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Introducing
Judge Larry D. Hendricks
Interim Executive Director
KBA/KBF

With the departure in June of Executive Director Jordan Yochim (who accepted a position at the University of Kansas), it became necessary for the KBA Board of Governors and the KBF Board of Trustees to find an interim E.D. while they conducted a search for a new full-time executive director. They were very pleased that Judge Larry Hendricks, recently retired from the Shawnee County District Court, accepted the boards’ offer to come aboard as the official Interim Director of the Kansas Bar Association and the Kansas Bar Foundation.

In this role, Judge Hendricks will run the day-to-day operations of the KBA and KBF, and will communicate closely with the Board of Governors and the Board of Trustees. The Judge took the reins on Monday, July 9, and will remain until a permanent director is chosen.

Originally a native of Great Bend, Judge Hendricks is now a long time resident of Topeka. He earned a bachelor’s degree from Kansas State University, a master’s degree in Public Administration from the University of Northern Colorado, and his Juris Doctor with honors from Washburn University School of Law. An Air Force veteran, the Judge began his 25 years of private practice as a solo practitioner and was a partner in the Topeka law firm of Stumbo, Hanson and Hendricks. He served as city attorney for Alma, Auburn, Lecompton and Perry, Kansas, before being appointed to the 3rd Judicial District Court in November 2006. He retired from the bench on March 31 of this year.

Judge Hendricks and his wife, Beckie, have two married sons and two grandsons.

The staff of the KBA and the KBF feel fortunate the Board of Governors and Board of Trustees have found such a great interim executive director for us, and we are grateful for his leadership and expertise during this transition. Welcome, Judge Hendricks. And thank you!
Sarah Warner, our KBA President, penned a thoughtful essay in the July/August issue of the Kansas Bar Journal. In it, she led with the observation: “I love Kansas. I love the law. And I love being a Kansas lawyer.” These are words I appreciate and embrace. And while I cannot claim a Kansas birthright, my wife and I enthusiastically planted roots in Kansas after leaving the University of Iowa College of Law. We have lived here for twelve years, and—despite our love of travel and variety—we cannot imagine calling any other place “home.”

For those who read my columns during my service as President of the KBA’s Young Lawyers Section, I wrote often about the importance of public engagement by lawyers. While Sarah’s column focused on lawyers’ engagement with the bar, I often asked the bar to look for ways to serve the greater community. Be it in the Kansas Legislature, municipal office, or on non-profit boards, these organizations benefit from a lawyer’s unique training and participation. Because of this, the Kansas Bar Association is essential not only to the legal community but to Kansas as a whole.

While I continue my request for engagement, I write now as a member of the KBA Search Committee—a committee that needs your help. The Executive Committee has appointed a team with rich experience to help find the next Executive
Director of the Kansas Bar Association. Mira Mdivani, our President-Elect, is chairing a committee that includes:

- Amy Fellows Cline (Wichita), KBF President
- Mark Dupree (Kansas City), KBA Board of Governors
- Nathan Eberline (Shawnee), KBA Young Lawyers Section Past President
- Greg Goheen (Kansas City), KBA Immediate Past President
- Natalie Haag (Topeka), KBA Past President
- Linda Parks (Wichita), KBA Past President
- Dave Rebein (Dodge City), KBA Past President
- Eric Rosenblad (Pittsburg), KBF Board of Trustees (and previous KBA Governor)
- Susan Saidian (Wichita), KBF President-Elect
- Amanda Stanley (Topeka), KBA Diversity Committee Chair

If you ever want to suffer from imposter syndrome, just place your name on a list like this. While my legal resume may pale in comparison to the rest of the group, I have experience in running executive searches, and my background is the reason I am both serving and writing this message.

The need for lawyers to join and participate in the KBA runs parallel to our collective need for a wise and effective leader to helm the KBA. Much like Sarah’s request for engagement by Kansas lawyers of every practice, age, and geography, I echo her appeal on behalf of the search committee. If you or someone you know has the skills to serve a diverse board and a widespread bar, then we want that name in our pool of candidates. We need someone who listens well to diverse and strong opinions. Just as essential, we need someone who can build consensus while equipping the Board of Governors and the Board of Trustees with the tools and information necessary to set a clear strategic vision—a vision the Executive Director must then implement. This is no small request, but it serves the noblest of goals: leading a statewide organization brimming with potential in the midst of a dynamic profession. The job description is on the following page, and the search committee asks you to help us seek out the next leader of leaders for the KBA.

Sarah may have asked me to serve on this committee because of my experience with helping organizations fill executive roles, but I accepted because I see our profession’s potential to serve in the leadership roles that our communities, our state, and our country need to be successful. I offer this not with contentment in where we are, but with optimism in the legal community’s direction and future. Whoever serves as the next KBA Executive Director will help bridge the divide between where we are and where we will go. To modify Sarah’s conclusion, Ad astra, my friends. Here’s to the person who will help us attain those heights.

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Nathan P. Eberline is the Vice President of Operations for the Accreditation Council for Business Schools and Programs (ACBSP) in Overland Park. Eberline previously served on the board of the Young Lawyers Section from 2010-2018, most recently as Past President. Eberline and his wife, Tara (an employment lawyer and partner with Foulston Siefkin, LLP) live in Shawnee with their daughters, Lydia and Grace.

Executive Director

Reports to: Kansas Bar Association Board of Governors & Kansas Bar Foundation Board of Trustees

Principal Responsibility: Administer the affairs and resources of the Kansas Bar Association (KBA) and the Kansas Bar Foundation (KBF) in the best interests of the membership and the public in accordance with stated policies and directives of the respective boards.

General Duties:

- Execute the policies as determined by the Board of Governors and the Board of Trustees.
- Make recommendations regarding programs and policies to the Board of Governors and the Board of Trustees. Assist the president, officers, and boards in discharging their duties. This includes, among other matters, informing the boards of developments and issues that could affect the KBA, the KBF, and the legal profession.
- Submit annually a proposed budget for the KBA and the KBF to the officers of each board for approval. Administer both KBA and KBF resources in accordance with the adopted budgets, Manage the finances of the KBA and its subsidiary corporations as approved by the respective organizations’ boards.
- Communicate KBA policies and objectives to the membership and the public with a focus on increasing engagement by the legal community and enhancing the KBA’s influence as a voice for the legal community.
- Employ, terminate, and establish the compensation of KBA and KBF personnel positions as required to carry on the work of the organizations within the adopted budgets and within the guidelines and policies of the organizations.
- Define the duties of the organizations' personnel, supervise and evaluate their performance, assign and delegate their responsibilities.
- Maintain an efficient and effective level of service in relation to the organizations' personnel, procedures, and equipment.
- Administer programs and activities as directed by the Board of Governors and the Board of Trustees.
- Serve as trustee signer to the Employee Retirement plan.
- Oversee the KBA and KBF finances in accordance with all generally accepted accounting standards and policies.
- Perform other job tasks as needed.

Other:

- Ability to travel in-state and out-of-state to represent the KBA and KBF, including occasional overnight stays.
- Flexibility to work outside normal business hours.

Education and Experience:

- College degree required with a minimum of 5 years’ experience in association and/or not-for-profit leadership.
- Proven leadership skills and exceptional communication skills.

Classification:

- Exempt

Salary:

- Competitive compensation commensurate with experience, including full benefits.

To apply, submit a resume and cover letter to the Executive Director Search Committee, Attention KBA President, at edposition@ksbar.org. Application review will begin September 14, 2018.
Effecting Strategic and Lasting Change

by Sarah E. Warner

If your time to you
Is worth savin’
Then you better start swimmin’
Or you’ll sink like a stone
For the times they are a-changin’.

Bob Dylan, "The Times They Are A-Changin’" (1964)

In August, I attended the National Conference of Bar Presidents meeting in Chicago. As at many conferences, most of my time was spent discussing our experience in Kansas with leaders of other bar associations throughout the United States. But one afternoon was different.

On the penultimate day of the conference, Fred Gray spoke. Gray—the attorney for Claudette Colvin, Rosa Parks, Martin Luther King, Jr., and other civil rights trailblazers—discussed the birth of the Civil Rights Movement in the 1950s in Montgomery, Alabama. His speech described his original defense of Colvin, a 15-year-old girl charged with disorderly conduct for refusing to move to the back of a segregated city bus. Even though his life’s ambition was to "destroy everything segregated [he] could find," Gray decided to resolve Colvin’s case at the trial court and look for a different opportunity for a no-holds-barred attack on segregation on the city buses. That opportunity, of course, was Parks’ arrest in December 1955.

Gray described sitting in the living room of Jo Ann Robinson, an Alabama State College professor and member of the Women’s Political Council, during the weekend after Parks was arrested, creating the vision and structure of the Montgomery Bus Boycott. He discussed their decision to ask a 25-year-old pastor at Robinson’s church with excellent rhetorical skills—Martin Luther King, Jr.—to be the spokesperson for the boycott. (After all, Gray could not be that public figurehead while still representing Parks in court.) He ended his remarks by speaking fondly of serving as president of the Alabama Bar Association in 2001, almost 50 years after the bus boycott, when he had the honor of appointing a lawyer who had been adverse to his cause half a century ago to the bar’s diversity task force.

As you might imagine, Gray’s program was powerful. Few people—and fewer lawyers—have the opportunity to shape the world in such a profound way. At the same time, Gray’s broader charge was that we, as lawyers, all have the ability to make profound differences in the lives of our clients and in our communities if we accept the challenge.

In the days that have passed since I heard Gray speak, I’ve taken that charge to heart and have considered how his experiences can inform the actions of all lawyers, even today. These thoughts by no means equate our everyday challenges with the magnitude of the Civil Rights Movement, but as Gray noted, his story can inspire all of us—regardless of background—to take a second look at our lives and the changing
times that surround us. In this vein, three points from Gray’s speech continue to resonate with me as I reflect on the challenges facing our profession.

1. **At the time of Gray's meeting with Robinson after Rosa Parks' arrest, Gray was 24 years old and less than two years out of law school.**

   Let’s face it. We lawyers are one risk-averse group. Dr. Larry Richard, a lawyer-turned-psychologist, found that the most uniform trait among attorneys—greater than skepticism, abstract reasoning, or problem solving—is an abnormally low level of "psychological resilience."2 That is, people in our profession tend to be "more thin-skinned and sensitive to criticism or rejection."3 We don’t want to rock the boat, and we tend to defer to others with more experience to avoid negative feedback. We are seldom willing to try something different.

   Regardless of how many years you’ve been practicing law, I’m sure you’ve run across this phenomenon. How many times have we been hesitant to implement a new approach—whether it’s a new piece of software in our office (we continue to use MS Office Suite 2007, eleven years after it came out), a new briefing technique (how many of you have adapted your writing to accommodate for digital viewing and electronic filing?), or a new legal strategy to address a problem we’ve seen hundreds, if not thousands, of times before? It’s so much safer to do things as we “always” have—so much less risky to step back and allow someone else to be the first to try something new. Certainly prudence and caution are important, particularly when counseling our clients. But how many times do we avoid change because it’s easier, not because continuing the course is the best option?

   The great irony of this personality trait, however, is that if you look throughout history, our profession has been and continues to be the principal catalyst of change. Lawyers authored the Declaration of Independence and the Federalist Papers. Lawyers fought for social and political rights in the legislatures and before the Supreme Court. We are the advocates for the causes of our clients and our communities. People look to us as the catalyst of wide-scale change. Yet they relied on Claudette Colvin’s experience to educate other organizers—including Rosa Parks—so they would be prepared to launch their movement with the next arrest.

   While our day-to-day activities are not on the same plane as the past (and continuing) Civil Rights Movement, Gray observed during his speech in Chicago that all lawyers are charged with devising life-changing legal strategy on a daily basis. The same is true for our work at the Kansas Bar Association as we address the challenges facing our profession as a whole.

   The legal profession is experiencing rapid change. With expanded use of technology and the decline in face-to-face contact with clients, staff, opposing counsel, and the court system, the practice of law is strikingly different from what it was even five years ago. The question facing the KBA—and each of us individually—is not whether we are surrounded by change, but how we choose to face those changes strategically.

   Consider your practice. Do you choose to embrace the e-filing revolution and find more effective ways to convey your arguments to judges and their staff … or do you continue to treat PDFs as merely a digital “printout” of a paper brief? Do you seek ways to keep abreast of the developments in case law as courts are handing out longer and far more numerous decisions than ever before … or is the annual one-hour case law update sufficient? Are you creating professional relationships and referral networks to breathe life into your law practice … or is the mandated Rule 26 conference the extent of your meetings with opposing counsel outside of court?

   At the KBA, we are considering these questions and broader ones. How can we as lawyers be less reactive, and instead steer the course of change? What developments should we be driving? What steps are we taking to shape our profession—6 months, or 60 months, or 60 years from now? These questions are important, and the solutions we devise are improved as each lawyer who becomes involved in our association and shares his or her experiences.

   **3. Gray recognized that even with his vision, knowledge, and enthusiasm, he could not effect change in the manner and to the extent he desired without the greater legal community.**

   The Civil Rights Movement was not comprised of merely one lawyer with a vision. It was championed by countless people working toward an ultimate goal of equality. On the Parks case alone, Gray joined forces with community members and organizers, as well as with Thurgood Marshall and the NAACP, to make desegregation permanent and to spread its reach far beyond the Montgomery city limits.

   One of the things that became obvious even in the first year of law school is that we as lawyers are in this profession together. In the eyes of the public, we rise together with each member’s successes and fall with any lawyer’s indiscretions. That is why, at its heart, the KBA is about building relation-
Every single day, our lives intersect with countless others. If it’s a co-worker, those interactions might grow into friendships, mentoring relationships, or even more. If it’s an adversary, we might develop mutual respect and a professional relationship that comes with the give and take of lengthy litigation.

Sometimes the journey of life offers brief encounters, but with repetition, the connection grows into something more familiar—like the bank teller you see on Friday afternoons, the school crossing guard or the ticket agent at the Southwest terminal.

Those connections may grow with individuals we depend upon for our daily routine. It might be the mailman, or the IT person at your law firm. These momentary touches are still memorable because these seeming strangers do their job to your benefit. My editor at this journal, Patti Van Slyke, for instance, falls in this group. In three years, we have never met, and have spoken on the phone just a few times. But our connection is important. She does her job, I do mine. It works.

I have this kind of relationship with a couple of gentlemen upon whom I depend for my transportation to and from KCI. They work for a driver service—Accent. There are several drivers: Dwayne, Burt, Jimmy, and Darrell. Often interchanged, the assignments are made by Accent’s owner, Terry Larson.

There is a special kind of relationship that comes with knowing a familiar face will be on your driveway on Monday morning at 4:15. Most of those trips are to east coast destinations for what is now commonly described as mass tort MDL depositions. The trips are fraught with professional hazard. They are almost always stressful. The trips require lugging a jammed briefcase and a carry-on bag busting at the zipper. When the anointed hour of my pickup would arrive, my part was done. Then it was their turn.

One of those drivers was Darrell Lamore. We drove together for probably ten years. I honestly didn’t know much about his personal life and the converse was true. It wasn’t necessary. But I liked him. He was punctual, prepared and a steady hand early and late. Darrell was of medium build. He was always dressed in black, had a mustache and thick black hair. He seemed a bit older than I, which is to say neither of us would be confused with spry or nimble.

And for that time, Darrell was usually my guy in the never ending parade of the 42 miles back and forth.

But our relationship changed ever so modestly on the morning of Friday, December 14, 2012. I was returning home on a direct flight from La Guardia. The plane landed at 10:15 that morning. He met me outside the gate, and I followed him to his car. I climbed in the car, and he put it in gear. I was heading home.

And Darrell looked up in the rear view mirror; our eyes locked. His brow was furrowed. “There’s been a terrible school shooting this morning,” he said. He turned up the radio volume as he knows I like it. It was the morning of the Sandy Hook Elementary shooting in Newtown, Connecticut. The entire 46-minute ride home, the story developed.

We didn’t talk about it much. We just listened and pondered how we live in a world where a teenager would murder his mother, 20 schoolchildren and six teachers. Years passed, and every time I was Darrell’s passenger, I thought about that morning.
And a couple weeks before Christmas I had a new driver—Dwayne. I didn’t think anything of it.

So, on Christmas Eve, I opened the Kansas City Star and paged through it, ending with the obituary pages. And there was a photo of Darrell. He had died the week before. He was 61. In the obit, I learned that Darrell had worked as a pastry chef, he was once an asphalt construction supervisor, and that he served in the U.S. Army and was a Vietnam veteran, honorably discharged. “He was a very generous person who gave of his time and money with an open heart to those in need,” the obit stated.

The announcement listed two living siblings, brothers.

I asked Accent’s owner Terry what happened. “Darrell was diagnosed with liver cancer and went quickly. He passed away within a couple weeks of learning the diagnosis. Darrell was a veteran so he received all of his medical treatment from the VA. In the past couple years, he had visited the VA about four or five times a year for what were diagnosed as stomach ailments. The last visit was when they told him about the liver cancer.”

My thoughts turned to what a man in his early 60’s does when he’s told he has six weeks to live. I considered all the other aspects of his life I could have learned quickly with just a brief conversation with him on any of our trips together.

Last week, I headed back to KCI and typed up this tribute. The song “I’ll be Seeing You” originally recorded by Frank Sinatra and the Tommy Dorsey Band came to mind.

“I’ll be seeing you in all the old familiar places
That this heart of mine embraces
All day through
In that small cafe
The park across the way
The children’s carousel
The chestnut trees, the wishing well
I’ll be seeing you
In every lovely summers day
In everything that’s light and gay …”

Darrell Lamore RIP.

About the Author

Matthew Keenan has practiced with Shook, Hardy & Bacon LLP, Kansas City, Mo., since 1985.
mkeenan@shb.com

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College students are now bearing more than two-thirds of the cost of their education at public universities in Kansas. That’s a sharp increase over the last 16 years. In 2001, revenue from tuition was a little more than a third of the cost of education; today it is just over 71 percent. In the meantime, tuition has increased more than 2.5 times. In fact, just last June, the Kansas Board of Regents approved tuition and fee increases for all six public universities in Kansas.

This shift in the source and amount of funding college students are bearing is tied to the dramatic decrease in state funding over the last decade. According to U.S. News and World Report, total state funding for higher education in Kansas in the upcoming year will be nearly $73 million less than it was a decade earlier. U.S. News also reported that more than three quarters of 2017 graduates from Kansas and Missouri law schools incurred law school debt, and, of those who incurred law school debt, the amount of that debt ranged from approximately $73,000 (University of Kansas graduates) to $97,000 (University of Missouri-Kansas City).

These statistics illustrate the significance of the scholarships generously provided by Kansas Bar Foundation donors. First, I want to thank all of you who have already established or contributed to one of the many scholarships administered by the KBF. Your support and leadership over the years have enabled the Foundation to award 57 scholarships since 2007.

With the rising costs of education, and rising debt load of our graduates, receiving a scholarship can make a huge difference in the life of a law student. Without financial aid and the generosity of scholarship donors, law school would be unaffordable for many. Because of your generosity, students who would not have otherwise been able to afford to take a public interest or government position have been able to pursue those dreams. Students from diverse backgrounds, like me, whose parents were unable to fund their college education, have been able to pursue legal careers. You have believed, supported, and invested in the future of our profession, and we are all the better for it.

