits of this nature in the wake of the opioid abuse crisis that has increasingly burdened governmental services. Civil litigation is being considered to allow local governments to recoup the costs of additional services required as a side effect of the epidemic. Legal counsels from Allen, Bourbon and Neosho counties attended the presentation.

Judge Marilyn Wilder is one of three women honored as 2018 Newton Area Women of the Year. The honorees were selected by a panel of judges based upon there positive impact in the community and outstanding leadership qualities. The theme for the event is a quote from Eleanor Roosevelt: “The future belongs to those who believe in the beauty of their dreams.” Wilder is a judge with the 9th Judicial District which covers McPherson and Harvey counties; she was the first female judge to be appointed in that district. Before her appointment, Wilder was in private practice with Adrian & Pankratz, P.A. in Newton, Kan. She is a graduate of the Indiana University School of Law.

Michelle Moe Witte, an attorney with Martin Pringle Attorneys at Law in Wichita was briefly profiled by the Wichita Business Journal in early April. An accomplished trial lawyer, Witte represents individuals and businesses in complex civil litigation. Her practice focuses on many complex areas of employment law. Having earned a B.A. in Communication from Wichita State University and a juris doctor from Washburn University School of Law, Witte’s first job was dishing up ice cream at the local Dairy Queen.
Obituaries

THOMAS JAMES ALEXANDER (1926 - 2018)

Thomas J. Alexander, 92, of Overland Park, KS, passed away April 25, 2018. A private family graveside burial was held on May 4, at Floral Hills Funeral Home & Cemetery. Thomas was born on Feb. 8, 1926 in Roeland Park, Kan., to James and Nellie Alexander. While he lived an extraordinary life, he was very unpretentious and extremely generous to his family and friends. His unique sense of humor and wonderful stories will be greatly missed by all who were fortunate enough to know him. He was an Army Veteran of WWII. He graduated from The University of Kansas, where he received a Juris Doctor degree in 1951. The University of Missouri awarded him a Master of Laws degree in 1964. He was a senior partner in the law firm of Kuraner & Schwegler. He practiced law in Missouri., Kansas, before the U.S. Supreme Court and the U.S Tax Court. Thomas was an instructor at the Law School of the University of Missouri at Kansas City. In the late 60’s, Thomas retired as Senior VP & Senior Trust Officer from Columbia Union National Bank and Trust Company. During that period, he graduated from the Stonier Graduate School of Banking at Rutgers University. Thomas was the National President of the Phi Kappa Sigma social fraternity and the President of the Phi Kappa Sigma Foundation. He was the U.S. Philatelic Classics Society President, consultant to The Philatelic Foundation and a member of the America Philatelic Society. He also served for many years as the Chairman of the Smithsonian’s National Postal Museum Council of Philatelists in Washington, D.C. Thomas was the author of the Simpson’s U.S Postal Markings, 1851-1861, and wrote numerous articles and books of the subject of philately and postal history, including the “U.S Stampless Cover Catalog,” the “American Philatelic Congress Books.” He also had a long-standing partnership with the Smithsonian and wrote the “United States 1847 Cover Census,” and “The Travers Papers: United States Postal History” and “Postage Stamps: Official Records.” His many philatelic awards and honors include the 1986 John N. Luff Life Achievement Award of the American Philatelic Society, the 2004 Smithsonian Institution Philatelic Achievement Award and the 2007 Alfred F. Lichtenstein Medal of the Collectors Club of New York. Thomas was preceded in death by his parents, brother Jack and nephews Michael and William Alexander. Thomas is survived by sister-in-law Andrea Alexander of Overland Park; nephew John Alexander, numerous great nieces and nephews and long-time dear friends who were considered family, James and Deena Fisher.

JIM H. GOERING (1958-2018)

Jim H. Goering, 60, passed away May 6, 2018 at Lawrence Memorial Hospital in Lawrence. He was born January 21, 1958 at Mercy Hospital in Moundridge. He was the son of Melvern and Erma (Buller) Goering. He grew up in the Eden Mennonite Church in Moundridge, and was a member of the Smithsonian and wrote the “United States Postal History” and “Postage Stamps: Official Records.” His many philatelic awards and honors include the 1986 John N. Luff Life Achievement Award of the American Philatelic Society, the 2004 Smithsonian Institution Philatelic Achievement Award and the 2007 Alfred F. Lichtenstein Medal of the Collectors Club of New York. Thomas was preceded in death by his parents, brother Jack and nephews Michael and William Alexander. Thomas is survived by sister-in-law Andrea Alexander of Overland Park; nephew John Alexander, numerous great nieces and nephews and long-time dear friends who were considered family, James and Deena Fisher.

Jim H. Goering, 60, passed away May 6, 2018 at Lawrence Memorial Hospital in Lawrence. He was born January 21, 1958 at Mercy Hospital in Moundridge. He was the son of Melvern and Erma (Buller) Goering. He grew up in the Eden Mennonite Church in Moundridge, and was a member of Hope Mennonite Church in Wichita. After a cherished childhood on the farm in rural Galva, Jim graduated from Bethel College in 1980 with a BA in history, and earned his law de-
Robert (Bob) McClure Lindholm (1935-2018)

Robert (Bob) McClure Lindholm, age 82, passed away April 16, 2018, after a seven year struggle with Alzheimer’s.

Lindholm was raised in the St. Louis area, but also lived in Jefferson City, Mo., Lindberg, Kan., and Overland Park, Kan.