For those of you who wish to contribute to our profession in this way, I encourage you to review the KBF scholarship
page on our website, https://www.ksbar.org/scholarships, which provides a description of each scholarship. The KBF currently administers ten scholarships to law students, and we are finalizing the details for two more, one to honor the life of Bruce Kent (a vociferous advocate for the KBF, particularly in the area of planned giving donations to the KBF), and the newly-established Equal Justice Scholarship (for female single parent law students), created by Kathy Kirk. You can contribute to any of the established KBF scholarships with an online donation or, if sending in a check, simply indicate in the memo line the scholarship for which your donation is designated, and send your check to the attention of Anne Woods, 1200 SW Harrison St., Topeka, KS 66612. Or, if you are interested in setting up your own scholarship, please contact Anne Woods or me to discuss your thoughts. KBF is a 501(c)(3) organization, so your donations are tax-deductible.

Every donor – every dollar – makes a difference. Your help is especially crucial in today's climate of constricting state budgets and rising tuition costs. Reach back to your college and law school experience and think about someone who helped you along the way, either with financial or moral support, and continue to pay that help forward. And, if you are hesitant to believe your donation, of any amount, can make a difference, I leave you with this modern parable to ponder:

A young girl was walking along a beach upon which thousands of starfish had been washed up during a terrible storm. When she came to each starfish, she would pick it up, and throw it back into the ocean. People watched her with amusement. She had been doing this for some time when a man approached her and said, “Little girl, why are you doing this? Look at this beach! You can’t save all these starfish. You can’t begin to make a difference!” The girl seemed crushed, suddenly deflated. But after a few moments, she bent down, picked up another starfish, and hurled it as far as she could into the ocean. Then she looked up at the man and replied, “Well, I made a difference to that one!”

About the Author

Amy Fellows Cline is a partner of the Wichita law firm of Triplett Woolf Garretson, LLC. She handles a wide variety of commercial litigation matters, including employment, oil and gas, construction and consumer protection disputes. Ms. Cline has significant experience appearing before courts across Kansas, as well as the Kansas Corporation Commission, Kansas Human Rights Commission, Kansas Department of Labor and U.S. Equal Employment Opportunity Commission.

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sarah.deaver@genexservices.com
How to Help a Young Lawyer

by Sarah Morse

Last issue, I had the privilege of introducing you to the young lawyers who are serving on the YLS board and working to achieve our section’s stated purpose: “. . . to stimulate the interest of young lawyers in the objectives of the Kansas Bar Association to carry on activities that will be of assistance to young lawyers in the practice of law. . . .”¹ While the goal of the YLS’s series of articles is to assist young lawyers, it is not only young lawyers that benefit from this discussion. As impressive as our board is, true and substantial assistance to young lawyers cannot be achieved by the work of young lawyers alone. The greatest boon young lawyers can receive in developing their skills and advancing their career is the assistance of more experienced attorneys.

That’s the way it should be, isn’t it? In this profession, which is based on applying precedent and experience to new facts and situations, there is no better teacher than experience—one trait that no new attorney, no matter how decorated or accomplished, can claim. And so, as young attorneys, we must rely on those who came before us to advise and guide and help us become better practitioners.

However, young lawyers are not the only beneficiaries of these relationships. Studies show that supporting young lawyers also strengthens a firm or organization, as the young attorneys are less likely to leave the firm when given a viable option.² Additionally, the better supported and trained your young attorneys are, the better service and satisfaction you can provide your clients. So let’s all help each other:
1. Remember what it was like

Not long ago (whether objectively or subjectively), you, too, were a young attorney. Regardless of how many years have intervened, try to remember how it felt when you were a newly minted attorney. Do you recall the exhilaration, trepidation, uncertainty, and bewilderment? It is a nearly universal experience for attorneys, and one that you, now seasoned and experienced, can help new attorneys navigate. Not only is your young associate focused on understanding the most recent Supreme Court decision and how its nuanced outcome may impact your client's pending litigation, but they are also distracted by wondering where to sit in the courtroom for the hearing they are covering for you. Those seemingly insignificant details of the actual practical practice of law are not innate, and placing yourself in the mindset of the new attorney may help you better advise the young attorney so their brain power can be spent on serving the client.

2. Have a conversation

At a recent presentation, I heard a respected attorney advise that mentorship is not sitting in a room and telling someone everything you know about practicing law; it should be a conversation. Engage with young attorneys, rather than simply offering pearls of wisdom to be gratefully accepted. Ask a young attorney about her career aspirations. Ask what skills he wants to develop. Any working relationship, and particularly those within one's own firm or organization, should be a partnership, even if not in the traditional law firm partnership sense. By understanding a young attorney's goals, you can better know what projects to assign and how to help their career develop.

3. Provide opportunities

Did you just hire a new attorney? Great! Now think about how you can give that attorney valuable opportunities to grow. Earlier in my career, I had a senior attorney suggest I argue a case before the Kansas Court of Appeals. "It's about time, don't you think?" he asked. In that moment I, in fact, did not think it was about time. The prospect actually made me as nervous as any other assignment I had ever received. Upon a brief reflection, though, I realized he was right. I had argued the motion for summary judgment to the district court and knew the case file just as well as the senior attorney, but he provided me the push I needed to take my experience to the next level by appearing before an appellate court. Although I am no longer in private practice, the opportunity presented during private practice helped me develop skills that have and will continue to serve me throughout my career. I acknowledge that many attorneys would not have given a young attorney that opportunity but would have taken on the responsibility themselves. I am grateful for that experience, and I know other young attorneys—even if in the moment they may be nervous—would appreciate the push and opportunity to grow their skills.

4. Trust

This tip goes hand in hand with providing valuable opportunities for young attorneys. To provide valuable opportunities, you must trust that the young lawyer is capable of handling more—and in the majority of instances, they are. And more than just trusting them with a new or different type of legal project, trust the young attorney with business discussions. Obviously, there may be business topics a new attorney is not privy to, but if the goal is to help the attorney become an integral part of the business, early discussions about expectations and timelines for career progression will help the young attorney feel invested in your business and committed to contributing to the growth of the business. Investment and retention in your business is a positive outcome for all involved.

The Young Lawyers Section encourages you to consider implementing these tips in your interactions with young attorneys. We feel strongly about the importance of experienced attorneys helping young attorneys, and we are working on ways to connect newly admitted attorneys to other young attorneys and experienced attorneys in their area of practice. We are looking for attorneys who are willing to offer encouragement, advice, or career support to attorneys who want to grow and develop their career. If you are interested in helping, please contact Sarah Morse at sarah.morse@fhlbtopeka.com.

About the Author

Sarah Morse serves as the Kansas Bar Association’s Young Lawyer Section President. She is Corporate Counsel at FHL Bank Topeka. Sarah received her bachelor’s degree in American History and Literature from Emory University and her law degree from Emory University School of Law in Atlanta, Georgia. Shortly after joining private practice in Topeka, Sarah became involved with the KBA YLS, and she looks forward to working with the engaged and enthusiastic YLS board members this year. In her free time, Sarah enjoys spending time with her family and pursuing more hobbies than is probably advisable.

Sarah.Morse@fhlbtopeka.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
Photography Contest Judge Angela Harris

Angela M. Harris
Photography
angela.harris.photography@hotmail.com
We are Kevin and Julie Kirkwood, owners of Kirkwood Kreations Photography. We are full time farmer/photographers residing in the beautiful country between Lawrence and Topeka. Our rural setting and love for photography allows us many opportunities to capture images of Kansas nature, landscapes, sunrises and sunsets, and often take off on photographic “boonie cruizin” excursions. We currently have long running photography exhibits in Juli’s Coffee and Bistro and Hazel Hill Chocolates in Topeka.

We also believe in the benefit of charitable contributions to non-profit organizations, and proudly donate time and images to organizations that include, RanchLand Trust of Kansas, Symphony in the Flint Hills, Big Brothers and Big Sisters and the American Cancer Society. Many of our images have won various contests and been selected to be displayed in locations such as The University of Kansas Hospital for the Kansas Rural Health Foundation and the Symphony in the Flint Hills.

One of our proudest projects involved several communities and hundreds of volunteers when our photograph of a barn in a wheat field was chosen from among 2,500 barns to be featured in a spec commercial developed for Coca Cola which was debuted to the Kansas audience May of 2015.

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Ryan John Purcell
Designer, Kansas Bar Association

Father & husband, and a life-long Topekan with 10 years experience at the KBA. I love my family, cycling, and snowboarding. I mostly take photos of macros & landscapes, sprinkled in with some nice “captured moments” of friends and family.

Connect with me @RyanJohnPurcell
Avvo Legal Services Sunset

by Larry Zimmerman

In the midst of mounting pressure from state bar associations over ethics concerns, Avvo announced the end of its fixed-fee legal services offering, Avvo Legal Services, in July. Avvo Legal Services charged potential clients $39.95 to speak with a lawyer participating in the program. Avvo facilitated the connection through its website depositing the $39.95 in the lawyer’s account and then debited $10 from the lawyer’s account for a “marketing fee.” Similar fixed-fee offerings for document review, business formation, and family law services were also in development or deployment. Avvo clearly hoped that the transaction structure and label on its fee would make clear that the arrangement was not fee-splitting but multiple states were unconvinced.

Avvo Opposition

In June, 2017, three New Jersey Supreme Court committees issued a Joint Opinion stating that the legal service program operated by Avvo “is an impermissible lawyer referral service, in violation of Rules of Professional Conduct 7.2(c) and 7.3(d), and comprises improper fee sharing with a non-lawyer in violation of Rule of Professional Conduct 5.4(a).” (ACPE Opinion 732, CAA Opinion 44, and UPL Opinion 54) The New Jersey Supreme Court opted not to review the issue in June, 2018.

Shortly after New Jersey’s opinion, the New York State Bar Association Committee on Professional Ethics released its own opinion (Opinion 1132, 8/8/17) that payment of the “marketing fee” to Avvo Legal Services was an improper payment for a recommendation. New York examined the Avvo rating system, guarantees, and refund policy for dissatisfied clients deciding that such steps clearly conveyed to the public a recommendation of a lawyer.

New York also noted in passing that other issues might also be created by the Avvo arrangement including confidentiality problems arising when evaluating issuance of a refund and the ability of a lawyer to offer competent legal services under the restrictions imposed by the service but ultimately noted that a decision on those issues was unnecessary given the larger context of the service being improper as a whole. Most interestingly, New York noted that Avvo might be meeting a legitimate public need unmet by traditional marketing but argued, “…it is not this Committee’s job to decide policy issues regarding access to justice, affordability of legal fees, or
lawyer quality. Our job is to interpret the New York Rules of Professional Conduct.”

Potential Opening for Avvo

In their rulings, New Jersey and New York had joined several other states including South Carolina, Virginia, Indiana, Ohio, and Pennsylvania in finding the service improper under the Rules. The news was not all bad for Avvo, however. The North Carolina State Bar opined in Proposed 2018 Formal Ethics Opinion 1 (April 19, 2018) that participation in Avvo and similar services could be permissible under certain circumstances. (That draft was apparently sent back for further study.) More significantly, The Illinois Attorney Registration and Disciplinary Commission, the body overseeing attorney discipline, issued a 124-page report recommending loosening of professional conduct rules to allow lawyers to engage for-profit referral services like Avvo.

The report argues, “Prohibiting lawyers from participating in or sharing fees with for-profit services that refer clients to or match clients with participating lawyers is not a viable approach because the prohibition would perpetuate the lack of access to the legal marketplace.” The Illinois Disciplinary Administrator, Jerome Larkin, solicited public comment on the report, which he wrote, through August 31, 2018. Chief Legal Officer for Avvo Legal Services, Josh King, has made a similar argument saying, “…When the Rules get rigidly applied like this, it has two really bad effects. One is really good lawyers pull back. And the second impact it has is it makes it harder for consumers to get access to legal services.”

Acquisition by Internet Brands

Ultimately, the decision to sunset the Avvo Legal Services product may be more business-driven than reactionary to state bar pressures. Avvo was acquired by Internet Brands back in January, 2018. That folded Avvo into a company with existing properties like Lawyers.com, Nolo, and Martindale-Hubbell. Initially, analysts predicted the acquisition would be a positive step for legal consumers.

Following the acquisition, Avvo’s founder and CEO, noted, “Medical is way ahead in this area – in how hospitals interact and maintain relationships with consumers in new ways. ‘There’s a brand that I trust associated with this medical need, and I go to that website, I interact with a nurse on call 24/7, and if I need more they can set that up.’ This is an example where the consumer bypasses the search environment because they have a relationship. The medical profession is working hard to keep that relationship going. Legal isn’t doing any of that. But that’s another reason this deal is attractive: tapping in to the innovation [Internet Brands] has had in other verticals. Being able to get on the phone and talk to people who’ve solved these issues in, say, medical, is super attractive.”

Months later, most of the Avvo leadership including its former CEO, CFO, CPO, CTO, and chief legal officer had made plans to leave and Avvo Legal Services was given a sunset date. The apparent need Avvo filled has not evaporated, however, and the ABA and several states such as Illinois may be looking for ways to enable and govern such services in a way that provides safety for both participating lawyers and prospective clients.

About the Author

Larry N. Zimmerman is a partner at Zimmerman & Zimmerman P.A. in Topeka and former adjunct professor, teaching law and technology at Washburn University School of Law. He is one of the founding members of the KBA Law Practice Management Committee.

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ships—relationships among lawyers, relationships with our governments, relationships with our communities. These relationships make us better advocates. They foster a more rewarding and sustainable system where we can live and work.

My vision for the KBA—for this year and the years to come—is to harness and strengthen these relationships so we are able, as a profession, to navigate the systemic changes we face. Over the next few months, I will be using this platform to discuss programs at the KBA designed to bring about this vision. Some efforts you’ve heard of before (from CLE webinars to law office management discounts to a reinvigorated annual meeting) and are designed to make us more efficient and effective in our everyday practice. Others are new projects—broader efforts designed to engage and interact with the greater legal community, from a summit for government and public-service lawyers to young-lawyer skills workshops to wellness programs designed to make us healthier and happier.

The times, they are a-changin’. But like Fred Gray in Jo Ann Robinson’s living room in 1955, we can steer the course of the changes before us. I’m excited for what the future holds.

About the Author

Sarah E. Warner is an attorney at Thompson Warner, P.A., in Lawrence. Before becoming president of the KBA in July, Warner served as president of various professional associations, including the Kansas Association of Defense Counsel, Douglas County Bar Association, and Douglas County Law Library Board of Trustees, as well as the KBA Appellate Practice and Young Lawyer Sections. She also serves as a member of the Kansas Board for Discipline of Attorneys. Warner and her husband Brandon (an administrative patent judge with the U.S. Patent and Trademark Office) call Lenexa home with their dog Kolbe, who also is an avid Bob Dylan fan.

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3. Id.
A few months ago, I toured the basement of a 100-year-old bank building in my hometown of Independence, Kansas. Typically, basements are pretty unimpressive, but this particular basement contains an old fallout shelter from the Cold War era complete with rations sealed in their original containers, and the remnants of an old barbershop. It truly is a neat piece of history! My “tour guide” just so happened to be my dad, who has worked at this particular bank building for nearly 50 years. During the tour, my dad noted, “I graduated from college on a Friday, began working at the bank the following Monday, and I have been working here ever since. That’s almost half of the building’s life!”

My dad’s comment reminded me that my mom, a retired speech-language pathologist, worked for the same educational co-op for nearly 40 years. As a millennial, this raised a question in my mind: Will the millennials who are entering or have entered the workforce remain at their job for 40 plus years? The answer, of course, is “it depends,” but statistics tell us that the likely answer is “no.” According to the Bureau of Labor Statistics 2016 Employee Tenure Summary, “Median employee tenure was generally higher among older workers than younger ones. For example, the median tenure of workers ages 55 to 64 (10.1 years) was more than three times that of workers ages 25 to 34 years (2.8 years).” More recently, the 2018 Deloitte Millennial Survey indicated that, “Among millennials, 43 percent envision leaving their jobs within two years; only 28 percent seek to stay beyond five years.”

As a former Director of Human Resources, these statistics raised a second question in my mind: How do we build on generational differences in today’s workforce if millennials seem to have ‘one foot out the door,’ and how do we expose young employees to the institutional and conventional knowledge possessed by their superiors? First, we need to ditch the “one foot out the door” mentality. According to James Goodnow, a millennial attorney and co-author of Motivating Millennials,
“These stereotypes are stifling for millennials, who are seeking businesses where they can grow and develop as professionals. This ‘they’re probably leaving anyway’ mentality creates a self-fulfilling prophesy where business leaders don’t invest in their youngest workers, who then leave as a result.”

Many workplaces today have a healthy blend of generations, creating a diverse environment. To me, cultivating and investing in this diverse environment through mentorship is vital when it comes to building on generational differences in today’s workplace and exposing young employees to the institutional and conventional knowledge of their superiors. The benefits of mentorship in the workplace are vast but can only be achieved when “…the company strategically acknowledges the value of mentoring by adjusting the mentor’s other business responsibilities. Modeling from the top also works well.”

So, what are some of the benefits? In my opinion, the benefits are too numerous to list in their entirety, but a few include: “increased knowledge transfer, job satisfaction, smart succession planning, development of leadership skills, motivation for professional development and accountability, achievement of goals and objectives, stronger internal networks, increased teamwork, and improved staff retention.”

Once I began my career as a Director of Human Resources, I was paired with a mentor (who happens to be a baby boomer), and I can personally attest to the value of mentorship in the workplace. Not only did this mentor/mentee relationship provide me with an individual who was familiar with the organization and its culture, it provided me with a sounding board when it came to pitching ideas, learning how to effectively interview and select new hires, advice on how to handle situations that I had never encountered, and beyond. I cannot begin to express how terrifying it was to have my first “tough conversation” with an employee, but the guidance of my mentor beforehand proved to be invaluable. Because of my experience, I view mentorship as one of the most important and valuable things an organization can provide to new employees.

As young lawyers enter the workforce, they are going to encounter tough clients, tough cases, tough interviews, and tough news to deliver. There will always be challenges along the way but utilizing and embracing the value of mentorship can turn tough situations such as these into learning experiences that the younger generations will one day pass on as they, too, become mentors to their younger colleagues.

About the Author

Beth Kelly is in her final semester at Washburn University School of Law. Upon graduation, Beth will return to southeast Kansas to continue her work in the long-term care industry, this time as in-house counsel for Medicalodges, Inc.

elizabeth.kelly1@washburn.edu.

References:
So We Gotta Say Good-Bye to the Summer 2018 CLEs

To Register: www.ksbar.org/CLE

**Lunch and Learn:**
Masterpiece Cake and Its Impact on Kansas
September 28, 2018
Robert L. Gernon Law Center
1200 SW Harrison
Topeka, KS 66612

**KIOGA Oil & Gas Conference**
October 12, 2018
The Wichita Boathouse
515 S. Wichita St.
Wichita, Kansas 67202

**Elder Law & REPT Annual Conference**
October 18 & 19, 2018
Four Points by Sheraton
530 Richard Dr.
Manhattan, Kansas 66502

**South East Kansas Legal Conference**
October 25 & 26
Pittsburg State University, Overman Student Center
1701 S. Broadway St.
Pittsburg, Kansas

**Lunch and Learn:**
Magna Carta
October 29, 2018
Robert L. Gernon Law Center
1200 SW Harrison
Topeka, KS 66612

**Webinars:**

Mesa CLE:
**Thou Shalt Not Lie, Cheat & Steal:**
The 10 Commandments of Legal Ethics
September 5, 2018 (Noon-1:00 PM)

Internet for Lawyers:
**Microsoft Word’s Styles: A Guide for Lawyers**
September 6, 2018 (Noon-1:00 PM)

Internet for Lawyers:
**Looking for Data Evidence in New Tech Places**
September 7, 2018 (Noon-1:00 PM)

Mesa CLE:
**Staying Within the Lines:**
Avoiding Ethical Penalties & Infractions
September 10, 2018 (Noon-1:00 PM)

Internet for Lawyers:
**Moving Your Practice into the Cloud – Benefits, Drawbacks & Ethical Issues**
September 11, 2018 (Noon-1:00 PM)

Mesa CLE:
**Sue Unto Others as You Would Have Them Sue Unto You**
September 25, 2018 (Noon-1:00 PM)
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- 2018 Solo and Small Firm Conference on Social Media as Investigative Research (June 9th at Lake of the Ozarks)

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PUBLIC NOTICE:
APPOINTMENT OF NEW MAGISTRATE JUDGE

The Judicial Conference of the United States has authorized the appointment of a United States Magistrate Judge for the United States District Court, District of Kansas at Topeka, Kansas.

The current annual salary of the position is $191,360. The term of office is eight years.

Interested persons may obtain further information and application forms at www.ksd.uscourts.gov/magistrate or by contacting the clerk of court at 913-735-2220.

Applications must be submitted by applicants only and not on behalf of another potential nominee and must be received no later than OCTOBER 15, 2018.
Representing municipalities requires familiarity with numerous areas of law, and one that has become increasingly important in recent years is economic development, or public-private partnerships (PPPs). Some math is generally used to outline the parties’ relationship, financial commitments and obligations within an agreement establishing a PPP (PPP Agreement). Municipal attorneys must also be able to effectively communicate to their governing body how any numerical terms within PPP Agreements protect the interests and advance the policy objectives of the municipality. Projects involving public incentives can be extremely controversial, and many times result in the members of the public accusing a governing body of providing developer handouts and fleecing the taxpayers. Effectively communicating to the governing body how a PPP Agreement’s provisions advance the organization and community’s interests will enable them to explain (and defend) the agreement to any skeptical constituents. This article will cover a few of the economic development tools available to Kansas municipalities, how mathematical calculations and numerical agreement provisions can protect municipal clients and help achieve their economic development goals, and the policy justifications for certain numerical agreement provisions.

**Clawback Provisions in PILOT Agreements**

Property tax abatements are one economic development tool that municipalities use to attract businesses and development. Municipalities may grant constitutional property tax abatements, or property tax abatements for real property and buildings purchased with proceeds from industrial revenue bonds. With either process, the municipality may require that the business receiving the abatement make payments in...
lieu of taxes (PILOTs) according to a fixed amount or a set formula per year (e.g. fifty percent of the total property taxes that would have been due without the abatement).³

Property tax abatements are commonly criticized by the public for lacking sufficient accountability to taxpayers and the broader public interest.⁴ For municipalities that require PILOTs for any property tax abatement, accountability measures can be created within a PILOT agreement by setting the conditions for the business to receive the abatement. An important accountability measure that is common to PILOT agreements is a “clawback” provision. Such provisions hold businesses accountable by giving the municipality the ability to recapture all or part of the abated property taxes if job creation or other thresholds are not met. This incentivizes the business to deliver the deal as promised, and ensures the municipality will not lose all of the abated property taxes if a deal fails to materialize.⁵

As an example, consider a PILOT agreement that says if a business employs 100 or more employees during a given year of an abatement term, the business must pay a PILOT equal to seventy-five percent of the property taxes that would have been due without the abatement in that year. However, if the business employs less than 100 employees in a given year, they must pay 100 percent of such taxes. The PILOT agreement also includes a clawback provision that requires the business to pay a specified percentage of the abated taxes for all prior tax abatement years, minus the PILOT paid in each of such years, if they fail to meet the employment requirement. The clawback provision includes the chart below:

<table>
<thead>
<tr>
<th>ABATEMENT YEAR</th>
<th>EMPLOYMENT YEAR</th>
<th>NUMBER OF EMPLOYEES</th>
<th>PERCENTAGE RECAPTURED</th>
<th>TAX YEARS RECAPTURED</th>
</tr>
</thead>
<tbody>
<tr>
<td>2019</td>
<td>n/a</td>
<td>n/a</td>
<td>n/a</td>
<td>n/a</td>
</tr>
<tr>
<td>2020</td>
<td>2019</td>
<td>less than 100</td>
<td>100%</td>
<td>2019</td>
</tr>
<tr>
<td>2021</td>
<td>2020</td>
<td>less than 100</td>
<td>80%</td>
<td>2019 &amp; 2020</td>
</tr>
<tr>
<td>2022</td>
<td>2021</td>
<td>less than 100</td>
<td>70%</td>
<td>2019, 2020 &amp; 2021</td>
</tr>
<tr>
<td>2023</td>
<td>2022</td>
<td>less than 100</td>
<td>60%</td>
<td>2019, 2020, 2021 &amp; 2022</td>
</tr>
<tr>
<td>2024</td>
<td>2023</td>
<td>less than 100</td>
<td>50%</td>
<td>2019, 2020, 2021, 2022 &amp; 2023</td>
</tr>
</tbody>
</table>

If, in 2022, the Company employs less than 100 employees, then the business must make a PILOT payment equal to 100 percent of property taxes that would have been due without an abatement for tax abatement year 2023, and pay an amount equal to sixty percent of the property taxes for each of tax years 2019, 2020, 2021, and 2022 that otherwise would have been due if there were no abatement, minus the PILOT paid in each of those years.

Assuming the property taxes due in each of years 2019, 2020, 2021 and 2022 were $100,000 and the PILOT paid in each year was $75,000, the amount of recaptured abated taxes would be $60,000 (i.e. $100,000 property taxes - $75,000 PILOT payment = $25,000 abatement) x 60% recapture percentage = $15,000 x 4 tax years = $60,000).

Adding such a clawback provision within a PILOT agreement will protect the municipality’s financial interests and help the governing body show the public that they hold abatement recipients accountable if they don’t deliver what they promise.

Public Participation Provisions in Development Agreements

If a municipality is partnering on a PPP that doesn’t involve a property tax abatement, it’s common to establish the terms of that deal in a development agreement. Development agreements between municipalities and developers generally dictate under what conditions a public entity will provide incentives and what occurs in the event the developer defaults.⁶ Public participation provisions, which often specify a maximum level of earnings that a municipality considers reasonable for the developer from the project, are also included in many development agreements.⁷ These provisions generally provide that once a developer achieves the maximum earnings specified, public resources originally committed to the project will either stay with or be returned to the municipality.⁸ The policy justifications for public participation provisions are ensuring public assistance does not result in windfall profits to the developer for an otherwise economically viable project, and that the municipality benefits from its financial participation in really successful projects.⁹

As an example, assume a development agreement sets a cap on the developer’s internal equity rate of return (IRR) of 200 percent of the projected IRR in the developer’s pro forma. If at any time throughout the life of the project the developer reports that his updated pro forma shows an IRR of more than 200%, then the IRR cap provision would require an automatic reduction in the total public investment the developer may receive so that the projected IRR is no more than 200 percent. Any public dollars beyond 200 percent of the projected IRR that would have gone to the developer will either stay with or flow back to the municipality, which it can use for other public purposes.
In the event a PPP project achieves great financial success, the public may ask a municipality’s governing body why they needed to support the project with a public investment. If the development agreement includes an IRR cap provision, as their counsel you can help them understand and explain that, thanks to this provision, the municipality and the public are benefitting financially from that project’s success.

Community Improvement Districts (CIDs)

In 2009, the Kansas Legislature enacted the Community Improvement District Act (the “CID Act”). Cities can establish CIDs that levy special assessments or an additional sales tax within a district to reimburse developers for a broad range of costs intended to revitalize the district.

The CID Act allows cities to establish CIDs after a petition has been filed by property owners within the proposed district. If a developer submits a petition for a CID that imposes an additional sales tax, at least fifty-five percent of the owners within the proposed district, both in terms of land area and assessed value, must sign a petition in order for the city to consider establishing the CID. The city must pay close attention to who owns property within the proposed district, who has signed the petition, and do a little math to make sure the petition complies with the CID Act. Consider the following example using the table below:

<table>
<thead>
<tr>
<th>Tract</th>
<th>Acres</th>
<th>Assessed Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>1</td>
<td>1000</td>
</tr>
<tr>
<td>B</td>
<td>1</td>
<td>1000</td>
</tr>
<tr>
<td>C</td>
<td>1</td>
<td>2000</td>
</tr>
</tbody>
</table>

The owners of Tracts A and B submit a petition to establish a CID funded by an additional one percent sales tax, that includes both of their tracts and Tract C. Tract C contains a restaurant whose sales would help generate CID sales taxes to pay for the project costs on Tracts A and B. You analyze the sufficiency of the petition, and note that the owners of Tracts A and B own sixty-six percent of the land area within the proposed district, which satisfies the statute. However, they only own fifty percent of the assessed value within the proposed district, and therefore can only establish the proposed CID if the owner of Tract C also signs the petition.

In a situation like this, you should contact Tract A or B’s counsel as soon as possible to let them know the petition is deficient. They may be able to convince the owner of Tract C to sign the petition without causing significant delays in the project. However, if the owner of Tract C isn’t interested in participating in the project, the owners of Tracts A and B could still establish a CID on their properties since they own 100% of the land area and assessed value. They could consider imposing a CID sales tax at a higher percentage than the one percent initially proposed to make up for not receiving CID sales taxes from the restaurant. If interested in this option, they also need to consider whether your client’s governing body has an appetite for an additional CID sales tax that’s higher than one percent. Kansas already has a relatively high state sales tax, and CID’s across the state have resulted in sales tax rates above eleven percent in certain districts. If the city is only willing to accept an additional one percent CID sales tax, the owners of Tracts A and B may need to rethink the scale or feasibility of the project. Understanding all of these options, and working with the developer’s counsel to find a plan that works for both of your clients, will increase the likelihood of a successful project.

Conclusion

Successfully representing municipalities in PPPs requires an understanding of the economic development tools available, knowledge of the mathematical requirements within numerous statutes, and the ability to negotiate a variety of numerical provisions within PPP Agreements. However, your client may place the most value on your ability to help them understand and communicate how those provisions advance their policy objectives and protect public resources. If you represent a municipality, I hope this article helps you achieve that.

About the Author

Michael Koss is Senior Assistant City Attorney for the City of Overland Park. He received a Bachelor of Science degree from Kansas State University and a law degree from the University of Kansas School of Law. He served four years as Legal Counsel for the League of Kansas Municipalities. As Assistant City Attorney, he focuses on economic development, information technology, and general municipal issues.

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2. K.S.A. 79-201a, Second.
7. Id.
8. Id.
9. Id.
10. K.S.A. 12-6a26 et seq.
11. K.S.A. 12-6a29(a).
12. Id.
13. Id.
14. Id.
Rethinking Preliminary Statements in Briefs

by Pamela Keller

Novice legal writers often have the impression that a brief’s introductory section (preliminary statement, nature of the case, summary of the case, etc.) merely needs to introduce the material that follows. A strong introduction should do much more. When you write the introduction or preliminary statement for your brief, your goal should be to prime your reader—help your reader better absorb the complex information that follows and motivate your reader to view the rest of your brief and the evidence in the case in a manner more favorable to you.

A recent empirical study showed that a preliminary statement that primes its reader by summarizing the case and themes has persuasive impact. While we don’t know exactly why, it likely has to do with the way our brains use frameworks, schemas, or story, to digest complex information.

Readers absorb information best if they understand its significance as soon as they see it. By providing a framework—making the structure of your argument explicit—at the outset of your brief, the reader can better grasp the relevance of the more detailed information you provide later. Thus, in your preliminary statement, summarize the major legal reasons why you win.

If that legal framework leads the reader to a hypothesis or impression about the outcome, the reader is likely to sort through the rest of the brief with that hypothesis in mind. Cognitive science suggests that even when a person creates an impression on fairly thin evidence, she is motivated to view additional information through the lens of that first impression. When we discover evidence that supports our desired conclusions, we more readily accept it. When we discover information that challenges that hypothesis or impression, we work harder to refute it. We are also more likely to notice weak evidence or inferences when we are motivated to disbelieve them.

The preliminary statement should not only provide a legal framework that summarizes the logic of the analysis, it should also appeal to the reader’s sense of what is fair and just. Advocates have long known intuitively that you must appeal not only to the reader’s logic but to his sense of justice. You should appeal to both at the beginning of your brief.
Neuroscientists have demonstrated that the systems in our brain responsible for rational thought do not function without some input from the brain systems responsible for emotion.9 Emotional thinking is closely related to, and necessary for, logical reasoning.10 Also, once we have an emotional reaction to information, we are motivated to resolve an issue consistent with that emotional reaction.11 We can tell ourselves to set aside our emotions, but we may still have a subconscious bias that influences how we sort through complex information.12 While judges are less susceptible to this kind of motivated reasoning, they are not immune.13

Researchers concluded that motivated reasoning was likely at play when their study showed judges favored sympathetic parties over unsympathetic ones.14 They tested 1800 state and federal judges to determine if emotion influenced their reasoning, and they found clear evidence it did.15 They gave the judges a series of hypothetical legal questions in pretrial motions in civil and criminal cases. The legal questions required interpreting and applying law and exercising discretion. All judges had the same relevant facts and law in each of the hypotheticals; the only variable that changed was how sympathetic the parties were. The results of the study revealed that sympathetic parties fared better—often far better—than unsympathetic ones.16 Judges did not favor either plaintiffs or defendants systematically, nor was there evidence judges let political ideology drive their decisionmaking. The judges simply favored the litigant who generated the more positive emotional response.17

In all the hypotheticals, a judge could have reasonably found for either party. Thus, the study measured emotional impact in close cases. I’m not suggesting a judge will abandon the law because you appealed to her emotion. But when the law isn’t clear and the outcome is uncertain, emotional factors can tip the scale toward one party.18 Also, to be effective, you have to evoke the judge’s emotion as a natural response to your framework: You can’t “invoke” emotion “like a hammer.”19

In summary, recent empirical studies and cognitive science support the idea that a preliminary statement, like an opening at trial, can have significant persuasive impact. It’s an opportunity to prime your reader with a case summary that initially tips the reader in favor of your side and thus motivates the reader to reason through the rest of your brief through your client’s lens. A briefwriter would do well to take the time to draft a preliminary statement that provides a clear legal framework and tells a story/evokes a theme that causes the reader to empathize with his or her client.

About the Author

Pamela Keller is a clinical professor at the University of Kansas School of Law. She directs the lawyering skills program, moot court, and the judicial field placement. Before teaching she practiced employment law with Ice Miller in Indianapolis and clerked for the Hon. John W. Lungstrum, U. S. District Court of Kansas.

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3. Id.
6. See id. at 405 & n. 59; Wistrich, supra note 4 at 870.
7. Id.
8. See id. at 459 (arguing that brief writers “really do have to grab the reader from the get-go”).
9. Chestek, supra note 1, at 4-5.
10. Chestek, supra note 1, at 3.
11. See Wistrich et al., supra note 4, at 871-72.
13. Wistrich et al., supra note 4, at 900.
14. Id. at 899.
15. Id. at 862.
16. Id. at 898-99.
17. Id. at 899.
18. Id. at 900.
19. Armstrong, supra note 2, at 289.
What does helplessness look like? What does it sound like and what does it feel like? For many of us, the answer to that question rarely crosses the boundary between life and death. And yet, at the Southern border of the United States, as every shade of helplessness is coloring history, attorneys across the nation are feeling its splash. Eager to help but unsure of where to even begin, attorneys are struggling to first, understand, and then to determine ways to use their talents to alleviate the horror of what they are witnessing. Images of children being torn from their parents’ arms. Images of families trapped in cages. Images of pain so tangible that it escapes the television set itself. One helpless in their search for protection and the other helpless in their ability to aid.

But how did we get here? And where do we go from here? Complex questions forever tormented by the tension between morality and legality; harmony found only through the understanding of both.

The U.S. Immigration laws have always recognized that there are certain individuals who need protection from the circumstances of their own predicaments. Asylum seekers—those persecuted through civil strife, oppressive rule, or their own convictions—have been amongst the most vulnerable immigrants who have arrived at our shores in hopes of finding safety from life’s unnatural struggles.

While media reports constantly conflate a “refugee” with an “asylum seeker”,¹ the two terms are more like siblings sharing the same DNA but each independent of the other. Both begin with the definition as being those who are unwilling or unable to return to their home countries based, in part, on either past persecution in their home country or a well-founded fear of future persecution, on account of race, religion, nationality, political opinion, or membership in a particular social group.² Where definition meets application is what defines the difference between the two terms. An asylum seeker, or asylee, is someone who is seeking humanitarian protection within the United States whereas a refugee is someone whose claim for protection has already been vetted outside the United States. Therefore, to say that a refugee is a security threat is contrary to legal procedure since those concerns would have been resolved prior to the individual’s entry into the US.

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Persecution is defined in law as a “threat to the life or freedom of, or the infliction of suffering or harm upon, those who differ in a way regarded as offensive.”\(^3\) In sum, persecution, at least in part, “must be inflicted upon an individual in order to punish him for possessing a belief or characteristic a persecutor seeks to overcome”.\(^4\) Such persecution must also be shown to be at the hands of the government or of an individual or group that the government is either unwilling or unable to control.\(^5\)

Self-evident from these characterizations is that individuals seeking humanitarian protections have already faced much trauma before arriving in the US; some have been raped, some threatened, some beaten, and some denied even the dignity of their own identity. Daily, news feeds, in boxes and list serves are filled with accounts by pro bono attorneys and crisis workers at the border reporting of such horrors. It is perhaps for this basic reason that the erosion of due process for such a group has struck a raw nerve with so many.

Family detention, and in particular the mass detention of children and women, creates moral dilemmas which are being experienced by an unprecedented number of people struggling to find a way to render assistance. According to the U.N. High Comm’r for Refugees, Guidelines on International Protection: Child Asylum Claims Under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees, “Children are more likely to be distressed by hostile situations, to believe improbable threats, to be emotionally affected by unfamiliar circumstances, and to be severely traumatized by cumulative harms.” With each day that passes, information from advocates on the ground tell a tale of parents being forcibly separated, children being lost in an administrative labyrinth and due process being rushed.

“Zero tolerance” policies have resulted in mass criminal prosecutions of those who have come to the U.S. in search of protection from harm followed by forced return to countries from which they fled. In the wake of this development, communities have protested, and attorneys have wondered, silently and loudly, how can they be a part of the solution rather than sit on the sidelines as a spectator in the sport of inhumanity?

Volunteer attorneys, some with immigration backgrounds and many without, are offering assistance to help conduct bond hearings, provide representation, draft pleadings and help reunite children and parents. Financial assistance to local and national nonprofits also ensures that private resources remain replenished so that work can continue without interruption. And yet perhaps the greatest gift that lawyers can tender is their voices. Voices which speak up against the denial of due process, speak up against the restriction of access to the courts and speak up against the push to have children—some as young as 3—represent themselves in hearings.

The time is now to act. And act we must. If history has taught us anything, it is that being a nation of immigrants is what has made the United States revered globally. A staunch devotion to the rule of law coupled with a firm grasp on Constitutional protections has always provided a path through the darkness of helplessness; the time is now to remain resolute for there is a frightened child out there, separated from family, counting on it.