He earned a degree in radio and television production from the University of Missouri-Columbia, served his country honorably in the United States Marine Corp., and received his Juris Doctor from the University of Missouri Law School. Left to honor Bob and remember his love are wife, Joyce Mrkvicka Lindholm, Overland Park, Kan.; daughters Christiana (Chris) Lindholm Oxford, Mt. Pleasant, S.C.; Lisa (Brad) Clark Heckey, Overland Park, Kan.; and Kristin (Chris) Clark Gadsden, Columbia, Mo. and 10 grandchildren. He was preceded in death by his parents, Arthur and Hazel Lindholm, one daughter, Melissa McClure Lindholm, and one sister, Cindy Otte. A memorial service was held on Friday, May 11, 2018 at Eden Mennonite Church, rural Moundridge. Visitation was held from 5:30 to 7:30 p.m. on Thursday, May 10th, also at the Eden Mennonite Church.

In lieu of flowers, the family suggested memorial gifts to Mennonite SNAP or Bethel College. Gifts may be sent in care of the Moundridge Funeral Home.

THADEUS EDWARD NUGENT, SR. (1931-2018)

Thaddeus Edward Nugent, Sr., born in Kansas City, Missouri, on the 16th of July, 1931. He passed away on Sunday, May 6th, at home surrounded by loved family members. He practiced law for 50 years as an International Family Lawyer and was a fellow of the AAML and IAM. Thad never turned away a client with a child at risk. That was a brilliant man in several capacities. He had a profound love of words—reflected in his voracious reading. He loved words and enjoyed drawing, and was fluent in five languages. He had a dry sense of humor that seemed ever present. He was a sharp dresser and enjoyed the opportunity to wear his tuxedo. He was an avid opera and Shakespearean theatre patron, and even performed in several plays. Thad was preceded by his children, Thaddeus E. Nugent, Jr., Kevin P. Nugent and Jean M. (Nugent) Johnson, as well as his sister Mary Alice Daniels and brother Robert E. Nugent, Jr. He is survived by his wife, Susan Goldenhersh, his daughters, Kathleen (Nugent) Wengert, Katherine Winder, Ariel Diamond, and son Noah Diamond, nine grandchildren and six great-grandchildren. Funeral Mass took place at St. Jude’s Catholic Church in Denver, Colo. on May 10, 2018 Mr. Nugent was laid to rest in Mount Olivet Cemetery in Wheat Ridge, Colo. The family requested that, in lieu of flowers, family and friends make a contribution to a favorite charity.
ATTORNEY DISCIPLINE

RELEASE FROM PROBATION
IN THE MATTER OF LOUIS M. CLOTHIER
NO. 112,658—MAY 1, 2018

FACTS: In March 2015, Louis M. Clothier was placed on probation for a term of three years. In April 2018, Clothier filed a motion for discharge from probation, along with affidavits showing compliance with all of the terms of his probation. The Disciplinary Administrator verified that Clothier completed all required tasks and offered no objection.

HELD: After considering the motion, affidavits, and supporting evidence, Clothier is discharged from probation.

ORDER OF SUSPENSION
IN THE MATTER OF CURTIS N. HOLMES
NO. 118,310—MAY 4, 2018

FACTS: A hearing panel determined that Holmes violated Kansas Rules of Professional Conduct 1.4 (communication), 1.16(a)(1) (withdrawing from representation), 5.5(a) (unauthorized practice of law), 8.1 (false statement in connection with a disciplinary matter), 8.4(c) (engaging in conduct involving dishonesty), and 8.4(d) (engaging in conduct prejudicial to the administration of justice), as well as Supreme Court Rule 218(a) (notification of clients upon suspension). In 2015, Holmes’ license was administratively suspended after he failed to pay the entire annual registration fee. Despite the suspension, Holmes continued to represent clients in multiple cases. Once this representation came to light, Holmes made false statements to the court and the Disciplinary Administrator.

HEARING PANEL: The hearing panel found the existence of several aggravating factors, including dishonest or selfish motive and a pattern of misconduct. This appeared to be part of an on-going attempt by Holmes to minimize his conduct. The disciplinary administrator recommended a 6-month suspension. Holmes asked that he be placed on probation, but he failed to follow the procedure established by Rule 211(g) (3), which eliminated probation as an option. The hearing panel recommended that Holmes be suspended for a period of 1 year.

HELD: After considering Holmes’ exceptions to the hearing panel report, the court found that the decisions of the hearing panel were correct. The disciplinary administrator continued to recommend a 6-month suspension. In deference to the panel that heard the case, a majority of the court agreed with the hearing panel and imposed discipline of a one year suspension. A minority of the court would have imposed the 6-month suspension recommended by the disciplinary administrator.

CIVIL

ADOPTION—STANDING; STATUTORY ANALYSIS
IN RE T.M.M.H.
JOHNSON DISTRICT COURT—AFFIRMED
COURT OF APPEALS—AFFIRMED
NO. 115,309—MAY 11, 2018

FACTS: T.M.M.H. was a few months old when his father died. His Grandmother and Mother reached an arrangement where T.M.M.H. lived with Grandmother, and at some point Grandmother filed for visitation. This action created many agreements, which supplemented more informal arrangements between Grandmother and Mother. Eventually, the district court ordered that Grandmother and Mother have “joint legal custody” of T.M.M.H. with reintegration of the child to Mother’s life. Over time, Mother remarried and her new husband filed a petition for step-parent adoption which was completely separate from the visitation action. Grandmother received notice of the petition, but the district court ruled that Grandmother was not an interested party to the adoption proceeding. The Court of Appeals affirmed this decision, and the Supreme Court granted Grandmother’s petition for review.

ISSUE: Standing via interested party status

HELD: Adoption did not exist at common law, so standing
must come from statutes which create jurisdiction. The adoption statutes do not include grandparents as interested parties and the court can only interpret the plain meaning of the statutes. The agreements between Mother and Grandmother were imprecise and not all of them were in the record on appeal, which means that the court cannot determine their full scope and meaning. This prevents Grandmother from meeting her burden to show that Mother waived her parental preference.

CONCURRENCE AND DISSENT: (Stegall, J.) It is error to require Grandmother to meet heightened pleading requirements in order to prove that she has become a parent via Mother’s waiver. Frazier was wrongly decided and improperly interprets the Kansas Parentage Act. But under the law as it currently exists, Grandmother does not have standing.

DISSENT: (Rosen, J.) It was error to ignore the record from the visitation action. Grandmother presented prima facie evidence of her standing as a parent. Because she met this burden, the case should be remanded to determine if the burden can be sustained and ultimately provide standing.

DISSENT: (Johnson, J., joined by Beier, J.) There is adequate evidence in the record to show that Grandmother has a legitimate claim to being an interested person.

STATUTE: K.S.A. 2016 Supp. 59-2401a, -2401a(a), -2401a(b), -2401a(e)}

### CRIMINAL

**CRIMINAL LAW—CRIMINAL PROCEDURE—EVIDENCE—JURY INSTRUCTIONS—PROSECUTORS SENTENCING—STATUTES**

**STATE V. BUTLER**

**WYANDOTTE DISTRICT COURT—CONVICTIONS AFFIRMED—SENTENCE VACATED—REMANDED NO. 115,604—APRIL 27, 2018**

FACTS: Butler was convicted of first-degree felony murder, conspiracy to commit aggravated robbery, and attempted aggravated robbery. Sentence imposed included lifetime post-release supervision. On appeal he challenged: (1) the sufficiency of the evidence supporting a finding of guilt on each of the alternative means in K.S.A. 2012 Supp. 21-5302 for committing the overt act in furtherance of the conspiracy; (2) district court’s instruction that jury had to find Butler committed the crime of conspiracy to commit aggravated robbery “knowingly” rather than “intentionally;” (3) district court’s denial of Butler’s motion for a new trial based on ineffective assistance of counsel; (4) district court’s failure to give a limiting instruction regarding evidence of prior bad acts; and (5) prosecutor’s closing argument reference to the defense theory of the case as “ridiculous.” Butler also claimed cumulative error denied him a fair trial, and claimed the district court erred by imposing lifetime post-release supervision rather than lifetime parole.

ISSUES: (1) Alternative means, (2) jury instruction—conspiracy to commit aggravated robbery, (3) motion for new trial, (4) jury instruction—prior bad act evidence, (5) prosecutorial error, (6) cumulative error, (7) sentencing

HELD: Plain language of K.S.A. 2012 Supp. 21-5302 does not set forth alternative means for committing an overt act. Under K.S.A. 2012 Supp. 21-5202 and facts in this case, it was legally appropriate for district court to instruct jury that it had to find Butler committed the crime of conspiracy to commit aggravated robbery knowingly rather than intentionally. Butler’s misplaced reliance on State v. Campbell, 217 Kan. 756 (1975), is discussed. The caselaw description of conspiracy as a specific intent crime has little relevance to the mental state now legally required as an element of the crime.

Specific allegations of ineffective assistance of counsel are examined, finding no abuse of district court’s discretion in denying Butler’s motion for a new trial. Substantial evidence supports district court’s findings that Butler’s girlfriend did not allege an alibi defense until after Butler was convicted, that investigation of a gun located in a pawn shop was irrelevant to Butler’s defense, and that counsel’s failure to pursue phone records and forensic evidence was reasonable under the facts in this case.

Evidence of events that were clearly part of the res gestae do not implicate K.S.A. 2012 Supp. 60-455. District court should have limited jury’s consideration of evidence regarding Butler’s drug purchases, but no clear error.

Under facts in this case, prosecutor’s rebuttal characterization of Butler’s theory of the case as “ridiculous” was fair comment on the evidence.

Cumulative error claim is defeated by the finding of only a single error.

State concedes sentencing error. Lifetime post-release supervision is vacated, and case is remanded for imposition of lifetime parole.

STATUTES: K.S.A. 2012 Supp. 21-3501(1), -3601(b)(3), -3717(b)(2), -5302, -5302(a), -5302(b), -5302(d), -5302(e), -5402(a), -6806(c), 22-3414(3), 60-455; K.S.A. 21-3201, 60-455; K.S.A. 21-3302 (Weeks)

**CONSTITUTIONAL LAW—CRIMINAL PROCEDURE—SENTENCING**

**STATE V. GILKES**

**WYANDOTTE DISTRICT COURT—REVERSED AS TO ISSUE SUBJECT TO REVIEW**

**COURT OF APPEALS—REVERSED AS TO ISSUE SUBJECT TO REVIEW NO. 109,259—APRIL 13, 2018**

FACTS: Gilkes was convicted of aggravated assault. On appeal he alleged trial errors and challenged his obligation to register as an offender under the Kansas Offender Registration Act (KORA), claiming in part the district court never made a finding on the record that Gilkes used a deadly weapon in the commission of the crime. In unpublished opinion, Court of Appeals affirmed the conviction and sentence, but remanded with directions to correct the journal entry to reflect the missing registration requirement. Review granted on Gilkes’ KORA claim.

ISSUE: KORA registration requirement
HELD: Pursuant to State v. Marinelli (No. 111227, this day decided), the question on appeal is whether Gilkes is a “violent offender” who must register under KORA. In this case, jury made the deadly weapon finding, but district court made no finding on the record that Gilkes used a deadly weapon to commit the offense. Unlike Marinelli, the journal entry of judgment in this case does not reflect the requisite finding. Gilkes is not an “offender” as defined by K.S.A. 2017 Supp. 22-4902(e)(2). Panel was without authority to remand the case to the district court to make the required on-the-record finding. The order to register as a violent offender is vacated. See State v. Thomas (No. 109951, this day decided).