About the Author

Rekha Sharma-Crawford is a frequent instructor at the American Immigration Law Foundation Litigation Institute and speaker at the American Immigration Lawyers’ Association national conference. Rekha and her husband, Michael, established The Clinic at Sharma-Crawford to close the gap between low-income immigrants facing removal and the availability of qualified, affordable representation with the U.S. Immigration Court. Rekha received her Juris Doctor from Michigan State University College of Law and is licensed in three states. The Missouri Bar Association awarded the Pro Bono Publico Award in 2017 to Rekha and Michael, and Rekha was awarded the Courageous Attorney Award by the Kansas Bar Association in 2018.

1. Contrast 8 USC § 1101(a)(42) vs. 8 USC § 1158
2. 8 USC § 1101(a)(42) and 8 CFR § 1208.13(a). The definition of a refugee also includes considerations for individuals who have been subjected to coercive population control program. The statute also gives the President broad authority to designate individuals, who meet the definition of refugee as asylees.
4. Id. at 223.
Immigrant Survivor Housing Issues

by Jenna Christophel

Overview: this article addresses various legal regulations surrounding housing undocumented immigrants in the U.S.

1. Federal Preemption and Renting to Undocumented Immigrants

In the United States, federal preemption is the invalidation of a state law that conflicts with federal law. Preemption issues are centrally concerned with whether Congress has manifested an express or implied intent that its federal legislation be exclusive in nature, trumping any conflicting state law by virtue of the Supremacy Clause of the Constitution. The preemption doctrine requires a clear and manifest expression that Congress wills its federal legislation to oust any corresponding state law. If such a congressional intent is not identified, a presumption exists in favor of states exercising their police powers to regulate a determined subject.1

With regard to housing undocumented immigrants, federal law makes no distinction by immigration status. “The doctrine of federal preemption in the immigration context is in a condition of unending flux, leaving the state and local political actors in a position of doctrinal uncertainty.”2 Federal preemption in immigration was addressed in *Arizona v. U.S.*3 There, the Supreme Court of the United States implied that removal procedures constitute federally preempted legislative subjects, but did not provide any clarity as to the actual extent of federal preemption in the immigration context.4

Operating within this legal grey area, states, cities and municipalities across the United States have undertaken efforts to regulate the effects of undocumented immigration on housing. Legal consequences of renting or leasing to an undocumented immigrant vary greatly. In some of these jurisdictions renting to an undocumented immigrant is punishable by the imposition of a fine, while elsewhere renting to undocumented immigrants is a criminal offense.5 In contrast, other areas have left the issue of undocumented immigrant renting completely unregulated.

2. Application of Federal Preemption in Prominent Immigration Caselaw

After *Arizona v. U.S.*, the Eighth Circuit became one of the first courts to examine the issue of renting to undocumented immigrants in *Keller v. City of Fremont.*6 This case dealt with a city ordinance from Fremont, Nebraska that limited hiring and providing rental housing to “illegal aliens” and “unauthorized aliens,” as defined in the ordinance. The ordinance was challenged on the grounds that: (1) the ordinance was unconstitutional because it violated the Equal Protection, Due Process, and Commerce Clauses of the United States’ Constitution; (2) it was federally preempted under the Immigration Reform and Control Act (IRCA); and (3) it violated various state and federal laws.7 There, the Eighth Circuit held that federal immigration laws and regulations did not preempt the city ordinance that made it unlawful for an un-
documented immigrant to rent a property without possessing an occupancy license, which could only be granted to U.S. citizens or documented immigrants. The court arrived at its conclusion after examining basic principles of the federal preemption doctrine, as well as the opinion of the U.S. Supreme Court in Arizona v. U.S.8

Shortly after the Eighth Circuit issued its opinion, the Fifth and Third Circuits took an opposite approach, holding city ordinances similar in nature to the one examined in Keller9 were preempted by federal immigration law. The Fifth Circuit was asked to decide a similar question on nearly identical facts in Villas at Parkside Partners v. City of Farmers Branch. The case arose from the city of Farmer’s Branch, Texas, which passed an ordinance that required every individual who rented an apartment or a single-family unit to obtain an occupancy license.10 Despite the similarities between the Farmer’s Branch ordinance and the Fremont ordinance, the Fifth Circuit found the Farmer’s Branch ordinance to be conflict preempted under the Supremacy Clause of the U.S. Constitution. In direct opposition to the Eighth Circuit, the Fifth Circuit held that the Texas occupancy license scheme’s criminal provisions conflicted with the IRCA.

In Lozano v. City of Hazleton, the Third Circuit examined two city ordinances which were designed with a similar structure and aim as the ones analyzed by the Eighth and Fifth Circuits. These ordinances made legal immigration status a condition to entering into a valid lease and required landlords and tenants to abide by an occupancy license regime conditioned upon the tenant’s proof of legal citizenship or residency. Although the Third Circuit joined the Fifth Circuit and found the local ordinances preempted by federal law, it relied on field preemption in addition to conflict preemption. The Fifth Circuit understood the Supreme Court’s decision in Arizona v. U.S. to mean that the IRCA clearly preempted any attempt by the local government to regulate residency of immigrants through the guise of housing regulations. It went on to hold that the IRCA is centrally concerned with the terms and conditions of admission to the country and the subsequent treatment of non-citizens lawfully admitted.11

The three circuit court opinions highlighted above demonstrate the different discrimination involved in ordinances limiting undocumented people’s access to housing. With no definitive answer as to whether immigration regulation is preempted, States have continued to regulate the field at an ever-increasing rate.

3. Variance in Immigration Housing Regulation

As much as immigration caselaw differs, so does the regulation of undocumented immigrant housing. According to the 2013 National Conference of State Legislatures, lawmakers in 45 states and the District of Columbia enacted 184 laws and 253 resolutions related to immigration. These legislative efforts accounted for a 64 percent increase from the 267 laws and resolutions enacted in 2012. Their content addresses a multiplicity of subjects including, but not limited to, regulating housing.12

In Kansas there are currently no state laws or ordinances regulating the housing of undocumented immigrants. However, recently there have been pushes from prominent Kansas politicians to regulate in this field. For example, Secretary of State Kris Kobach introduced several bills in the 2017 legislative session targeted at undocumented immigrants. One bill aimed to prohibit municipalities from adopting policies that prevent law enforcement officers from inquiring about a person’s immigration status or restrict cooperation with Immigration and Customs Enforcement (ICE). A version of that bill received hearings last legislative session but never made it to the House floor.13

Despite some of the recent proposed bills, Kansas caselaw and policy tends to be very favorable towards protecting the rights of undocumented immigrants. In Ment-Hernandez v. 223, the Kansas Supreme Court ruled that a custodian must be paid workers’ compensation benefits despite being an undocumented immigrant.14 Further, an ICE list named five Kansas counties that it says limit cooperation with the federal agency. Shawnee, Sedgwick, Butler, Finney and Harvey counties will not honor an ICE detainer without probable cause, a warrant, or a court order.15

These counties reached their decision based on a case heard by the 3rd Circuit in 2014, Galarza v. Szalczyk.16 There, the Court ruled local agencies could be liable if they hold a person based on an inaccurately issued ICE detainer and the person later sues the agency. In this case a Pennsylvania county held a man with an ICE detainer, authorities later determined he was a U.S. born citizen and he sued citing Fourth Amendment protections. This ruling prompted Shawnee County, Kansas to review its policy and notify ICE that it would no longer hold believed undocumented individuals based solely on an ICE detainer.

Accordingly, Kansas has created an environment where undocumented immigrants should feel comfortable seeking housing arrangements. It should be noted that oftentimes landlords request or require social security numbers (SSN) from tenants. Undocumented immigrants who do not have a SSN should under no circumstance provide a false SSN to their landlord. This may preclude them from receiving immigration benefits from the United States in the future. Immigrants who have a valid work permit, visa, or other documented immigration status can apply for a SSN from the social security administration.

4. Fair Housing Discrimination Based on National Origin

A person’s immigration status does not affect his or her federal fair housing rights or responsibilities. The Fair Housing
Act prohibits discrimination in the sale, rental, financing of dwellings, and in other housing-related transactions, based on race, color, national origin, religion, sex, familial status, and disability. National origin discrimination is different treatment in housing because of a person’s ancestry, ethnicity, birthplace, culture, or language. This means undocumented immigrants cannot be denied housing opportunities because they or their family are from another country, because they have a name or accent associated with a national origin group, because they participate in certain customs associated with a national origin group, or because they are married to or associate with people of a certain national origin.

It is illegal to coerce, intimidate, threaten, or interfere with a person’s exercise or enjoyment of rights granted or protected by the Fair Housing Act. This includes threats to report a person to ICE if they report housing discrimination to the U.S. Department of Housing and Urban Development (HUD). HUD does not inquire about immigration status when investigating claims of housing discrimination.

Landlords are allowed to request documentation and conduct inquiries to determine whether a potential renter meets the criteria for rental, so long as this same procedure is applied to all potential renters. Landlords can ask for identity documents and institute credit checks to ensure ability to pay rent. However, a person’s ability to pay rent or fitness as a tenant is not necessarily connected to his or her immigration status. Procedures to screen potential and existing tenants for citizenship and immigration status may violate the Fair Housing Act’s prohibitions on national origin housing discrimination.

5. Reporting Housing Discrimination

Incidents of housing discrimination can be reported via complaint with HUD. Anyone can file a complaint with HUD at no cost. To file a complaint via phone you can call: 1-800-669-9777 (English and Spanish Voice) 1-800-927-9775 (TTY). You can file a complaint using an online form. To file a complaint online there is form located on the HUD website at: https://www.hud.gov/program_offices/fair_housing_equal_opp/online-complaint

You can write HUD a letter with: Your name and address, the name and address of the person your complaint is about, the address of the house or apartment you were trying to rent or buy, the date when this incident occurred, and a short description of what happened. Then mail it to:

Office of Fair Housing and Equal Opportunity
Department of Housing and Urban Development
Room 5204
451 7th St. SW
Washington, DC 20410-2000

HUD has documents and informational brochures translated into eighteen languages (Amharic, Arabic, Armenian, Cambodian, Chinese, Creole, Farsi, French, Hmong, Korean, Polish, Portuguese, Russian, Spanish, Tagalog, Vietnamese, and English). HUD also uses phone interpreter services that allow us to assist people in over 175 languages.

About the Author

Jenna Christophel is a Kansas native and graduate of the University of Kansas. She later earned her law degree at Washburn University School of Law. Jenna joined the Kansas Coalition Against Sexual and Domestic Violence (KCSDV) as its Immigration Project Attorney. She came to the Coalition from the U.S. Department of Homeland Security, United States Citizenship and Immigration Services (USCIS) where she served as a Government Information Specialist Jenna is currently admitted to the Kansas Bar, a member of the Kansas Bar Association, and a member of the American Immigration Lawyers Association (AILA).

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2. Carlo E. Zayas Morales, supra note 1
3. Arizona v. United States, 641 F. 3d 339
4. Carlo E. Zayas Morales, supra note 1
7. Carlo E. Zayas Morales, supra note 1
8. Arizona v. United States, 641 F. 3d 339
10. Carlo E. Zayas Morales, supra note 1
11. Carlo E. Zayas Morales, supra note 1
12. Carlo E. Zayas Morales, supra note 1
16. Galarza v. Szalczuk, 745 F. 3d 634
Change Can Be Hard; Change Can Be Good

by Anne McDonald

Well, according to Google, the two Chinese characters that spell "crisis" do NOT signify danger and opportunity, as President Kennedy said in a speech in 1959. It’s a nice idea though and one that we can nonetheless employ. Crisis and change do often go together with either one bringing about the other. I bet you can think of an example from your own experience.

I’m going in different, though related, directions in this article. In heading down the first path, we hope that crisis will indeed bring change. In the others, the focus is on change that need not bring crisis but will bring new faces and new energy.

The Kansas Bar Journal has already run three separate articles about the National and State Task Forces on Lawyer Well Being. If you read them, you know that a 2016 survey of the legal profession did identify a crisis – statistics showed that too many lawyers had work and life styles that were damaging to them, and to the profession. Depression, anxiety, substance abuse, stigma, barriers to seeking help and suicide were all at high, unsustainable levels. This realization prompted the Report of the Task Force on Lawyer Well Being which was unveiled last fall. It encouraged each state to form its own Task Force to increase awareness of the situation and to begin implementing changes that will eventually transform the culture of the legal profession. Our Kansas Supreme Court has endorsed the efforts of our own State Task Force, and deems it so important that they have asked one of their own members, Justice Eric Rosen, to be a part of it. They also asked Steve
Grieb, special counsel to Chief Justice Lawton Nuss, to serve as well. We are assembling other representatives of the identified stakeholder groups:

- Law firms
- Law schools
- Lawyer Assistance Programs
- Judges
- Bar Associations
- Regulatory counsel
- Professional liability companies

Those of us who have spearheaded this movement are excited to have others join this effort which we believe will avert the crisis and bring about change that can help each of us and all of us to be healthier individuals and members of a healthier legal profession.

The second change that most of you are aware of is the new leadership of our state Bar Association. The willingness of Sarah Warner and Judge Larry Hendricks to step up and serve is admirable. New faces will no doubt bring new ideas, and that is as it should be. The outgoing President, Greg Goheen, and former Executive Director Jordan Yochim, were both members of the state Task Force on Lawyer Well Being and the two new leaders will bring new energy to the Task Force.

Another new face is Carla Pratt, the new dean at Washburn Law School. I got to see her when she recently introduced the keynote speaker at the Kansas Women Attorneys Association Lindsborg Conference. I feel sure she will bring the perspective of her own life experience and philosophy to Washburn and that will lead to growth and innovation for the law school.

Lastly, there will be a new KALAP Executive Director who will bring new faces, new ideas and new energy to the program. Louis Clothier, an attorney in private practice in Leavenworth, has been appointed as the new Executive Director and he will begin sometime in late August. It has been a joy, honor and privilege to serve, and to witness the great effort that many KALAP clients have exerted in changing themselves into healthier, happier people who are also better lawyers. Their own improved well-being will help lift our whole profession. Although I am retiring, I plan to continue to serve on the Task Force and be a volunteer for KALAP where needed. There are still many avenues for growth in our lawyers assistance program and though change can be hard, change can also be good.

About the Author

Anne McDonald was appointed to the Lawyers Assistance Program Commission at its inception in 2001 and has served as the Executive Director of KALAP since 2009. She graduated from the University of Kansas School of Law in 1982. She is retiring in the fall, but will continue to serve on the State Task Force on Lawyer Well Being and will also remain as a volunteer at KALAP when needed.

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Summer Internship Provides Unique Look at Court System

by Cole Cummins

This summer, I had the opportunity to complete an internship at the Johnson County District Court through KU Law’s Judicial Field Placement program. This program requires students to log a total of 255 hours of supervised work with a judge. Through this internship, I have had a chance to apply and sharpen the skills I began to develop during my first year of law school, such as legal research and writing. Getting feedback on things like memos and case briefs from judges who are actually presiding over the case at hand is so much different than getting that feedback from a professor over a hypothetical set of facts. Knowing that what I was writing may actually be used and could potentially affect somebody’s life forced me to become a better researcher. Taking that research to a judge or a clerk and getting feedback about how I presented it showed me where I needed to spend more time and more ink. I am excited to take these skills into 2L year and continue to improve upon them.

While getting better at legal research and memo writing was beneficial, it was more of an “added bonus” to my summer experience. What made this program so valuable in my eyes was the exposure to the court system. The first day interns arrived, we were given ID badges. These ID badges gave us the ability to explore the courthouse, sit in on hearings and trials, and get into the Law Clerk offices to pester them with questions whenever needed. Having the chance to observe actual court proceedings, and then discuss those proceedings with the judge, was the most beneficial part of this experience. The memory of watching my first full court trial in Judge Sutherland’s courtroom will stick with me my entire life. After a 1L year full of oral argument exercises and civil procedure exams, I thought I had a good idea of what to expect going into this experience. I was wrong. I learned more about what it means to advocate for a client and how a courtroom operates in those three days than I did my entire 1L year. There is something about watching a real trial that affects real lives that captivates you and makes it so much more impactful than arguing against a classmate over a made-up set of facts or reading an old civil procedure case from a text book.

When the trial came to an end, I was overflowing with questions. Clearly, this wasn’t Judge Sutherland’s first time having interns sit in on a trial, because before I could even ask, he approached the group of interns huddled in the back of the courtroom, ready to field questions. The opportunity to have a judge tell you what each attorney did that he found persuasive, or why he overruled this objection but sustained the other, or why one side should have filed this motion but didn’t, etc., provides so much practical insight to things that law school simply can’t. Listening to judges explain these things provided valuable “behind the scenes” knowledge that will stick with me throughout my career.

At the end of our discussion, Judge Sutherland said to all of us, “You know, law school will teach you a lot of things. One thing it doesn’t teach you though, is how to practice law.” That comment stuck with me because he was right. In the first year of law school, trying to retain the amount of new information being thrown at you can be like trying to drink from a fire
hose. I felt like I had learned so much at the end of 1L year, but this experience has shown me that none of that knowledge really matters unless you know how to use it. An attorney may know more about the law than the judge himself, but if he doesn't know how to connect with a jury, gain respect from a judge, or speak confidently in a courtroom, it may not matter. Things like that are far easier to learn through observation and experience than reading about proper courtroom etiquette from a book.

As my summer at the courthouse comes to an end, I have taken some time to reflect upon my experience. A few things in particular stick out to me:

Judges are real people:
- One of the coolest aspects of this experience was having access to judges outside of their courtroom. So often, in the legal profession and in general, judges are seen as disciplinary figures, sitting above everyone else in the room, banging their gavel and passing out sentences. What people fail to realize is that they are really just people. Accomplished people who deserve respect, but people. Sure, Judge McCarthy is perfectly professional on the bench and has no problem being stern when he needs to be. But what the rest of the courtroom doesn't know is that just 30 seconds before they were ordered to rise for his presence, he was chatting with interns about the woeful state of the Royals and their best course of action at the trade deadline.

Different judges have different styles:
- While there is a procedure that must be followed in every trial or hearing, those procedures do not prevent judges from adding their own personal touch. A prime example of this is Judge Sutherland and his approach to the jury selection process. It's a good thing that Johnson County has so many residents, because this way nobody notices how many of the same jokes he recycles to put the potential jurors at ease. He has also never once forgotten to tell a witness to “watch their step” as they exit the witness box, and always prints out a copy of jury instructions for each juror to reference. Things like that aren't done in every courtroom and illustrate a part of a judges job that allows them to facilitate these uniform processes in the way they see best fit.

Veterans Treatment Court:
- Judge McCarthy is the head of a program called Veterans Treatment Court. The mission of this program is to identify veterans in the criminal justice system who would benefit from treatment and court supervision as an alternative to serving jail time. Once a veteran is determined to be eligible, taking into account the level of their offense, past criminal history, and other factors, they can be admitted to the program. Once they are admitted, these veterans voluntarily participate in a program that involves court appearances every other week and frequent drug and alcohol testing. Each veteran is given a support system that involves treatment and recovery programs, as well as a mentor program that pairs them with a fellow veteran to motivate them along the way.
- Before every Veterans Court hearing, the VTC team meets in Judge McCarthy’s jury room to discuss the progress of each individual within the program. The VTC team is made up of attorneys, VA representatives, probation officers, police officers, treatment center representatives, and Judge McCarthy, who acts as a spokesperson for the team on the bench.
- I had the opportunity to observe these pre-hearing meetings, where the team discussed how individuals were making progress with their sobriety, social interactions, and mental health. It was amazing to see how invested the VTC team was in each of the individuals.
- I also got to sit in on the actual hearings that took place after these meetings. These hearings are unlike any other traditional courtroom proceeding. I saw veterans share stories of how they have battled PTSD that led them to commit their offenses, and how this program has helped turn their lives around. Members of the gallery frequently applauded in the middle of hearings. A veteran even played the entire courtroom a song on his guitar at one hearing. There is a graduation ceremony for veterans who successfully complete the program. Senator Jerry Moran is scheduled to speak at the next one.
- It has been uplifting to see the court system recognize that incarceration is not always the best course of action, especially for those battling mental health issues as a result of their service to our country.