CONCURRENCE AND DISSENT (Rosen, J., joined by Beier and Johnson, JJ.): Concurs in the result. Disagrees with majority’s determination that registration is not part of the criminal sentence and resulting constitutional infirmities. Agrees with reasons set forth in Justice Johnson’s concurring opinion in Thomas that address additional concerns in majority’s rationale in the instant case.


CRIMINAL PROCEDURE—SUPPRESSION
STATE V. HANKE
HARVEY DISTRICT COURT—AFFIRMED
COURT OF APPEALS—AFFIRMED
NO. 114,143—APRIL 20, 2018

FACTS: A law enforcement officer learned that there was a van parked in front of a convenience store that had been running for over an hour, and it appeared that the driver was slumped in the seat. The officer walked on foot to investigate, and he did see the driver slumped in the driver’s seat. He knocked to initiate contact, concerned that the driver had a medical condition. Hanke awoke, startled. There was no smell of alcohol in the van, but the officer was concerned that Hanke appeared to be disoriented and had trouble focusing. Based on the officer’s experience, he was concerned that Hanke might be under the influence. Hanke agreed to a search of his van, which revealed methamphetamine and marijuana. Hanke moved to suppress the results of the search but that request was denied, and he was convicted after a bench trial. A majority of the Court of Appeals’ panel affirmed, finding that the encounter between law enforcement and Hanke was voluntary. Hanke’s petition for review was granted.

ISSUE: Application of Fourth Amendment

HELD: It is irrelevant whether the encounter started as voluntary or as a public safety stop. Even if the court assumes that the stop was an investigatory detention, it was justified because the officer had reasonable suspicion of illegal activity. The detention was not illegal and Hanke’s consent to search was not tainted.

STATUTES: No statutes cited

APPEALS—CONSTITUTIONAL LAW—CRIMINAL PROCEDURE—SENTENCING—STATUTES

STATE V. MARINELLI
RILEY DISTRICT COURT—AFFIRMED;
COURT OF APPEALS—AFFIRMED
NO. 111,227—APRIL 13, 2018

FACTS: Marinelli entered no contest plea to aggravated assault with a deadly weapon. District court addressed at sentencing, rather than at time of conviction, the registration requirement under the Kansas Offender Registration Act (KORA). On direct appeal, Marinelli claimed he should be excused from registration requirements because district court failed to comply with KORA’s statutory procedures. Court of Appeals affirmed in unpublished opinion. Review granted to consider whether Marinelli is a “violent offender” as defined by K.S.A. 2012 Supp. 22-4902(e)(2), and if so, whether he is excused from KORA’s registration requirement because the district court failed to comply with KORA’s statutory directive to notify him at the time of conviction of his duty to register.

ISSUES: (1) Appellate jurisdiction, (2) noncompliance with KORA statutory procedures

HELD: Issue of first impression as to whether a defendant who has entered a guilty or no contest plea has available grounds, in the KORA context, for a direct appeal. Court reviews caselaw permitting sentencing appeals following a plea of guilty or nolo contendere, and holds that KORA is not part of a defendant’s sentence. Rather, the duty to register under KORA arises (“springs into existence”) by operation of law upon the existence of distinct sets of statutory conditions identified in the opinion. Accordingly, there is jurisdiction to consider Marinelli’s direct appeal of the district court’s order to register under KORA. To be valid that registration requirement must be predicated on the district court’s finding that Marinelli used a deadly weapon in the commission of his offense. That action is appropriately viewed under K.S.A. 2017 Supp. 22-3601(a) as a judgment, decision, or intermediate order in the case.

District court’s order that Marinelli comply with KORA is affirmed. Under facts in this case and documents filed by the court, including a Sentencing Guidelines Journal Entry of Judgment, district court made the requisite finding on the record that Marinelli was a violent offender. District court’s failure to inform Marinelli on the record at the time of conviction about the procedure to register and KORA requirements did not excuse his registration obligations.

CONCURRENCE (Rosen, J., joined by Beier and Johnson, JJ.): Agrees there is jurisdiction under K.S.A. 2017 Supp. 22-3602(a) to decide if the KORA registration responsibilities imposed by the district court are invalid. Criticizes the majority’s excursion into whether KORA provisions are sentencing provisions, and its misinterpretation of State v. Jackson, 291 Kan. 34 (2010). Agrees with rationale of Justice Johnson’s concurring opinion in State v. Thomas (1099951 this day decided) that concludes the KORA registration is part of the sentencing in that case. Citing his disagreement with State v. Petersen-Bead, 304 Kan. 192, cert. denied 137 S.Ct (2016), would hold there is jurisdiction based on the court’s longstanding rule that a defendant may appeal from the sentence

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imposed after a plea of guilty or nolo contendere.


CRIMINAL PROCEDURE—RESTITUTION—SENTENCING
STATE V. MEEKS
SHAWNEE DISTRICT COURT—AFFIRMED
COURT OF APPEALS—AFFIRMED
NO. 113,593—APRIL 13, 2018

FACTS: Meeks pleaded guilty to felony theft of a vehicle. District court sentenced Meeks to 11 month prison term, 12 month postrelease supervision, and ordered Meeks to pay $14,356.21 in restitution—the fair market value of the car plus the victim's deductible—upon his release from prison and until paid in full. Meeks appealed the restitution order, arguing the amount made any plan unworkable due to his limited resources. Court of Appeals affirmed in unpublished opinion. Review granted.

ISSUE: Restitution - unworkable plan

HELD: Wariness stated with rigid definition of an "unworkable" plan of restitution that has been evolving in Court of Appeals' caselaw. The opinion reiterates that unworkability should be evaluated on a case-by-case basis, and cites relevant factors for consideration. On the facts in this case, the district court did not abuse its discretion when it ruled that Meeks failed to show a restitution plan was unworkable.