This summer will be one that I remember throughout my entire career. I have had the opportunity to improve technical skills, observe real court proceedings and learn from the perspective of judges. I have made connections with attorneys, judges and staff members. I have taken tours of detention centers, jails and crime labs. I am encouraged by programs like the VTC. Overall, I’ve gotten an up-close view of what being a member of the legal profession actually looks like. I am grateful that my professors in my first year at KU Law prepared me so well for an opportunity like this, and I am excited to take my experience with me as I head into my second year of law school and beyond.

About the Author
Cole Cummins is a 2L at the University of Kansas School of Law. He is a native Kansan and received his bachelor’s in political science and business from KU. He has an interest in several areas of law and is considering practicing in the areas of corporate or criminal law.

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Navigating the Field

by Jessie Pringle

Every Saturday in the fall growing up, my parents and I made the drive from Chanute to Lawrence for KU football. Each week I dreaded telling my friends that I was going out of town, but I looked forward to seeing my parents’ friends, a group that I just called the “football crew.” The football crew had been attending KU games since they graduated from law school in 1980. I grew up cheering on KU football with a tax attorney, a federal clerk, two judges and my dad.

I attended my first KU Law homecoming reception before I can remember. I was wearing my first KU Law shirt in elementary school, one that I had proudly picked out by myself at the Student Bar Association booth. In middle school, I would walk down the block to dad’s office at 3 p.m. to record closed files for storage or organize new statute supplement books. I attended my first Kansas Court of Appeals hearing when I was in high school. I grew up understanding what it was like to be a lawyer.

I cannot tell my law school experience without talking about my father’s. His friends had made it seem so easy. Law school was simply where you spend three years studying late into the night with people who would become your friends for the rest of your life. I knew that no matter what classes I took or professors I had, I wanted to walk away from law school with friends like his. Thirty-nine years later, I will graduate this coming spring with my own law degree after all my own late nights in the library and alongside my own lifelong law school friends.

While I have the influence and support of the lawyers I grew up around, I have been able to find my own place in the legal field. Instead of confining myself to what I already knew, I asked myself what I was passionate about and found opportunities everywhere.

During my own law school tenure, I spent a summer with KU’s Medical-Legal Partnership at Lawrence Memorial Hospital working for low-income patients on accessing their basic needs. I was able to visit patients on the floor to conduct intake interviews, sit in on follow-up appointments with family members, call clients with updates, and work on court documents. This work required working with LMH’s Care Coordination Office, nurses, and physicians to provide care to patients. This was my first time doing legal work, and I found out that I simply loved working with people and helping solve their problems.

While in school, I have taken classes on poverty law, fair housing, legislation, and public policy. These courses helped me identify issues that contribute to—or detract from—equal access to justice. I have learned how the law succeeds
or fails in protecting people. These courses made me wonder: how do we ensure that everyone has an equal and fair chance to be heard?

Before starting my third year, I was at Kansas Legal Services as an Access to Justice Technology Fellow. At KLS, I helped research and develop resources to aid self-representing litigants through the justice system. I worked on numerous projects, including: updating and creating online legal forms, writing and producing instructional videos, and developing a chatbot to answer users’ questions about legal forms. Throughout the summer, I also gained legal experience by helping clients obtain protection orders, advising seniors on advanced directives, and researching landlord-tenant issues.

I acknowledge what a privilege it was to grow up understanding the legal system. I know that many do not have that opportunity. This past summer led me to the realization that I want to help others navigate the legal landscape that I grew up around, one I took for granted. It is imperative that more people understand and successfully access the court system to ensure fair and just outcomes. Having informed and prepared self-representing litigants also increases judicial efficiency and decreases court costs. Ultimately, five minutes of my time explaining how to access a legal form online can make a world of difference to someone trying to escape an abuser or get support in order to feed their children.

What I have learned in the past years as a law student is that “helping people” is not a cliché. Rather, it is a pillar of our profession, a foundational notion that guides our values—something that makes law school bearable. As students, it is actually something that helps you study harder for an exam or motivates you to keep up with current legislation. It is what gets you to reach out and join Kansas Women Attorneys Association. It keeps you up late at night surfing twitter on #AppellateTwitter or #LegalTech.

Growing up standing on the shoulders of my father and his friends, I didn't learn much about decanting a trust or the requirements on gift taxes. Instead, I learned how to cheer for KU football, how to have a sense of humor, how to care about other people, and how to serve Kansas with my law degree. The lawyers in that football crew have always been my role models, but in pursuit of following their legacies, I have been able to create my own.

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About the Author

Jessie Pringle is a 3L at KU Law. Pringle graduated with a History degree from the University of Kansas where she served as Student Body President. She hopes to pursue a career in serving low-income and underserved communities. Outside of law school, her interests include kickball, golf, and discussing public policy.
Presidential Power in the Obama and Trump Administrations

By Richard E. Levy
I. Introduction

One consistent trend since the time of the founding has been the expansion of presidential authority. In recent years, this trend has accelerated at an exponential rate, propelled by the war on terror and the dysfunction of our hyperpartisan Congress.

Although these events take place on a national stage, they have important implications for the bench and bar here in the state of Kansas. The operations of the national government inherently and necessarily affect all of its constituent parts, including Kansas. Of more immediate concern, the use of presidential power to implement particular policies, such as tariffs, significantly affect many people here in the state. More broadly, the hyperpartisanship fueling the growth of presidential power operates here in Kansas as well.

The general point of this article is that, although their policy goals were different, both Presidents Obama and Trump asserted especially broad presidential authority in a number of areas, including the war on terror, foreign relations, immigration policy, control of officers, and executive privileges and immunities. The congressional response to these assertions has been political and partisan, rather than institutional. That is, members of Congress seem perfectly willing to accept and even applaud broad assertions of presidential power when it suits their partisan policy agenda. The judicial response has also been inconsistent. Although some cases invalidate presidential actions as going too far, many others reject challenges on procedural grounds or affirm broad presidential authority on the merits.

II. General Principles

Under basic separation of powers principles, Congress “makes the law,” the President and executive officers “execute the law,” and the judiciary “interprets the law.” The legislative power to make the law is the antecedent power to adopt binding rules of general applicability that determine the ends and means of public policy. The executive power to implement the laws derives primarily from the laws that Congress enacts, but the President also has substantial independent authority in the field of foreign relations. The judicial power to interpret the laws arises in connection with the courts’ authority to resolve cases and controversies within their jurisdiction.

Article I vests the legislative power in Congress, the most politically accountable branch, which must meet the requirements of bicameralism and presentment to enact laws. Congress can only enact laws that are necessary and proper to the exercise of an enumerated power. The Senate must consent to important presidential appointments and to treaties. Congress may not delegate the legislative power to anyone else, but it necessarily delegates the power to implement laws to executive officers and courts.

Article II vests the executive power in the President, elected by a national constituency, who has the duty to “take care that the laws be faithfully executed.” The President’s power to act
“must stem either from an act of Congress or from the Constitution itself.”6 The President has express and implied powers to appoint, supervise, and remove officers of the United States engaged in the execution of the laws, although Congress may create independent agencies and require “good cause” for the removal of some officers.7 The President has independent constitutional authority as Commander in Chief of the armed forces and chief representative of the United States in foreign relations matters, although Congress also has powers related to the use of force and the conduct of foreign relations.8

Article III vests the judicial power in the Supreme Court and such lower courts as Congress may establish, assuring their independence through life tenure and salary protections.9 The jurisdiction of federal courts extends to cases and controversies arising under federal law, between citizens of different states, and in various other areas implicating national interests.10 The exercise of judicial power depends on a justiciable case or controversy, which incorporates requirements related to standing, ripeness, and mootness and precludes the resolution of “political questions.”11 Under the rule of law, the judicial power to resolve cases and controversies implies the power to review statutes for constitutionality and executive action for compliance with the law.12

Although basic separation of powers principles are easy to summarize, applying them in practice to modern government presents an enormous number of difficult questions. In resolving these questions, the Court’s analytical approach has vacillated between formalism and functionalism. Formalism requires strict separation of powers, with the analysis centered on the proper characterization of a particular action as legislative, executive, or judicial to determine whether the proper branch exercised the power in accordance with constitutional requirements.13 When the Court uses a formalistic approach, it usually invalidates a law. Functionalism starts with the premise that legislative, executive, and judicial powers overlap, with the analysis centered on whether a particular institutional structure preserves the core functions of each branch and the essential balance of power among the branches.14 When the Court uses a functional approach, it almost always upholds a law.

Since the New Deal, the functional approach has dominated, facilitating the rise of the modern administrative state, in which administrative agencies have significant “quasi-legislative” and “quasi-judicial” policy authority. The authority to appoint, oversee, and remove officers in those agencies affords a president substantial control over public policy—as reflected in dramatic policy shifts when President Obama replaced President Bush and when President Trump replaced President Obama. At the same time, the president’s independent authority as Commander in Chief and chief representative in the conduct of foreign relations has also grown substantially over time, aided by congressional acquiescence and the judiciary’s reluctance to intervene in such matters.

The scope of presidential authority depends on how it interacts with the actions of Congress, as reflected in Justice Jackson’s influential framework from The Steel Seizure Case.15 When the President acts pursuant to congressional authorization, “his authority is at its maximum, for it includes all that he possesses in his own right plus all that Congress can delegate.” When Congress has neither granted nor denied authority, “he can only rely upon his own independent powers, but there is a zone of twilight in which he and Congress may have concurrent authority, or in which its distribution is uncertain.” Finally, when the President acts against the “will of Congress, his power is at its lowest ebb, for then he can rely only upon his own constitutional powers minus any constitutional powers of Congress over the matter.”

III. Use of Force in the War on Terror

The Constitution divides power over the use of military force between Congress and the President. Although Congress retains the power to declare war, controls funding for the military, and has regulatory authority over the armed forces, in practice the President’s power to use force unilaterally has greatly expanded over time. Key issues in the Obama and Trump administrations have been the expansive reliance on the Authorization for the Use of Military Force adopted after 9/11 and the use of force without explicit congressional authorization.

A. Allocation of War Powers

The Constitution vests Congress with the power to declare war and to fund and regulate the military,16 but it makes the President Commander in Chief.17 The Framers vested the fundamental choices about the use of military force to Congress because they believed that the most politically accountable branch of government ought to make such important decisions. Nonetheless, experience taught that, once the decision was made, there should be a single commander to lead the military. Over time, the balance of control over the use of force has shifted toward the President.

Although only Congress may declare war, under some circumstances the President has inherent power as Commander in Chief to use force without a declaration of war. In The Amy Warwick (The Prize Cases),18 the Supreme Court upheld President Lincoln’s initiation of a naval blockade against southern ports at the outset of the Civil War, reasoning that the President had inherent power to repel an invasion or suppress an insurrection. Subsequent presidents have used force without formal declarations of war, ranging from brief military incursions to large-scale conflicts. Courts have consistently rejected efforts to challenge the legality of presidential uses of force.19

In an effort to assert greater control over the use of military force, Congress enacted the War Powers Resolution in 1973, overriding President Nixon’s veto. Although it is denominated a “resolution,” the War Powers Resolution satisfied bicameral-
ism and presentment requirements and has the same effect as a statute.\textsuperscript{20} In practice, the War Powers Resolution has had virtually no effect on the presidential use of force. It has never required the end of hostilities and has no applicability to many modern military actions such as missile or drone strikes.

\section*{B. Authorization for the Use of Military Force}

Congress might authorize the use of force in various ways, including a formal declaration of war, a resolution of “Authorization for the Use of Military Force” (AUMF), or other means of explicit or implicit approval.\textsuperscript{21} There has been no formal declaration of war in the “war on terror,” but Congress has expressly authorized the use of military force.

A formal declaration of war represents the commitment of the nation to an all-out military conflict against a specified enemy or enemies. Under international treaties and customary international law, it has legal consequences for the nations engaged in war (“belligerents”) and neutral countries. These rules are the product of an earlier time, poorly adapted to the modern world. Thus, the last time the United States formally declared war was World War II.

Presidents have at times sought and received express congressional authorization to use force. Thus, for example, in the first Iraq War, President George H.W. Bush initially claimed that a United Nations Security Council Resolution authorized the use of force, but he eventually sought and obtained an AUMF from Congress as well.\textsuperscript{22} Other conflicts rest on less explicit forms of authorization, including international agreements (e.g., the Korean War) or tacit approval reflected through ongoing appropriations and other forms of acquiescence (Vietnam).\textsuperscript{23}

In the wake 9/11, President George W. Bush sought and received two resolutions authorizing the use of force. Like the War Powers Resolution, these joint resolutions have the force of law and are equivalent to statutes.\textsuperscript{24}

- \textbf{Senate Joint Resolution 23}, “To authorize the use of United States Armed Forces against those responsible for the recent attacks launched against the United States,”\textsuperscript{25} empowered the President “to use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001.”

- \textbf{House Joint Resolution 114}, “To authorize the use of United States Armed Forces against Iraq,”\textsuperscript{26} empowered the President “to use the Armed Forces of the United States as he determines to be necessary and appropriate” to “defend the national security of the United States against the continuing threat posed by Iraq” and “enforce all relevant United Nations Security Council resolutions.”

These AUMFs are broad in scope and indefinite in duration. As the nature of the terrorist threat has evolved and new groups, such as the Islamic State and Al Shabaab, have emerged, presidents have argued that the AUMFs provide the basis for military action against these groups.\textsuperscript{27}

Critics have challenged the reliance on these AUMFs to justify military actions against terrorist organizations that did not exist at the time of the 9/11 attacks, are active in regions far removed from Al Qaeda’s areas of operation, and that have no known affiliation with Al Qaeda. In \textit{Smith v. Obama},\textsuperscript{28} however, a federal court concluded that the issue presented a nonjusticiable political question.

\section*{C. Use of Force without Congressional Authorization}

Although it is clear that the President has some authority to use military force even without congressional authorization, the precise scope of that authority is unclear and recent presidential actions, such as strikes in Libya and Syria, test those limits. \textit{The Prize Cases}\textsuperscript{29} recognized the President’s inherent power to suppress an insurrection or repel an invasion, but subsequent actions have stretched the limits of this authority. Examples include President Reagan’s use of force in Grenada, President George H.W. Bush’s use of force to capture Manuel Noriega in Panama, and President Clinton’s use of force in Kosovo. In practice, there seems to be little that Congress or the courts can or will do to prevent the unilateral use of force, and presidents generally seek congressional authorization only when it is politically expedient to do so because the use of force is likely to be sustained and costly.

Both President Obama and President Trump have used military force to achieve strategic objectives in other countries without prior congressional authorization and without engaging the War Powers Resolution. President Obama authorized air strikes in Libya in 2011, an ongoing operation that exceeded the time limits specified in the War Powers Resolution. He claimed that the Resolution did not apply because United States forces were not engaged in sustained fighting, exchanges of fire with enemy forces, or stationed on the ground in Libya. Courts dismissed legal challenges to this use of force on justiciability grounds.\textsuperscript{30} Although President Obama was hesitant to use force in Syria without congressional authorization, President Trump has twice ordered strikes in Syria in response to Bashar Hafez al-Assad’s use of chemical weapons. A court dismissed a challenge to the first strike on standing, ripeness, and political question grounds.\textsuperscript{31}

\section*{IV. Diplomacy and International Agreements}

Because the nation must “speak with one voice” in its interactions with other countries, the President represents the United States in matters of foreign relations. The President’s powers in this area are a mix of explicit and implied powers, often informed by historical precedents and practices. Traditionally, presidents have received bipartisan support in this arena, but this norm has eroded in the era of hyperpartisanship.
A. The President’s Foreign Relations Powers

In United States v. Curtiss-Wright Export Corp., the Supreme Court proclaimed that the President has “the very delicate, plenary and exclusive power . . . as the sole organ of the federal government in the field of international relations.” The constitutional text reflects this role by explicitly vesting the President with the power to appoint (with Senate consent) and receive ambassadors, and to negotiate treaties subject to Senate consent. Curtiss-Wright also highlighted the important practical advantages of presidential control over the conduct of foreign policy, including superior information and resources and the superior ability to maintain secrecy.

Accordingly, the Court has been willing to give broad scope to presidential authority in this area, recognizing incidental powers (such as the power to recognize governments and enter into executive agreements) and additional powers established through historical practices as an “historical gloss” on presidential power. Both President Obama and President Trump have relied on their broad constitutional authority to conduct foreign relations. Of particular interest are actions related to diplomacy and recognition and the use of executive agreements.

B. Diplomacy and Recognition

In matters of diplomacy, the President’s power is paramount. Accordingly, Curtiss-Wright indicated that in the field of foreign relations Congress “must often accord to the President a degree of discretion and freedom from statutory restriction which would not be admissible were domestic affairs alone involved.” Conversely, congressional interference with the conduct of diplomacy, especially in connection with the recognition of governments, may violate separation of powers.

Many statutes delegate to the president discretion to impose sanctions of various kinds on other nations as a tool to effect foreign policy goals. President Trump, for example, has used his statutory authority to impose tariffs on other countries’ goods based on national security concerns or in response to unfair trade practices. Although many in Congress have objected to such measures, Congress has not stepped in to constrain this discretion or reverse these measures. These actions have had a significant impact in Kansas because other countries have imposed retaliatory tariffs on agricultural products produced in Kansas.

The discretion to impose sanctions includes the discretion not to do so. The lifting of sanctions, for example, figured prominently in the “Iran Deal,” discussed further below. President Trump has been reluctant to impose sanctions against Russia for its interference with the 2016 elections. In a rare show of bipartisanship, Congress responded by passing the Countering America’s Adversaries Through Sanctions Act by overwhelming (veto-proof) majorities in both chambers. Although President Trump signed the bill into law, he issued two separate signing statements objecting to the law. Ultimately, the administration did impose sanctions on Russian interests, although not until after a statutory deadline had passed.

Another controversial diplomatic question is whether to recognize Israel’s designation of Jerusalem as its capital. Israel’s sovereignty over parts of Jerusalem is disputed and many countries have refused to recognize Jerusalem as Israel’s capital. Both the Bush and Obama Administrations declined to do so and successfully resisted congressional efforts to force such a change. In Zivotofsky ex rel. Zivotofsky v. Kerry, the Supreme Court invalidated a statutory provision requiring the State Department to list “Jerusalem, Israel,” as the birthplace of children of United States citizens born in the occupied portions of Jerusalem. The Court concluded that the statute impermissibly interfered with the President’s “exclusive power of recognition.”

Reversing the policies of previous administrations, President Trump recognized Jerusalem as the capital of Israel and opened a United States embassy there. Zivotofsky suggests that this decision is squarely within his power.

C. International Agreements

Although the Constitution requires that the Senate consent to treaties, it contemplates other types of international agreements as well. This implies that some types of agreements are so important they must come in the form of a treaty, but there is no judicial authority on that question. In practice, presidents often make “executive agreements” without Senate consent. A valid executive agreement can alter legal rights and preempt state law.

When statutes authorize or implement executive agreements, their validity and binding character is clear, even for agreements that might otherwise be treaties requiring Senate consent. In the North American Free Trade Agreement Implementation Act, for example, Congress authorized and approved NAFTA.

The scope of presidential authority to enter into executive agreements without congressional authorization is less clear. In several cases dealing with executive agreements, the Supreme Court has upheld the particular agreement in question, but these cases are susceptible to a narrow reading that requires some independent presidential authority and at least tacit congressional approval.

The transition from President Obama to President Trump had important consequences for several executive agreements negotiated during the Obama Administration—the “Iran Deal” to constrain its nuclear program, the Trans-Pacific Partnership, and the Paris Climate Agreement.

Under the Iran Deal, which President Obama brokered in conjunction with European partners, the United States and its allies lifted economic sanctions against Iran if it took steps to prevent the weaponization of its nuclear program. The deal
was controversial, as critics argued that it was too weak. A number of Republican Senators, led by Senator Tom Cotton, wrote an Open Letter to the Leaders of the Islamic Republic of Iran, warning them that, without Senate approval, the deal was a “mere executive agreement” that future presidents could revoke and Congress could modify. Critics of the letter argued that it was an improper interference with presidential authority to conduct foreign relations.

Congress eventually adopted the Iran Nuclear Agreement Review Act, which required President Obama to submit the agreement for congressional review. Upon submission, however, Congress was deadlocked and neither approved or disapproved the agreement. In *Bender v. Obama*, the Second Circuit held that a private attorney lacked standing to challenge the constitutionality of the Act and the underlying agreement. Before his election and after taking office, President Trump indicated his intent to kill the agreement (at least as to the United States), and he eventually did so by refusing to extend waivers from sanctions against Iran.

The Trans-Pacific Partnership was a wide-ranging free trade agreement involving the United States, China, Japan, and a number of other Pacific Rim countries. President Obama signed onto the agreement, but Congress never ratified it, as required by the agreement’s terms. President Trump opposed the agreement during the campaign and withdrew from it within days of his inauguration.

The Paris Climate Agreement is a global initiative to combat climate change. The United States joined almost every other country in the world by signing the agreement during the Obama Administration. President Trump, however, withdrew the United States from the agreement several months after taking office.

Whatever the consequences of President Trump’s withdrawal from these agreements as a matter of international law or foreign relations, it was undoubtedly within the scope of his presidential authority to do so.

V. Immigration Policy

Immigration policy is an especially controversial subject. Although there is a broad consensus that our current system is deeply flawed and requires major reforms, efforts at legislative change have reached an impasse. It is not surprising then, that both President Obama and President Trump took unilateral actions, albeit with different policy goals in mind. Both presidents’ actions have proven to be highly controversial.

A. The INA

The Immigration and Nationality Act (INA), as amended, is an enormously complex statute that governs immigration into the United States. The statute provides for many different types of visas, ranging from temporary visas (for tourism, educational, or business purposes) and longer term visas (for workers, family members, and others). It creates a process through which asylum seekers and refugees may enter and/or remain in the United States on humanitarian grounds. The statute provides for the denial or revocation of visas on specified grounds and the removal of aliens who are not lawfully present. In each area, the statute delegates considerable enforcement discretion and authority to the President and executive branch officials.

B. Undocumented Aliens

The treatment of the millions of undocumented aliens who are not lawfully present in the United States is a particular area of controversy. Some advocate a hard line on undocumented aliens, including aggressive measures to enforce immigration laws, stepped up efforts to locate and remove undocumented aliens, and increased border security (such as the construction of a wall). Others argue that many of these undocumented aliens are honest, hardworking individuals, often brought to the United States as children who have known no other life, who deserve legal protections and a path to citizenship. Presidential action to deal with the status of undocumented aliens has been the source of considerable controversy.

As a threshold matter, it is important to see that the President necessarily has a certain amount of enforcement discretion in relation to the removal of aliens who are not lawfully present in the United States. Given the limits of available resources, law enforcement officials must inevitably set priorities. Immigration officials simply lack the resources to identify, detain, and remove every person who is not lawfully present in the United States. The statute also specifically delegates considerable enforcement discretion to the executive branch.

One manifestation of this enforcement discretion is “deferred action,” in which the government declines to take action against undocumented aliens in order to devote enforcement resources to higher priority targets. Deferred action policies have been in place for many years, but in 2012 the Obama Administration adopted a more formal system of deferred action known as DACA (Deferred Action for Childhood Arrivals). This policy conferred a right to remain in the United States for a period of years and “lawful status” that allowed recipients to work, get drivers’ licenses, and be eligible for some government benefits. In 2014, the Administration expanded the program to include more childhood arrivals and the parents of childhood arrivals, and extended the period of protection to 3 years.

In *Texas v. United States*, a federal court of appeals upheld a nationwide injunction prohibiting the implementation of the expanded policy, concluding that it was a “legislative rule” that had to follow the notice and comment procedures of the Administrative Procedure Act. The court also strongly hinted that the policy was contrary to the statute and a violation of the Take Care Clause. The case did not address the validity of the original DACA order from 2012, which remained in effect.
Insofar as President Trump’s campaign emphasized a tough anti-immigration stance, it is not surprising that he took measures targeting undocumented aliens, including the rescission of DACA and stepped up enforcement measures. Under pressure from litigants in the Texas case, who threatened to challenge the original DACA, Attorney General Sessions sent a letter to the Acting Secretary of Homeland Security advising her that the DACA program should be terminated. The next day, she rescinded the original DACA order.63

The rescission of DACA left many individuals in a state of limbo and precipitated a number of lawsuits. At least three federal courts enjoined the rescission of DACA, concluding that the DHS failed to provide a sufficient basis for doing so under well-established administrative law judicial review standards.64 Meanwhile, Texas and seven other states filed a lawsuit challenging the original DACA order,65 and Kansas has joined the suit.66

In an effort to ramp up enforcement, President Trump also issued Executive Order 13768, “Enhancing Public Safety in the Interior of the United States,” which outlines the Administration’s enforcement policies and purports to deny federal funding for “sanctuary jurisdictions” that refused to assist with federal enforcement efforts.67 Federal courts, however, have held that the denial of funding to these jurisdictions is unlawful because the administration lacks statutory authority to deny funding on that basis.68

These enforcement efforts directly or indirectly affect many Kansas residents. For example, U.S. Citizenship and Immigration Services estimates that roughly 5900 DACA recipients live in the state.69 Stepped up enforcement hit home in Lawrence, Kansas, when the arrest of Syed Ahmed Jamal, a 30-year resident and chemistry teacher, garnered national attention.70

C. Border Security

Increased border security was a centerpiece of President Trump’s campaign, including the proposed implementation of a “Muslim ban” and the construction of a border wall. Although he eventually obtained an important victory when the Supreme Court upheld executive orders banning immigrants from certain countries, President Trump has been unable to secure funding for the border wall and his zero tolerance policy at the border has faced political backlash.

Shortly after taking office, President Trump issued an order imposing a moratorium on entry into the United States from certain specified countries, followed by two subsequent orders that incorporated revisions to address legal objections to the previous orders. Although several lower-court decisions blocked the orders,71 the Supreme Court upheld the most recent version in Trump v. Hawaii.72 The Court concluded that the order was within the President’s statutory discretion under the INA and did not violate any of its provisions.73 The Court also rejected a constitutional challenge, applying the deferential rational basis test and accepting the Administration’s national security justifications for the order. In so doing, the Court declined to consider the President’s political statements as evidence of animus against Muslims.

Another high profile component of President Trump’s enhanced border security efforts is the proposal to build a wall along the border with Mexico. It appears, however, that he will require congressional authorization and funding to do so. First, although the President might claim unilateral authority as Commander in Chief to build a wall as protection against invasions or implicit statutory authority, such claims rest on shaky grounds. Second, even if the President has authority, funding for construction of the wall would require a legislative appropriation, and discretionary funds in the military or homeland security budgets are insufficient. The President did achieve a minor legal victory when a lower court upheld the waiver of certain environmental laws to expedite the construction of a prototype border wall and rebuild a fence along the border.74

In April 2018, the President issued two additional orders stepping up enforcement along the border. One order provided for the use of the National Guard to provide for border security.75 This memorandum relies on the President’s authority under 18 U.S.C. § 1385, which authorizes him to request assignment of National Guard forces that remain under the authority of the state. Some states have declined the President’s request. A second order directs cabinet officers to end “catch and release” practices for individuals apprehended attempting to enter the United States illegally.76

One aspect of these policies has proven to be especially controversial—the separation of children from their parents. The Trump administration claimed that separation of families was necessary because the government could not detain children together with their incarcerated parents,77 but later issued an executive order providing for detention of parents and children together.78 In Ms. L. v U.S Immigration and Customs Enforcement,79 a federal district enjoined the separation of families and ordered the government to reunite children with their parents. The government has struggled to meet the deadlines for reunification.80

VI. Control of Officers

The authority to appoint, oversee, and remove executive officers is a critical source of presidential power, although it is subject to constitutional and statutory limits. Both President Obama and President Trump took actions that stretched the limits of these powers.

A. The Unitary Executive and Presidential Control

It is commonly understood that the Constitution contemplates a “unitary” executive headed by a single person—the President. The framers considered that a single chief executive was necessary to allow for prompt, coordinated action. The
Vesting Clause vests the executive power in the President, not the executive branch,83 and the Take Care Clause imposes on the President the duty to ensure the faithful execution of the laws.82 The clear implication is that the President controls a unitary Executive Branch.

Nonetheless, the unitary executive principle is not absolute and the President’s control over the executive branch is subject to both constitutional and statutory checks and balances. Critically, under the rule of law, the President cannot order officers to violate the laws.83 In practice, presidents have three means of controlling the officers of the executive branch: appointment, direct oversight, and removal.

The Appointments Clause,84 explicitly provides for and limits the means of appointing judges and other officials. The Clause applies to the appointment of any “officer of the United States,” which includes anyone exercising authority under the law.85 It contemplates two categories of officers—principal and inferior officers. The President appoints judges and principal officers with the advice and consent of the Senate. Although this is the default rule for inferior officers as well, Congress may provide for their appointment by the President alone, by the courts, or by the heads of departments. Another provision, the Recess Appointments Clause,86 allows the President to make appointments to fill vacancies while Congress is in recess.

The Constitution is less explicit about direct oversight of officers. The President’s authority as Commander in Chief to direct the actions of military officers is clear, but there is no corresponding provision regarding civil officers.87 Nonetheless, the Vesting and Take Care Clauses imply at least some measure of supervisory authority over civil officers. Given the broad delegations to agencies in the executive branch, presidents have sought to formalize supervision and control over agency policymaking processes through the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB), both of which are White House agencies.88

Aside from the Impeachment Clause,89 the Constitution is silent about the removal of officers. Nonetheless, the Supreme Court has long recognized an inherent presidential removal power.90 Congress may limit that power by requiring “good cause” for the removal of some officers, including independent agencies and independent prosecutors.91

B. Appointments

The impact of hyperpartisanship has been particularly evident in presidential appointments, as the rules and the practices of the Senate make it relatively easy for the opposing political party to block the President’s nominees. Historically, Senators of the opposing party deferred to the President’s choices, but those days are long gone and both parties seem engaged in trench warfare to obstruct presidential appointments.

1. Appointments in the Obama Administration

Republicans used their control over the Senate to slow or block many of President Obama’s nominations, most famously his nomination of Merrick Garland for the Supreme Court. The focus here, however, is the National Labor Relations Board, which was the object of a pitched battle that produced three separate Supreme Court decisions.

From 2009 to 2013, Senate Republicans used the filibuster to prevent confirmation of President Obama’s nominees to the NLRB, and the Board was down to two confirmed members. During this period, the two remaining members rendered decisions, relying on statutory provisions authorizing the Board to delegate its authority to panels of at least three members, two of which would constitute a majority. They reasoned that they constituted a majority of a three-member panel that had been delegated authority by the Board. In New Process Steel, L.P. v. NLRB,92 however, the Court rejected this theory, concluding that the statute required a minimum of three seated members to transact business.

President Obama tried to alleviate the problem using the Recess Appointments Clause, which allows the President to fill a vacancy that “happens during a recess” of Congress. The Supreme Court invalidated the appointment in NLRB v. Noel Canning.93 The Court construed the Clause broadly to encompass vacancies that arose before a recess but continued into it and defined recess to include any sustained break in the legislative session. Nonetheless, the appointment in this case did not occur during a sustained break, because the Senate had passed a resolution to convene “pro forma session[s]” only, with “no business . . . transacted,” on every Tuesday and Friday during the break.94 Notwithstanding the resolution’s language, the Senate could transact business by passing a unanimous consent agreement. Thus, the Court concluded that the Senate was in recess for no more than three days at a time. As a practical matter, Noel Canning severely limits the availability of recess appointments because the Senate can easily provide for pro forma sessions for any breaks during the session.

President Obama also had difficulty filling the position of General Counsel to the NLRB, an important post that controls enforcement decisions within the agency. When a vacancy arose in that position, President Obama used the Federal Vacancies Reform Act (FVRA)95 to name an interim appointment. Under FVRA, the first assistant to the officer fills a vacant position on an interim basis unless the President names another eligible person to serve. Eligible persons include officers previously confirmed to another position by the Senate and officials who have been with the agency for a specified period in the previous year and have a specified pay grade level.

Under § 3345(b)(1) of the statute, however, a person may not serve as an interim officer if he or she has also been nominated to fill the position on a long-term basis, with some
limited exceptions not relevant here. President Obama named someone other than the first assistant to be the interim General Counsel and later nominated him to fill the position on a long-term basis. In *NLRB v. SW General, Inc.* the Supreme Court held that this nomination violated § 3345(b)(1) and disqualified the nominee from serving as interim General Counsel, rejecting the argument that § 3345(b)(1) did not apply. Although the FVRA was an obscure statute at the time of this decision, subsequent events during the Trump Administration have brought the statute into the public eye.

### 2. Appointments in the Trump Administration

Although the Republican Party has control over the Senate, President Trump has experienced some difficulty filling various offices. The extent to which this problem is the result of obstructionist tactics by Democrats, as opposed to problems within the administration, is the subject of considerable debate. Whatever its causes, the large number of vacancies means that many officials are serving on an interim basis, and President Trump has made frequent use of FVRA. Insofar as the Act contains strict time limits for interim appointments, delays in filling positions have caused the clock to run on some interim appointments. Three additional appointments issues have arisen during the Trump Administration.

First, in November 2017, Richard Cordray’s resignation as Director of the Consumer Finance Protection Bureau (CFPB) precipitated a battle over the rightful Interim Director. Before resigning, Cordray named a Deputy Director, who claimed authority to act as Interim Director under the “Dodd-Frank” Act, which created the CFPB. Dodd-Frank provides that the Deputy Director shall “serve as acting Director in the absence or unavailability of the Director.” President Trump, however, relied on FVRA to name John Michael Mulvaney as Interim Director. The Senate had previously confirmed Mulvaney as Director of OMB, and he would serve simultaneously in both positions. These dueling appointments represented an important battle for control of the CFPB, insofar as Mulvaney is an outspoken opponent of the CFPB and its mission.

Who the lawful Interim Director was depended on the interaction between Dodd-Frank and FVRA. By its terms, FVRA is the “exclusive means” for interim appointments unless, among other things, another statute “designates an officer or employee to perform the functions and duties of a specified office temporarily in an acting capacity.” In *English v. Trump*, a federal district court ruled that the Deputy Director was unlikely to succeed on the merits of her claim for injunctive relief against Mulvaney’s appointment. The court reasoned that Dodd-Frank’s deputy director provision fell within the scope of FVRA’s exception, but that meant only that FVRA was not exclusive and not that Dodd-Frank displaced it. The President could still rely on FVRA and his appointment took precedence over a “designation” made under Dodd-Frank.

Second, it is unclear whether FVRA applies when the President has fired or otherwise removed a person from office. By its terms, FVRA applies when an officer subject to Senate confirmation “dies, resigns, or is otherwise unable to perform the functions and duties of the office,” but it is unclear whether this language encompasses officers whom the President has fired. Although a person who has been fired is “unable to perform the functions and duties of the office,” the * ejusdem generis * canon of statutory construction might support a narrowing construction.

Specifically, the first two items on the list (death and resignation) are beyond the President’s control, so the catchall phrase might be limited to similar vacancies. Such a narrowing construction would make sense, since there are obvious reasons why Congress might not want to give the President discretion to fire officers and then name interim replacements. This issue has particular relevance if the President were to terminate either Attorney General Sessions or Deputy Attorney General Rosenstein in order to name an interim replacement who would shut down or curtail Special Prosecutor Mueller’s investigation.

The Mueller investigation also figures prominently in a third issue, whether his appointment as special prosecutor violates the Appointments Clause. Notwithstanding some who argue otherwise, it seems clear that the Special Prosecutor is an inferior, rather than principal officer. Even so, the office is the product of Justice Department regulations, which specify the means of appointment. Professor Stephen Calabresi has argued that the appointment is unconstitutional because it was the Justice Department, not Congress (as required by the Clause), that provided for appointment by the head of a department. A recent Supreme Court decision, *Lucia v. S.E.C.*, which invalidated the appointment of administrative law judges by officials other than the agency head, suggests that the Court will demand strict adherence to the Appointments Clause.

### C. Direct Oversight

The extent to which presidents may control the exercise of discretion delegated to administrative agencies is a matter of considerable uncertainty. Insofar as a statute vests discretion in an agency, rather than the President, undue presidential interference may violate the statute. On the other hand, “faithful execution of the laws enacted by the Congress . . . ordinarily allows and frequently requires the President to provide guidance and supervision to his subordinates.”

Presidents often issue Executive Orders that are binding within the executive branch, but those orders seldom create judicially enforceable rights and duties for third parties. In recent years, many presidents have used Executive Orders to implement regulatory policy.
As noted above, a series of executive orders under several presidential administrations has established a system of centralized regulatory review by OIRA. Under these orders, agencies may not adopt a regulation or major policy unless the action’s benefits outweigh its costs and OIRA reviews proposed regulations for compliance with this mandate. This sort of regulatory review has been controversial, as critics argue that it subverts the administrative process and agency expertise, providing a back door means through which lobbyists can block regulatory efforts. Nonetheless, regulatory review is generally within the scope of presidential authority, but OIRA may not impose requirements that conflict with statutes or cause delays that violate statutory deadlines.

Shortly after taking office, President Trump issued Executive Order 13771, commonly known as the “2 for 1” order. Among other things, this order requires Executive Branch agencies to identify two existing regulations for repeal for every new regulation proposed. It also requires agencies to offset the private costs of compliance posed by new regulations by eliminating the costs of compliance with existing regulations and imposes an annual cap (set at zero for 2017) on incremental regulatory costs that each agency may introduce. To the extent that these requirements may be contrary to statutes or require agencies to repeal regulations without good reasons for doing so, Executive Order 13771’s legality may be subject to question.

Since President Trump took office, a number of agencies have suspended, stayed, or rescinded Obama Administration rules, regulations, and policies. Courts, however, have blocked many of these actions because the agency failed to follow required procedures or provided inadequate justifications. These judicial decisions may require addition procedures or better explanations, but they do not bar the underlying regulatory actions altogether.