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

STATE V. PEWENOFKIT
SEDGWICK DISTRICT COURT—AFFIRMED
COURT OF APPEALS DISMISSAL—AFFIRMED
NO. 109,542—APRIL 13, 2018

FACTS: Pewenofkit pleaded no contest to kidnapping, aggravated kidnapping, and aggravated burglary. Prior to his plea, Kansas Offender Registration Act amended in 2011 to enlarge the registration requirement from ten years to lifetime registration. On appeal Pewenofkit argued for first time that imposition of the lifetime registration requirement violated the Ex Post Facto Clause. In unpublished opinion, Court of Appeals sua sponte dismissed the appeal, stating Pewenofkit failed to explain why the issue should be considered for the first time on appeal, and failed to provide any factual basis upon which to analyze his ex post facto claims on appeal. Review granted.

ISSUE: Appeal on issue not raised in district court

HELD: Pewenofkit's petition for review failed to challenge the panel's holdings as error. Panel's dismissal of the appeal is affirmed

STATUTES: K.S.A. 22-4901 et seq.

APPEALS—CONSTITUTIONAL LAW—CRIMINAL PROCEDURE—SENTENCING
STATE V. REDICK
SHAWNEE DISTRICT COURT—CONVICTIONS
AFFIRMED—SENTENCE VACATED—REMANDED
NO. 113,300 - APRIL 13, 2018

FACTS: In trial to the court, Redick was convicted of premeditated first-degree murder and arson in the killing of his girlfriend and burning of her car. District court granted defense counsel's request for sequestration order. When defense called its first witness and admitted the witness had been in the courtroom during the state's case, the district judge disallowed the witness' testimony because the witness had violated the sequestration order. District judge imposed a hard 25 life sentence for the first-degree murder charge, identified the murder conviction as the “primary crime,” and sentenced Redick to 13 months on the arson, based in part on a criminal history score of “I.” On appeal Redick challenged: (1) the adequacy of his waiver of the right to jury trial, specifically the judge's refusal to tell him that a jury's guilty verdict would have to be unanimous; (2) the district judge’s refusal to admit testimony from a defense witness who had violated the sequestration order; and (3) the legality of his sentence.

ISSUES: (1) Waiver of jury trial, (2) violation of sequestration order and exclusion of testimony, (3) illegal sentence

HELD: Waiver issue, raised for first time on appeal, is addressed on the merits. On record in this case, Redick's waiver of his right to a jury trial was knowing and voluntary. State v. Frye, 294 Kan. 364 (2012), is factually distinguished. District judge's colloquy during the waiver hearing was minimally adequate; her failure to specifically address the requirement that a guilty verdict be unanimous was not fatal; and Redick demonstrated his awareness and understanding of the right he affirmatively chose to surrender. Court would have preferred that the district judge explained steps that could have been taken to ensure the seating of a fair and impartial jury whose participation would have been unadulterated by prejudicial press coverage, but the omission of this information did not render Redick's waiver unacceptable.

District judge erred as a matter of law and thus abused her discretion to the extent she treated exclusion of the defense witness' testimony as an automatic consequence of the violation of the sequestration order. But it is impossible to determine whether the legally erroneous exclusion was harmless because defense counsel failed to proffer the unidentified witness' testimony, and substantial circumstantial evidence supports the conviction.

Redick's claim that his sentence violated the double rule
lacks merit because that rule does not apply to off-grid sentences. However, district judge erred in identifying the off-grid crime of first-degree murder as the primary crime, with resulting error in the criminal history score used for calculating Redick’s sentence. Redick’s sentence is vacated and case is remanded for resentencing using the on-grid crime of arson as the primary crime.

CONCURRENCE (Biles, J., joined by Nuss C.J. and Stegall, J.): Agrees with majority opinion except for the jury trial waiver claim. Concurs in the result on that claim, but would affirm the district court on this point as generically as it was argued in Redick’s brief, and would hold that any argument on a more specific concern of potential juror bias was abandoned as not briefed.

STATUTE: K.S.A. 2016 Supp. 21-6604(f)(2), -6606(c), -6804, -6819(b)(3)

APPEALS—CONSTITUTIONAL LAW—CRIMINAL PROCEDURE—SENTENCING
STATE V. ROCHELEAU
SEDGWICK DISTRICT COURT—AFFIRMED;
COURT OF APPEALS—REVERSED
NO. 110,243—APRIL 13, 2018

FACTS: Rocheleau entered guilty plea to aggravated indecent solicitation of a child. Sentence imposed included lifetime registration under the Kansas Offender Registration Act (KORA) as amended in 2011. Rocheleau argued, appealing lifetime registration violated the Ex Post Facto Clause because it exceeded the pre-2011 amendment registration period applicable at the time of his crime. In unpublished opinion Court of Appeals dismissed the appeal because the notice of appeal only mentioned sentencing, holding this limited its jurisdiction because KORA registration was not part of a criminal sentence. Review granted.

ISSUES: (1) Appellate jurisdiction, (2) Ex Post Facto Clause
HELD: Rocheleau’s notice of appeal should be read broadly enough to encompass his KORA challenge under the conflicting caselaw existing when he appealed. After State v. Marinelli (111227, this day decided), a criminal defendant pursuing KORA challenges is advised not to recite in the notice of appeal that the defendant is appealing only sentencing issues.


CONCURRENCE (Malone, J.): No change to his position in his concurring opinion in State v. Watkins, 306 Kan. 1093 (2017), wherein he expressed disagreement with Petersen-Beard but the principle of stare decisis compelled his concurrence with the majority in that case.