D. Removal of Officers

Although the President’s power to remove officers is well-established, it is not without limits. Recent developments in this area include litigation over the constitutionality of for cause limits on the removal of the Director of the Consumer Finance Protection Bureau, whether the exercise of the power to remove an officer can constitute obstruction of justice, and the extent to which the President might have authority to fire the independent counsel.

Under the Supreme Court’s removal power precedents, Congress may not interfere with the President’s duty to ensure the faithful execution of the laws by preventing the removal of officers who fail to do so. Requiring the President to show “good cause” for removal of officers is consistent with this principle because failure to execute the laws faithfully would be cause for removal. Nonetheless, conditioning the removal of high-ranking officials like cabinet officers on “good cause” would be invalid because the essential functions of the President demand complete control over those officers.

By requiring good cause for the removal of the agency’s members, Congress may prevent the President from removing them based on policy disagreements, thus creating “independent agencies.” Notwithstanding the views of some Justices and commentators, the constitutionality of independent agencies is not in doubt. The independence of an agency implies that the President may not control the agency’s policy choices through other means, so Executive Orders like those discussed above generally do not apply to independent agencies.

Several recent cases have addressed the constitutionality of for cause removal provisions for the Director of the Consumer Finance Protection Bureau (CFPB), a regulatory body created by the Dodd-Frank Act. Unlike most independent agencies, the Director is a single individual, rather than a multimember body. In PHH Corp. v. CFPB, a panel of the District of Columbia circuit held that this arrangement violated separation of powers by vesting too much authority in a single individual who was not politically accountable. Although the circuit, sitting en banc, reversed, the panel opinion was written by Judge Brett Kavanaugh, President Trump’s nominee to replace Justice Kennedy. It may therefore provide some insight into his views on presidential power.

An important issue that has arisen since President Trump took office is whether an otherwise valid use of the removal power can constitute an obstruction of justice. For example, the President’s power to fire FBI Director Comey was clear. Although the Director serves a term of years, there is no provision requiring good cause for removal before the expiration of the term. The question is whether the use of the acknowledged power to fire Director Comey can constitute obstruction of justice if the President’s purpose was to interfere with an ongoing investigation. There is no authoritative ruling on the issue and experts argue it both ways. A similar issue arises in relation to the exercise of the pardon power.

Another issue concerns the President’s authority to fire Special Counsel Mueller—either directly or by requiring officials in the Justice Department to do so. The latter course might require President Trump to replace either the Attorney General or Assistant Attorney General with someone who will do so—a course of action reminiscent of President Nixon’s infamous “Saturday Night Massacre.” Congress responded to President Nixon’s actions by enacting a statute providing for the appointment of an independent counsel to investigate the executive branch removable only for “good cause.” Although the Supreme Court upheld this statute in Morrison v. Olson, experience under the law eventually convinced members of Congress that it was undesirable and Congress allowed the law to lapse.

Although Justice Department regulations require good cause for the removal of a Special Counsel, President Trump apparently believes that he has the power to fire Special Counsel Mueller. The constitutionality of a statutory for cause re-
moval provision is not in doubt after *Morrison v. Olson*, however, so the President could fire the Special Counsel only if the it is improper to impose such a limitation by regulation or if the Attorney General has good cause to support the removal. Although proposed legislation to protect the Special Counsel appears to enjoy bipartisan support, congressional leadership has so far declined to bring any such bills to the floor for debate.127

### VII. Executive Privileges and Immunities

The Constitution provides explicit privileges and immunities for Congress, but is silent on the question of presidential privileges and immunities. Nonetheless, the Supreme Court has recognized both (1) absolute presidential immunity from civil liability for official conduct; and (2) a qualified executive privilege against compelled disclosure of confidential communications.

#### A. Presidential Immunity

In *Nixon v. Fitzgerald*,128 the Supreme Court held that the President enjoys absolute immunity from civil suit. Such a rule is necessary so that the President can execute the duties of the office without fear of personal liability. Immunity only applies to conduct that is within the limits of the President's duties, and does not protect against suit based on personal conduct.129 Likewise, immunity does not protect against litigation seeking to block unlawful presidential actions, although justiciability and other doctrines may protect against such suits.

Many lawsuits challenged the legality of the Obama administration's actions, but few of these suits implicated presidential immunity. Nonetheless, lower federal courts applied presidential immunity doctrines to dismiss at least two civil suits against President Obama, both of which were based on outlandish factual allegations and probably frivolous in any event.130 The courts also turned away lawsuits alleging that President Obama was not born in the United States and therefore could not be President, typically on standing grounds.131

In contrast President Trump is involved in a variety of legal matters that have raised questions about presidential immunities. Under *Clinton v. Jones*, presidential immunity does not shield President Trump from litigation arising out of activities before he became president, including business litigation and lawsuits arising out of his personal life. The most famous of these cases, of course, is litigation brought by Stephanie Clifford (aka Stormy Daniels).132 The judge in that case recently granted a stay of proceedings because of a criminal investigation of Michael Cohen, who represented President Trump in negotiating the agreement.133

Another question raised in connection with ongoing criminal investigations is whether the President is immune from criminal prosecution. One view is that the President enjoys absolute immunity from criminal prosecution, at least while in office.134 Some experts have argued, however, that Special Counsel Mueller could indict President Trump if his investigation uncovered criminal wrongdoing.135 Even if a sitting President is immune, a prosecution might be possible after a President is no longer in office, a concern that prompted Gerald Ford to pardon Richard Nixon. Should the issue of immunity materialize, it is worth noting that Judge Kavanaugh has written in support of especially broad constitutional immunities for the President.136

#### B. Executive Privilege

The Court has also recognized an “executive privilege” that protects against compelled disclosure of confidential communications between the President and the President’s advisors. Although the privilege clearly serves an important and necessary function, it may also obstruct the legitimate investigation and oversight functions of Congress and the courts. Both the Obama and Trump Administrations have used executive privilege to withhold information from or refuse to answer questions in congressional investigations.

*United States v. Nixon*,137 concluded that recognition of executive privilege is necessary so that the President can obtain candid advice, but held that this privilege is not absolute. Instead, the courts are to balance the need for privilege against the need for information, thus preserving the essential functions of all three branches. On the facts, the Court ordered President Nixon to turn over tape recordings subpoenaed by the special prosecutor, concluding that the need for evidence in an ongoing criminal prosecution outweighed the President’s undifferentiated assertion of the need for confidentiality. In other cases, the Court has applied this balancing test, with mixed results.138

During the Obama Administration, Attorney General Holder asserted executive privilege, refusing to produce documents for a Congressional Committee investigating “Operation Fast and Furious,” a failed sting operation in which government agents provided weapons to criminals in the hopes of tracing the weapons back to catch the ringleaders. The Committee cited him for criminal contempt and referred the matter for prosecution, but the Justice Department predictably declined to prosecute. The Committee then sued to enforce the subpoena, which produced a series of district court decisions rejecting the Attorney General’s argument for executive privilege. By the time that the court entered its final order requiring disclosure, however, the administration had already publicly disclosed the information, and Holder was no longer Attorney General.139

Executive privilege has also been an issue in some Committee hearings involving Trump Administration officials, but the Committees have been much less adamant about forcing disclosures of information. In one high profile example, Attor-
ney General Sessions declined to answer questions from the Senate Judiciary Committee about conversations with President Trump, justifying his refusal to answer by the need to preserve President Trump’s ability to assert executive privilege should he choose to do so. This stance did not satisfy Democrats on the Committee, who wrote a public letter stating their expectation that Attorney General Sessions would come prepared to identify matters on which he asserted privilege and testify fully as to everything else. The Attorney General did not comply, but the Committee did not pursue the matter further.

VIII. Conclusion

Both President Obama and President Trump continued the expansion of presidential power. Insofar as the factors that have contributed to this trend show no signs of abating, the expansion of presidential power seems likely to persist. In the event of a constitutional crisis, these trends will test the strength of our political and legal institutions.

Comparing the Obama and Trump administrations’ actions highlights two important points about the expansion of presidential power. First, the dysfunction of Congress facilitates the expansion of presidential power because congressional paralysis invites presidential action to fill the void and because Congress cannot respond effectively when the President arguably oversteps the limits of presidential power. Second, politicians who complain about abuses of presidential power typically object only when the President is a member of the other party and takes actions with which they disagree. When Presidents of their own party assert broad power to take actions with which they agree, they remain silent and often defend broad presidential power.

These matters have played out on the national stage, but they have important implications for Kansas. Most directly, particular presidential policies often have immediate consequences in Kansas. For example, presidential actions on national security affect military personnel in the state, actions on trade affect Kansas farmers, and actions on immigration affect families that live here.

Separation of powers in Kansas faces its own challenges in an era of hyperpartisanship. Notwithstanding solid Republican control of the Legislature and the Statehouse, political divisions have complicated legislative action in many important areas, such as budgets, taxes, and school finance. The more significant issue, however, concerns the independence of the judiciary, which has been the focus of partisan attacks from the right.

More fundamentally, Kansas is part of the United States, dependent on the effective operation of the national government to protect our interests. If the decline of institutional constraints on presidential power undermine democracy and the rule of law, we will not escape the consequences simply because we are far from Washington, D.C. Accordingly, whether we agree or disagree with the particular policies of either administration, attorneys in Kansas have a professional obligation to defend constitutional principles.

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Post Script. While this article was in press, there have been further developments with respect to many of the issues discussed. Two of these developments warrant some discussion. First, a federal judge recently ordered the full reinstatement of DACA, although the court stayed the order pending appeal. Attorney General Sessions responded by issuing a strong statement criticizing the decision and vowing to fight it. Second, a federal district court recently rejected constitutional challenges to Robert Mueller’s appointment as Special Prosecutor, concluding that Mueller is an inferior officer and identifying statutory provisions vesting his appointment in the head of a department. The opinion, which is admirably thorough, rejects the arguments that Professor Calabresi advanced against the constitutionality of the appointment. Nonetheless, the issue may well end up before the Supreme Court.
1. See U.S. Const. Art. I, § 1 (Vesting Clause); § 7, cl. 2. (bicameralism and presentment).
5. U.S. Const. Art. II, § 1 (Vesting Clause); § 3 (Take Care Clause).

8. See, e.g., Hamdan v. Rumsfeld, 548 U.S. 557, 126 S. Ct. 2749, 165 L.Ed.2d 723 (2006) (holding that the President's authority as commander in chief did not include power to use military commissions to try "unlawful" enemy combatants for "conspiracy" because such offenses were not recognized under the laws of war and their trial by commission was not authorized by statute).
11. See Marbury v. Madison, 5 U.S. (1 Cranch) 137, 2 L. Ed. 60 (1803).
20. See Com. of Matts. v. Laird, 451 F.2d 26 (1st Cir. 1971) (concluding that it was unnecessary to consider whether Vietnam War exceeded President’s sole power as Commander in Chief because congressional actions had effectively approved it); Orlando v. Laird, 443 F.2d 1039 (2nd Cir. 1971) (same).
21. See supra note 20 and accompanying text.
25. 217 F. Supp. 3d 283 (D.D.C. 2016) (appeal pending) (dismissing claim by member of the military); see also supra note 11 and accompanying text (discussing justiciability doctrines).
30. Id. at 320.
31. See U.S. Const. Art. II, § 2, cl. 2; § 3.
33. 299 U.S. at 320.
34. See infra notes 43-45 and accompanying text.
36. See, e.g., Erica Werner and Heather Long, Why nothing seems to be stopping Trump's trade war, Wash. Post, July 11, 2018, available at https://go.ksbar.org/2Pq3XC.
42. Compare U.S. Const. Art. I, § 10, cl. 1 (prohibiting states from entering into any treaty or alliance) with Art. I, § 10, cl. 3 (prohibiting states from entering into any agreement or compact without congressional consent).
47. See, e.g., Mark Sandler, Trump Abandons Iran Nuclear Deal He Long Scrutinized, N.Y. Times, May 8, 2018, available at https://nyti.ms/2nT5L4V.
48. For the full text of the agreement, see https://go.ksbar.org/2weUBex.
52. See generally U.S. Code, Title 8.
53. See 8 U.S.C §§ 1157-1159.
54. See, e.g., 8 U.S.C. § 1229b (delegating discretion to adjust status
84. U.S. Const. Art. II, § 2, cl. 3.
91. Id. at 2407-15.
94. 2011 S.J. 923.
97. 5 U.S.C. §§ 3345-3349d.
100. See, e.g., Amy B. Wang and Maria Sacchetti, Chemistry professor arrested by ICE on his front lawn won’t be deported — for now, Feb. 8, 2018, available at https://wapo.st/2mqLFxM.
presidential power in the Obama and Trump administrations


116. See cases cited supra note 91.

117. See supra notes 100-103 and accompanying text (discussing the appointment of the director’s interim replacement).

118. 839 F. 3d 1 (D.C. Cir. 2016).


120. For discussion of Judge Kavanaugh’s views on other aspects of presidential power, see infra note 136 and accompanying text.


123. Attorney General Elliot L. Richardson and his deputy, William D. Ruckelshaus, resigned rather than fire Watergate Special Prosecutor Archibald Cox. The political backlash forced the appointment of a replacement for Cox—Leon Jaworski—who continued the investigation that eventually led to President Nixon’s resignation.


125. 28 CFR 600.7(d) (“The Special Counsel may be . . . removed from office only by the personal action of the Attorney General . . . for misconduct, dereliction of duty, incapacity, conflict of interest, or for other good cause, including violation of Departmental policies.”).

126. See, e.g., Jordan Fabian, White House: Trump believes he has power to fire Mueller, The Hill, April 10, 2018, available at https://go.ksbar.org/2Bu2iU0 .


131. See, e.g., Drake v. Obama, 664 F. 3d 774 (9th Cir. 2011); Berg v. Obama, 586 F. 3d 234 (3rd Cir. 2009).

132. Although originally filed in state court, the case was removed to federal court. Stephanie Clifford a.k.a. Stormy Daniels a.k.a. Peggy Peterson v. Donald J. Trump a.k.a. David Dennison and Essential Consultants, LLC, case no. 18-cv-02217, U.S. District Court for the Central District of California (Western Div. – Los Angeles).


134. Justice Story stated that “[t]he president cannot, therefore, be liable to arrest, imprisonment, or detention, while he is in the discharge of the duties of his office . . . .” See 3 Joseph Story, Commentaries on the Constitution of the United States, pp. 418-419 (1st ed. 1833); accord Nixon v. Fitzgerald, 457 U.S. 731, 749 (1982) (quoting passage with approval).

135. See Jonathan Turley, Can Donald Trump be indicted while serving as president? Wash. Post, Feb. 27, 2018, available at https://go.ksbar.org/2N0J0XL.


141. See Charlie Savage and Nicholas Fandos, Sessions Refuses to Discuss His Conversations with Trump about Comey or Russia, N.Y. Times (October 18, 2017), available at https://nyti.ms/2wdsRqN.


143. See supra notes 63-66 and accompanying text (discussing rescission of DACA).


147. See supra note 106-107 and accompanying text.
The Winner Takes it All: Making Mediation in Federal Court Work For Your Client

by Diane Sorensen

When I began practicing law thirty years ago, there were no cell phones and no internet, research was done in the library with books, and lawsuits mostly went to trial. When I clerked for Judge Patrick F. Kelly of the U.S. District Court for the District of Kansas from 1986 to 1988, he had just begun to utilize mediated “settlement conferences.” He hand-selected local trial attorneys (including a young Dennis Gillen) to serve as mediators for these conferences. The concept of mediated settlement conferences as a means of alternative dispute resolution was being used in other courts across the nation at the time, but was relatively new to Kansas.

Today we do our legal research almost entirely online, we have smart phones, and mediation is a regular part of the practice of law, causing the majority of cases to settle out of court. Judge Kelly was at the start of an emerging trend. In 1988, Congress enacted 28 U.S.C. § 652, which requires district courts to enact rules requiring the consideration of alternative dispute resolution in all civil cases.

The District of Kansas enacted Local Rule 16.3—“Alternate Dispute Resolution”—in 1995. Rule 16.3(c) addresses the referral of cases to mediation, and sets forth the rules of mediation. Rule 16.3(d) states that the court “will maintain a list of mediators” who meet the qualifications set forth in the Rule. That list is available on the court’s website. The Model Standards of Conduct for Mediators has been adopted by the American Arbitration Association, the American Bar Association, and the Association for Conflict Resolution. While these standards are only that—standards—they are an influential source of the ethical considerations for mediators in all types of litigation.

Why Mediation Works

Nearly 90 to 95 percent of cases that go to mediation settle. While there are a variety of reasons why this process is so effective, the biggest reason is that the process is based on the principle of self-determination. Through the facilitation of a trained and neutral mediator, parties retain the power to resolve (or decline to resolve) their own dispute. Parties in litigation are keenly aware that—if the case goes to trial—the winner will most likely “take it all” and the loser could—in some cases, such as employment cases—end up paying the winning party’s attorney fees.

Plaintiffs know that they will be judged by a jury over which they will have no control, or that their case may be ended by a judge’s pen granting a motion for summary judgment. Defendants likewise know the risks that could befall them, and the amount they will pay in attorney fees in their quest to be the winner. When parties are asked to truly focus on these risks and benefits—and their chance at achieving them—they often determine that the best thing they can do is settle their case. It is this self-determination, this ability to decide one’s own fate, which makes mediation such a successful tool.
Choose the Right Mediator for Your Case

Federal magistrate judges may, in certain cases, agree to mediate. Typically, however, the parties must hire a private attorney-mediator. The list of federally approved mediators is a good place to begin in selecting a mediator.\(^5\)

When selecting the mediator for your case, give thought to who your client will respect, and who will make your client feel heard and understood. Trust is a fundamental part of an effective mediation. Ask your colleagues for recommendations, and then study the background and training of the mediator. Mediators will not mind if you call and interview them to determine their approach and experience with the area of law in question. The mediator’s style can be an important consideration. Is this a mediator who will offer opinions on the merits of legal arguments, or is it one who will simply remain neutral and just convey information?

An effective mediator should possess these skills: a good sense of humor; empathy, intuition and creative thinking skills; sincerity, candor, and common sense; the ability to ask difficult questions with sensitivity; exceptional listening skills; patience; optimism; and flexibility. A mediator needs the ability to understand the underlying emotional needs of the parties. If those needs are recognized and dealt with, the case is much more likely to be settled.

Prepare Your Client for Mediation

It is imperative that you meet with your client in advance of mediation to prepare them for understanding the process of mediation, to discuss their goals for settlement, and to prepare them for understanding the likely range of settlement that may be achieved.

- Explain the mediator’s role. Let your client know the mediator will expect to talk directly to them, and that the mediator is a lawyer who is acting as a neutral party. Make sure they know that a mediator (unlike an arbitrator) does not “decide” the case.
- Discuss what happens next if mediation does not resolve the case: what will the fees be to take the case to trial? How likely is summary judgment?
- Let them know the importance of confidentiality (discussed below).

Determining Who Should Attend

D. Kan. Rule 16.3(c)(2) provides:

Attendance by a party or its representative with settlement authority at the mediation is mandatory, unless the court orders otherwise. The purpose of this requirement is to have the party or representative who can settle the case present at the mediation… The parties’ attorney(s) responsible for resolution of the case must also be present.