CONCURRENCE AND DISSENT (Johnson, J., joined by Beier and Rosen): Agrees there is jurisdiction to hear the appeal. Disagrees with majority’s determination that KORA registration is not part of the criminal sentence.

DISSENT (Beier, J., joined by Rosen and Johnson, J.J.): Consistent with her votes in Petersen-Beard and other cases dealing with Eighth Amendment and Ex Post Facto claims, dissents from majority’s holding that lifetime sex offender registration is not punishment.

STATUTES: K.S.A. 2017 Supp. 22-3601, -3602(a), -3608(c), 60-102, -2103, -2103(b); K.S.A. 22-2103, -3606, -4901 et seq.

CONSTITUTIONAL LAW—CRIMINAL PROCEDURE—SENTENCING—STATUTES
STATE V. THOMAS
SEDGWICK DISTRICT COURT—AFFIRMED IN PART, REVERSED IN PART
COURT OF APPEALS—AFFIRMED IN PART, REVERSED IN PART
NO. 109,951—APRIL 13, 2018

FACTS: Thomas convicted of aggravated battery for using a stiletto heel to attack a fellow dancer. District court informed Thomas at sentencing of her duty to register under Kansas Offender Registration Act (KORA) as a violent offender, but never made a finding on the record that a deadly weapon was used in the commission of the crime. On appeal Thomas claimed: (1) district court erred by disallowing cross-examination of victim about victim’s civil action against their mutual employer; (2) prosecutor’s closing argument misstated the evidence and diluted State’s burden of proof; (3) cumulative error denied her a fair trial; and (4) her KORA registration obligation should be excused. In unpublished opinion, Court of Appeals affirmed the conviction, vacated the registration requirement, and remanded to the district court for consideration of the deadly weapon question. Thomas’ petition for review granted on all issues, and on her challenge to the remand.

ISSUES: (1) Right of confrontation, (2) prosecutorial error, (3) remand for resentencing
HELD: No abuse of district court’s discretion in excluding evidence concerning the victim’s civil lawsuit. Under facts in case, district court did not cut off Thomas’ ability to confront the victim, and Thomas failed to show how details in the civil case could have provided any basis to impeach the victim’s testimony.

Prosecutor confused the parties during closing argument. This misstatement argued facts not in evidence, but the error was isolated and harmless under facts in the case.

Cumulative error doctrine not available for a single prosecutorial error.

State filed no cross-petition, so no review of panel’s holding that the KORA obligation to register as a violent offender must be triggered by the district court’s explicit finding on the record that a deadly weapon was used in the commission of a crime. But see State v. Marinelli (111,227, this day decided) (holding such a finding is required before the obligation to register arises under KORA). In this case, no statutorily defined condition identified in Marinelli exists, thus the obliga-
tion to register never springs into existence. The absence of a court-made finding on the record that Thomas used a deadly weapon is not a sentencing error. The remand order is vacated.

CONCURRENCE AND DISSENT (Rosen, J., joined by Beier and Johnson, JJ.): Agrees that remand is not needed. Dissents from majority’s interpretation of KORA as applied, and disagrees with its underlying position that KORA is not a sentencing statute that increases punishment for designated convictions. Agrees with Justice Johnson’s rationale and conclusion in his concurring opinion that KORA registration is a part of sentencing.

CONCURRENCE (Johnson, J, joined by Beier and Rosen, JJ.): Concurs with the result, but challenges the majority’s newly manufactured “springing obligation” theory to support its theory that Thomas’ KORA registration obligation was not part of the sentence imposed. Would hold the district court’s sentencing pronouncement ordering Thomas to register under KORA was illegal because it did not conform to applicable statutory provisions. Would vacate that part of the pronounced sentence and hold that pursuant to the law-applicable statutory provisions. Would hold the majority’s newly manufactured “springing obligation” theory to support its theory that Thomas’ KORA registration obligation was not part of the sentence imposed.


HELD: For purposes of the aggravated-robbery statute, a subjective test is applied to determine whether the victim perceived the weapon as dangerous. Here, sufficient evidence supports Carter’s conviction for aggravated robbery. The victim raised her hands when Carter pulled out a Taser, the victim told a 911 operator that she had been threatened with a weapon, and the jury reviewed a videotape of the events which included a showing of the weapon as Carter was still gathering the money.

For purposes of KORA, an objective test is applied to determine if the defendant used a deadly weapon. Under KORA, a weapon is deadly only when, as used, the weapon is likely to cause death. In this case the State presented no evidence to show that a Taser is a deadly weapon as defined by KORA, thus Carter’s use of a Taser did not trigger the registration requirement. Carter’s registration as a violent offender was vacated. Conflict with another panel’s published opinion, State v. Franklin, 44 Kan.App.2d 156 (2010), is recognized and discussed.


COURT OF APPEALS

CIVIL

ATTORNEY FEES—CLASS ACTIONS—SHAREHOLDERS
ROSS-WILLIAMS V. BENNETT
JOHNSON DISTRICT COURT—AFFIRMED
NO. 117,139—APRIL 27, 2018

FACTS: After merging with Nextel Communications to form Sprint Nextel, the company booked significant financial losses. Monica Ross-Williams filed a shareholder derivative action on behalf of shareholders, claiming a breach of fiduciary duty in agreeing to the transaction. After negotiations, all parties to the shareholder derivative action agreed to a settlement. The settlement provided for reform in corporate governance and internal control policies but did not grant any monetary awards. The proposed settlement did include $4.25 million in attorney fees and expenses to be paid by Sprint. After the agreement was reached, Ross-Williams filed in Kansas district court a motion seeking approval of the proposed settlement. Notice was sent to all Sprint shareholders and one stock owner, Michael Hartleib, filed an objection not only to the settlement agreement but also to the proposed attorney fees. The district court heard extensive arguments from the parties before agreeing to substantive portions of the proposed settlement, plus attorney fees in the amount of $450,000. Hartleib appealed this ruling, while Ross-Williams cross-appealed the attorney fee award.

ISSUES: (1) Standing, (2) venue, (3) settlement agreement approval, (4) attorney fees

HELD: Kansas does not have a continuing-ownership requirement for shareholder derivative actions. So even if Ross-Williams no longer owns stock, she did at the time the suit was initiated and she has standing to pursue this action. Sprint submitted to the jurisdiction of Kansas courts and also agreed to the settlement that was enforced under Kansas law, giving Kansas venue. The district court independently analyzed the proposed settlement and considered all relevant factors. This diligence allowed for an assurance that there was no abuse of discretion, even with the heightened standard that must be applied when shareholders are not awarded any money from the settlement. There is no evidence of fraud or collusion between the parties and the substantive terms of the settlement were fairly negotiated. On cross-appeal, Ross-Williams claims that the district court erred by awarding $450,000 in attorney fees rather than the requested $4.25 million. Evidence submitted to the district court showed that the amount of work performed on this
case was far outside the norm for this type of action. This is especially true after it came to light that the most unreasonable billing hours came from an attorney who had been disbarred. Counsel was entitled to be fairly compensated, and the $425,000 award made by the district court was appropriate. Even though Hartleib provided a valuable service for Sprint, there is no statute which would allow him to recover fees or expenses. The court cannot make such an award in the absence of a statute.

STATUTES: K.S.A. 2017 Supp. 60-211, -22, -223(e), -223(h), -223a, -223a(a), -223a(b)(1), -223a(b)(2), -223a(b)(3), -223a(c), -223a(d), -259(f); K.S.A. 2016 Supp. 60-259(f)

WORKERS COMPENSATION
GILKEY V. FREDERICK WATERPROOFING WORKERS COMPENSATION BOARD OF APPEALS—REVERSED AND REMANDED
NO. 117,259—APRIL 20, 2018

FACTS: Gilkey had a lengthy career working in construction. He was injured in a work-related car accident in 2000, and as a result, was assigned some physical restrictions. But Gilkey was unaware of these restrictions, and he continued to perform strenuous manual labor until he was injured in an accident in 2014, which resulted in back surgery. His treating physician assigned a total whole body impairment rating after this 2014 accident, and rehabilitation experts assigned task loss percentages. The ALJ took this information and assigned a 53% work disability rating. But on appeal, a majority of the Board agreed with the employer that Gilkey’s 2000 accident and work restrictions meant there was no actual task loss from the 2014 accident. Gilkey appealed.

ISSUE: Calculation of task loss.

HELD: K.S.A. 2017 Supp. 44-510e(a)(2)(D) requires the exclusion of theoretical work tasks when calculating task loss directly attributable to a new injury. The work restrictions assigned to Gilkey in 2000 were not permanent, since Gilkey continued to work without restriction for 12 years. This means there was actual task loss, and the case is remanded to allow for further Board review.


WORKERS COMPENSATION
JONES V. U.S.D. NO. 259
WORKERS COMPENSATION BOARD—REVERSED AND REMANDED
NO. 117,915—MAY 4, 2018

FACTS: Jones was injured at work in 2011 while moving boxes of copy paper through the school where he was employed. Jones received conservative treatment and was released back to work without restrictions, although he still complained of symptoms. Jones ultimately underwent surgery to repair an injury to his neck, but he was released back to work without permanent restrictions. Jones was injured again in 2014, and he underwent a second surgery. After his recovery, he was again released back to work without permanent restrictions. But his job had been eliminated due to his extended absence. After failing to find other employment, Jones filed for workers compensation benefits. The ALJ found that Jones suffered a 15 percent permanent partial impairment of the whole body, with 61 percent task loss. The ALJ did not consider whether there was any preexisting task loss from the 2011 injury when calculating task loss for the 2014 injury. U.S.D. No. 259 appealed, claiming the ALJ erred by not including Jones’ preexisting permanent restrictions from the 2011 injury when calculating the 2014 injury’s task loss. The Board agreed, ruling that the task loss calculation was incorrect. Jones appealed.

ISSUES: (1) Collateral estoppel; (2) interpretation of K.S.A. 2013 Supp. 44-510e(a)(2)(D)

HELD: The issue regarding collateral estoppel was not raised before the board or in Jones’ petition for judicial review. The argument cannot be raised for the first time in his appellate brief. The board misinterpreted K.S.A. 2013 Supp. 44-510e(a)(2)(D). Jones had no permanent work restrictions following his 2011 injury. Although there was testimony that he should have had those restrictions, he did not. The board interpreted the statute by reading in language that does not exist. This matter is remanded for further consideration of Jones’ award without consideration of any preexisting work restrictions.

STATUTES: K.S.A. 2017 Supp. 77-621(c)(4); 2013 Supp. 44-510e(a)(2)(D)

MOTION TO DISMISS—WORKERS COMPENSATION
ENDRES V. YOUNG
COWLEY DISTRICT COURT—REVERSED AND REMANDED
NO. 117,352—APRIL 20, 2018

FACTS: Steve Endres was at work when he started feeling chest pains. He sought treatment from the company nurse, who diagnosed gastric reflux. Later that night, Steve suffered a heart attack and died. Steve’s widow, Amy, sued both the nurse, Kimberly Young, and the employer. Both defendants responded by claiming that Amy’s exclusive remedy was through the Kansas Workers Compensation Act, not through a tort action. The district court agreed and granted the motion to dismiss. Amy appealed.

ISSUES: Recovery under workers compensation

HELD: The workers compensation statutes were overhauled in 2011, in an attempt to limit the applicability of that act to injured workers. Now injury is compensable only if caused by an accident, Young’s misdiagnosis cannot be seen as an accident, meaning the injury is outside of workers compensation. And because this was decided on a motion to dismiss, there are important facts missing. This case must be remanded for further proceedings.

**CRIMINAL**

**CRIMINAL LAW—SENTENCING—STATUTES**

**STATE V. CARTER**

**SEDGWICK DISTRICT COURT—AFFIRMED IN PART—VACATED IN PART**

**NO. 116,223—APRIL 27, 2018**

FACTS: Carter used a Taser when she robbed a Dollar General Store. Jury convicted her of aggravated robbery. Finding Carter used a dangerous weapon, sentencing court imposed lifetime registration as a violent offender under the Kansas Offender Registration Act (KORA). On appeal Carter challenged the sufficiency of the evidence supporting her conviction, arguing the Taser is not truly dangerous and she displayed the taser only after the robbery had been completed by putting the store’s money in her bag. She also challenged the registration requirement, arguing she did not use a deadly weapon.

ISSUES: (1) Sufficiency of the evidence, (2) offender registration

HELD: For purposes of the aggravated-robbery statute, a subjective test is applied to determine whether the victim perceived the weapon as dangerous. Here, sufficient evidence supports Carter’s conviction for aggravated robbery. The victim raised her hands when Carter pulled out a Taser, the victim told a 911 operator that she had been threatened with a weapon, and the jury reviewed a videotape of the events which included a showing of the weapon as Carter was still gathering the money.

For purposes of KORA, an objective test is applied to determine if the defendant used a deadly weapon. Under KORA, a weapon is deadly only when, as used, the weapon is likely to cause death. In this case the State presented no evidence to show that a Taser is a deadly weapon as defined by KORA, thus Carter’s use of a Taser did not trigger the registration requirement. Carter’s registration as a violent offender is vacated. Conflict with another panel’s published opinion, *State v. Franklin*, 44 Kan.App.2d 156 (2010), is recognized and discussed.

**STATUTES:** K.S.A. 2015 Supp. 22-4902(e)(1), -4902(e)(2); K.S.A. 2014 Supp. 21-5420; K.S.A. 20-3018(b)

**ATTORNEY AND CLIENT - CONSTITUTIONAL LAW - CRIMINAL PROCEDURE**

**STATE V. HARRIS**

**ATCHISON DISTRICT COURT—AFFIRMED**

**NO. 117362—MAY 11, 2018**

FACTS: Harris arrested on failure to appear warrant. At jail intake, officers discovered THC positive cigarillo sticks in pocket of jacket Harris had been wearing. At end of bench trial, district court took matter under advisement and issued a written decision the next day finding Harris guilty of possession of marijuana. On appeal Harris claimed for first time that his waiver of right to a jury trial was not knowing and voluntary. He next claimed insufficient evidence supported his conviction. Third, he claimed the district court violated Harris’ right to be present at all critical stages of the trial by issuing its determination via a written memorandum decision instead of pronouncing it from the bench. And fourth, he claimed the district court erred in denying motion for a new trial in which Harris alleged his trial counsel was ineffective.

ISSUES: (1) Waiver of right to jury trial, (2) sufficiency of the evidence, (3) presence at trial, (4) motion for new trial—ineffective assistance of counsel

HELD: Kansas cases have found a defendant’s waiver of jury trial may constitute an exception to general rule requiring a contemporaneous objection, and have upheld jury trial waivers even when district court failed to explain all particulars surrounding the right to a jury trial. Under facts of this case, Harris was appropriately advised of his right to a jury trial, and his waiver of his right to a jury trial was knowingly and voluntarily made.

Notwithstanding the failure to monitor the jacket for a 20 minute period in the booking area, the evidence viewed in the light most favorable to the prosecution was sufficient to find the marijuana was in Harris’ possession when he entered intake wearing the jacket.

Harris’ right to be present was not violated by the district court rendering its findings in a memorandum decision. The return of a jury verdict is a critical stage because the parties can poll a jury to ensure verdict unanimity. However, while a guilty finding by a court must be rendered in open court so long as there is no unreasonable delay, the findings may be rendered at sentencing.

Defense counsel’s failure to object to district court's issuance of a memorandum decision was not ineffective assistance because no legal basis for that objection in this case. Under facts in the case, Harris’ unMirandized statement that the jacket would not have been admitted if defense counsel had filed a motion to suppress, but the statement was inconsequential to the court’s determination. Exclusion of the statement would not have affected the outcome of the trial. District court did not abuse its discretion by denying Harris’ motion for a new trial.

**STATUTES:** K.S.A. 2017 Supp. 22-3405(a), -3424, -3424(a), -3424(b), -3424(c), -3501; K.S.A. 22-3403(1), -3421
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Leawood Law Office. Looking for office sharing and/or work sharing arrangement, ideally with estate planning/probate attorney, although any civil practice is welcome. Conference room, phone system, internet, high-speed copier/printer, and lunchroom. Plenty of surface parking. In a great area in south Leawood—bright and modern space on second floor of bank building. Contact Paul Snyder (913) 685-3900 or psnyder@snyderlawfirmllc.com.

Office for Rent. 12’ x 15’ office space for rent at 1-435 and Nall Ave., Overland Park, Kansas. Receptionist provided. Internet access and conference rooms are available. Rent $850 per month, with the possibility of trading rent for work on some cases. Possibility for referrals from three other attorneys in the suite. For more information, contact Samantha Arbegast at 913-652-9937 or scr@theronanlawfirm.com

Overland Park Law Office. Two offices available at SW corner of 119th & Quivira. Cubicle space available for paralegal. Use of large conference room and storage space included. Open to either office share or ‘Of Counsel’ arrangement. Contact Whitney at web@caldwellandmoll.com or 913-451-6444.

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