The question of who is the person “with settlement authority” in any given case has met with some attention in the Kansas federal court. For instance, in Prudential Ins. Co. of Am. v. Hawker Beechcraft Global Customer Support, LLC,6 Hawker Beechcraft was awarded nearly $14,000 in sanctions against Prudential, for Hawker Beechcraft’s attorney fees and expenses in connection with the mediation. Magistrate O’Hara followed his earlier ruling in Turner v. Young,7 and held that Prudential violated D. Kan. Rule 16.3(c)(2) by having only its attorneys physically present at the mediation and having its party representatives available by telephone. The court noted that there was no prior notice to the opposing party or to the mediator that this would occur. Judge O’Hara stated:

Whatever the structure of the mediation in this instance, Prudential presumptuously and unilaterally left the mediator without the option of bringing the parties together face-to-face. This option may have become increasingly attractive throughout the six-hour mediation, with each party asserting the other’s failure to negotiate in good faith.8

In Inter-Ocean Seafood Trader, Inc. v. RF International, Ltd.,9 Magistrate Gale held that the defendant violated Rule 16.3 by having only its insurer’s attorney-of-record (who had settlement authority up to plaintiff’s demand) present at the mediation. The court cited and followed the Turner decision, and awarded sanctions against the defendant for the fees and expenses incurred by plaintiff for the mediation. The court observed:
A party’s participation in a mediation by the attorney of record alone, whatever his authority, will rarely be sufficient. The purpose of mediation is to engage the parties, not only the attorneys, in the mediation process. It is “intended to improve communication among the parties and provide the opportunity for greater litigant involvement in the earlier resolution of disputes.” D. Kan. Rule 16.3. This is why the rule separately addresses participation by parties and counsel. The Court agrees with defense counsel’s assertion that he “should” consult with his clients about offers. See Kansas Rules of Professional Responsibility 1.4 and Comment 1. “Even when a client delegates authority to the lawyer, the client should be kept advised of the status of the matter.” Kan. R. Prof. Res. 1.4, Comment 1. Counsel can efficiently negotiate remotely without a mediator. The value of the mediation is for the mediator to engage the parties and counsel directly. The procedure of delegating full authority to the attorney frustrates this purpose in insulating the party from the mediator’s counsel and advice.10

A different holding was reached by Judge Marten in Topolski v. Chris Leef Gen. Agency, Inc.11 In that case, the plaintiff moved for sanctions because the defendant did not bring its insurer (which might offer coverage for at least part of the claims) to the mediation, but had the insurer available by telephone. Judge Marten declined to follow Turner, and held that because the insurance company was not an actual party to the lawsuit, it was not required to be at the mediation.

A similar result was reached by Judge Sebelius in Booth v. Davis,12 although the court in Booth distinguished Turner rather than disagreeing with its holding:

Turner stands for the proposition that if a party appears at mediation through a representative with settlement authority, such as an insurer, that representative must have full settlement authority—the practical ability to meet the plaintiff’s demand. Turner does not stand for the proposition that nonparty insurers are required to attend mediation.13

Because this issue is not clearly settled in Kansas, it is important to communicate with opposing counsel (and with the mediator) about who will be present at the mediation. If there are issues, it is best to raise those before the mediation, not after.

Rule 16.3(c)(2) directly addresses the issue that arises when the settlement must be approved by an outside group, such as a public body, city commission or board of directors:

A unit or agency of government satisfies this attendance requirement if represented by a person who has, to the greatest extent feasible, authority to settle, and who is knowledgeable about the facts of the case, the governmental unit’s position, and the procedures and policies under which the governmental unit decides whether to accept proposed settlements.

By motion, the court may excuse the presence of persons with settlement authority from attending the mediation.14 It is far better to anticipate problems and address those through agreement or motion to the court, than to face a sanctions motion following the mediation.

It is also important to notify the mediator if any third persons plan to attend (such as spouses, significant others, parents, etc.). Be willing to talk with the mediator about any potential impact this person’s presence might create. It is typically preferable to have only the party present at the mediation.

Your Role as Counsel During Mediation

Most mediators request a submission by each party, which will include the factual background, the legal claims, the current posture, and an analysis of the strengths and weaknesses. The more time and effort you put into your mediation submission, the better the mediator will understand your case and be prepared to best assist in resolving the case. It is also important that you fully understand your case, including who are the most important witnesses, what are the key documents, and who is your judge. High quality submissions make a big difference in the mediation. Be sure to include pertinent exhibits or deposition excerpts, but do not include “everything” unless there is a real need to do so. The mediator will read everything you give to him or her, and usually charges for preparation time.

At the mediation, you can increase your chances for settlement by doing the following:

• Be willing to take a good hard look at the weaknesses in your case and to acknowledge those.
• Be candid with the mediator about what information he or she can share with the opposing side.
• Share your thinking and strategizing with the mediator, and ask the mediator for advice about timing and structure of offers.
• Listen to what the mediator is saying: you do not have to agree with the other side’s position; you just need to be able to listen and see what that position is. The attitude of “I am right, they are wrong.” will only hinder mediation.
• It is important, of course, to strongly advocate your position and give the mediator arguments that will assist negotiations in the other room.
• Understand the damages, do not be vague. Be prepared to support your settlement position with legitimate and reasonable criteria.
• The best attorneys are confident enough not to need to posture, but instead to talk frankly about their case.
• Let the mediator talk directly with your client to build trust and rapport and to identify the emotional issues that may be present.
• Put your client first.
• Do not make unreasonable opening demands or offers.
• Be extremely careful about “final offers.”

Confidentiality

Rule 16.3(i) states:

…the mediator, all attorneys, the parties, and any other persons involved in the mediation must treat as “confidential information” the contents of written mediation statements, anything that happened or was said, any position taken, and any view of the merits of the case formed by any participant in connection with any mediation. “Confidential information” must not be:

1. disclosed to anyone not involved in the mediation;
2. disclosed to the trial judge; or
3. discoverable or subject to compulsory process or used for any purpose … in any pending or future proceeding in any court …

In Hand v. Walnut Valley Sailing Club, the plaintiff attended an unsuccessful mediation of his case against the Walnut Valley Sailing Club. That evening, he disclosed—via a group email to all members of the defendant sailing club—exactly what had transpired during the mediation (offers made, statements made, etc.). Judge Crow found that all participants in the mediation are bound by Rule 16.3’s confidentiality provisions. He further found that this breach was so profound and large that he had no choice but to dismiss the plaintiff’s case as the sanction.

Be sure to remind your clients that what happens at the mediation is to stay at the mediation, or the consequences can be severe.

An exception to confidentiality was recognized by the court in Lowery v. County of Riley, where a post-mediation dispute arose between the defendants as to who was contributing what amount to the settlement. The mediation proceedings were the subject of a subsequent lawsuit, and were not treated as confidential in that suit.

Judge Sebelius considered documentary evidence that was produced at a mediation in Ericson v. Landers McLarty Olathe KS, LLC. Obviously struggling with the fact that this document should have been kept confidential pursuant to D. Kan. Rule 16.3(i), Judge Sebelius noted that both the plaintiff and the defendant were referring to the document in their briefing to the court, that it was likely the document would have been later produced during discovery, and that the document was “not the type of information that D. Kan. Rule 16.3(i) is aimed at shielding.”

An experienced mediator will likely use an Agreement to Mediate in which the parties will agree that statements made during mediation are inadmissible as evidence in later proceedings.

Timing of Mediation

The timing of mediation is case-dependent. Early mediations have the advantage of saving time, money, and hard feelings, but the disadvantage of everyone thinking they will be the winner. Later mediations have the advantage of the information from discovery, an idea as to how the judge may rule, and a real appreciation of the risk involved. At the same time, later mediations have the disadvantage of parties having become entrenched in their resentment toward the other side. The most common time that mediations are scheduled is after some discovery, but before dispositive motions.

Very early (pre-filing) mediations should not be overlooked. While often at this stage the attorneys work to settle on their own, a mediator can definitely make a settlement more likely. Even if the case does not settle, much information about the opposing side’s case is gained, and a later mediation is not precluded.

Creative Settlement Solutions

All settlements come down to money, but settlements often happen because of non-monetary factors. Creativity is paramount to successful mediation. At times, for instance, a kind statement delivered by the mediator from the defendant to the plaintiff may make a settlement possible because it may take the wind out of the plaintiff’s sails.

Creativity on the part of the mediator can also break an impasse between the parties. I heard once of an impasse being resolved by cutting for the high card in a deck of cards. A mediator’s offer is also sometimes an option. This happens when the mediator tells each side the dollar amount the mediator believes the case should settle for, and each side must reject or accept without knowing the response of their opponent.

A Good Mediation Result Is One That:

• Is better than the alternative.
• Satisfies the interest of the client, the opposing side, and interested third parties.
• Adopts a solution that is the best of all available options.
• Is legitimate—no one feels taken.
• Involves commitments that are clear, realistic, and operational.
• Involves communication that is efficient and well-understood.
• Results in an enhanced working relationship, so the parties and/or their attorneys can deal with future differences more easily.
• Is reduced to writing once an agreement is reached.

A settlement reached at mediation should be memorialized in a short document, or in a follow up email if settlement is reached post-mediation.\(^\text{19}\) Include any important terms in the short documentation, i.e. confidentiality of settlement terms; non-disparagement; allocation of settlement funds and tax consequences. If there are multiple defendants, be sure to include a delineation of who is contributing what amount to the settlement.\(^\text{20}\)

**Conclusion**

The formula for making mediation successful is really pretty simple: choose the right mediator for your case, fully prepare yourself and your client for the mediation, be ready to listen, and always put your client’s interests first.

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**About the Author**

Diane H. Sorensen is a shareholder at Morris, Laing, Evans, Brock and Kennedy, where she has been practicing law since 1988 after a federal clerkship with Judge Patrick F. Kelly. A large part of her practice is mediation, especially employment cases. She is on the approved list of mediators for the United States District Court for the District of Kansas. Diane is a past chair of the Bar Journal Board of Editors.

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New Positions

Jeffrey Bauer has become a shareholder in the Levy Craig Law Firm, PC. Jeffrey has been with the firm since 2014. He practices in all aspects of business and real estate transactional work with an emphasis on retail and industrial real estate development projects.

Stephanie Becker has been promoted to the position of Sr. Vice President, General Counsel and Corporate Secretary. Stephanie has been in Associated Wholesale Grocers, Inc.’s legal dept. since 2005 and has a wealth of knowledge in real estate, business transactions and the grocery business. Stephanie graduated from UMKC School of Law and has an LL.M from John Marshall Law School.

Patrick Murphy has been elected an equity member of the firm of Rasmussen Dickey Moore LLC Trial Counsel. With the firm for five years, Patrick’s practice focuses on product liability and insurance defense. He also serves as a judge pro tem in Johnson County.

Richard Raleigh was sworn in as interim Harper County Attorney in July, following the resignation of David Graham. Raleigh, from Medicine Lodge, was a judge in Pratt prior to being appointed interim attorney for Harper County. He remains interim until the approval of the appointment by the Kansas Governor.

Michael Tamburini has joined Levy Craig Law Firm PC as a shareholder. He’s been with the firm since 2014 following 17 years with national-tier firms in loan enforcement, creditors’ rights and bankruptcy litigation in state, federal and bankruptcy courts.

Scott Welman, who previously held the post of General Counsel, is now leading Associated Wholesale Grocers, Inc.’s development teams as Executive Vice President and Chief Development Officer, both with regard to strategic growth opportunities and real estate development projects throughout the company. Scott has been with AWG since 2004. He led the successful start-up of AWG’s military supply subsidiary, Always Fresh. Scott graduated from UMKC School of Law.

Ann Wolf has been hired as an associate with the Levy Craig Law Firm, PC in Kansas City. Ann has experience in the areas of construction, business, product liability, general litigation, insurance defense and environmental law.
New Locations

Coy Martin has opened Coy Martin Law, LC, 111 S. Whittier Street, Wichita, KS 67207; Telephone: 316.689.4248; Email: coy@coymartinlaw.com

Notables

The Kansas Supreme Court appointed five new members to the Access to Justice Committee and reappointed two other members. Terms for the following four began July 1 and will end June 30, 2021:

Chief Judge James Fleetwood of the 18th Judicial District (Sedgwick County).

Christie Campbell, Wichita Legal Services

Ruth Wheeler, district court administrator, 5th Judicial District (Chase and Lyon counties)

District Judge William Ossmann of the 3rd Judicial District (Shawnee County)

The Court also appointed Marcia Hannon to complete an unexpired term that runs until June 30, 2020. Assistant director of the Kansas Supreme Court Law Library, she succeeds Stephine Bowman of Kansas Coalition Against Sexual and Domestic Violence.

Those reappointed to additional three-year terms are:

Chief Judge Joe Dickinson of the 9th Judicial District (Harvey and McPherson counties)

District Magistrate Starla Borg Nelson, serving Republic County in the 12th Judicial District (which also includes Cloud, Jewell, Lincoln, Mitchell and Washington counties)

Joseph Robert Aker, graduate of Abilene High School and Fort Hays State University, graduated from Washburn University School of Law in May. He served an internship with the Kansas Department of Agriculture and spent a summer at Ag & Business Legal Strategies of Cedar Rapids, Iowa where he worked with the lead attorney representing farmers and producers in agricultural bankruptcy and debt restructuring cases. His passion is agriculture and rural practice; he plans to pursue both.

Kevin J. Arnel, managing partner at Foulston Siefkin LLP, was profiled this summer in the Wichita Business Journal as one of its 40 Under 40 Hall of Fame. He cited one of the key decisions/turning points in his career was when he and his wife decided to move to Wichita and when they opted to forego opportunities that would have required them to move away. A product of the Washburn University School of Law, Kevin has an extensive legal practice in the areas of tax exempt organizations, real estate, general business, and estate planning.

David Andrew (Andy) Bailey completed an externship with the WaKeeney law firm of Deines and Deines through a program sponsored by the Dane G. Hansen Foundation. A law student at Washburn University School of Law, Bailey decided to focus his career on Oil and Gas law. The Dane G. Hanson Foundation program allows students to earn college credit while working and learning in the law field and pays a stipend to students who travel out west to do their externships.

H. Scott Beims was recognized in the Rawlins Co. Square Deal for receiving his 50 year pin during the annual meeting at the Kansas Bar Association. Beims attended the annual meeting in Overland Park where he was recognized alongside other lawyers who have practiced law in Kansas for 50 years.

District Magistrate Judge Douglas Bigge of Rooks County was honored with the Lee Nusser Award for Outstanding Magistrate Judge of 2018 by the Kansas District Magistrate Judges Association. Bigge serves in the 23rd Judicial District. He was elected magistrate judge in 1996. A graduate of Fort Hays State University, Bigge attended the National Judicial College in Reno, Nevada and received his certificate of qualification from the Kansas Supreme Court in 1997.

Christine Blake, clerk of the district court for the 25th Judicial District in Finney County, was reappointed by Kansas Supreme Court Chief Justice Lawton Nuss to serve on the state’s eCourt Steering Committee. Also reappointed was District Magistrate Judge Debra Wright who serves Mitchell County of the 12th Judicial District. Supreme Court Justice Dan Biles chairs the committee. Other members reappointed for one-year terms were: Chief Judge Karen Arnold-Burger of the Kansas Court of Appeals; William Burns Jr., district court administrator of the 29th Judicial District, composed of Wyandotte County; Nancy Dixon, judicial administrator, Office of Judicial Administration; Kelly O’Brien, director of information systems, Office of Judicial Administration; Katherine Oliver, clerk of the district court in Riley County of the 21st Judicial District; Chief Judge Michael Powers of the 8th Judicial District, composed of Dickinson, Geary, Marion, and Morris counties; Chief Judge Thomas Kelly Ryan of the 10th Judicial District, composed of Johnson County; Doug Shima, clerk of the appellate courts; Supreme Court Justice Caleb Stegall; Senior Judge David Stutzman.

This committee oversees the implementation of a centralized case management system which is converting the system from a paper-based process to a statewide electronic platform.

Email: coy@coymartinlaw.com
Lauren Bonds, legal director for the ACLU of Kansas, was profiled in an in-depth article in the Hutchinson News this summer. (See “Quiet Thunder: Hutchinson helped shape legal director for ACLU of Kansas by John Green, Hutchinson News July 22, 2018.”) The article contained insights from Bonds’ mother, a long-time Hutchinson High School history teacher, as well as comments from current and former ACLU Kansas staff and from Lauren herself. Bonds received her law degree from Duke University, choosing it for its reputation for doing “innocence project” work to free wrongly convicted prison inmates. She held summer positions at the Texas Civil Rights Project and Equal Rights Advocates and participated in the school’s Guantanamo Defense Clinic.

Bob Brookens celebrated 40 years in practice this summer with open houses in Hillsboro and Marion. Brookens was quoted as saying “My first client was in June 27, 1978.” Through the years, Brookens partnered with several lawyers, including Dean Batt, Robert Morse, Keith Collett and Susan Robson.

Adam Burrus, a lawyer with Fleeson, Gooing, Coulson & Kitch LLC was profiled in the Wichita Business Journal as one of its 40 Under 40 Hall of Fame. The words he lives by? “To whom much is given, much is expected.” He represents businesses and individual clients in every facet of the legal process, including arbitration, mediation, and litigation. His practice is focused on representing clients in the areas of construction and business litigation, creditor’s rights, bankruptcy, and insurance defense.

Curtis E. Campbell of Cimarron was elected to the board of directors of the Kansas School Attorney’s Association at its annual meeting. Campbell received his juris doctor from Washburn University School of Law and is in private practice in Cimarron. He is the Gray County Prosecutor. His law practice focuses in the areas of Domestic, Criminal Prosecution, School Law and General Practice. He is also the attorney for Cimarron USD 102, Montezuma USD 371 and Cope land USD 476.

Barry Kent Duwe was recognized in the Lucas-Sylvan News as one of 136 law school graduates who successfully passed the Kansas Bar examinations this summer. He was sworn in on June 27th as an attorney-at-law by the Kansas Supreme Court and the United States District Court in Topeka.

Jordan Ford, partner and chair of the national immigration practice group Lewis Brisbois Bisgaard & Smith, was profiled in the Wichita Business Journal as one of the 40 Under 40 Hall of Fame, disclosing her secret wish to be a restaurant critic for the New York Times. Ms. Ford advises employers on immigration and employment law issues in many different industries, including agriculture, transportation, manufacturing, technology and sports and entertainment. She is a frequent speaker and lecturer on issues related to immigration law and employment law.

The Kansas District Judges Association elected the following as officers earlier this summer:

Judge James Fleetwood was elected president. He is chief judge of the 18th Judicial District which is a one-county district composed of Sedgwick County.

Judge Bruce Gatterman was elected president-elect. He is chief judge of the 24th Judicial District composed of Edwards, Hodgeman, Lane, Ness, Pawnee and Rush counties.

Judge Daniel Creitz was named Secretary. He is chief judge of the 31st Judicial District, which encompasses Allen, Neosho, Wilson and Woodson counties.

Judge Kim Cudney was made treasurer. She is chief judge of the 12th Judicial District made up of Cloud, Jewell, Lincoln, Mitchell, Republic and Washington counties.

These new officers were elected at the KDJA’s statewide continuing education conference in Overland Park.

Judge Robert Frederick stepped down as president of the organization. He assumed the duties of chief judge of the 25th Judicial District in July; that district includes Finney, Greeley, Hamilton, Kearny, Scott and Wichita counties.

The Kansas Supreme Court appointed five judges to the Judicial Education Advisory Committee and reappointed a sixth. The committee recommends and organizes education and training for Kansas appellate judges, district judges and district magistrate judges. Appointed to three-year terms beginning July 1 and ending June 31, 2021 were:

District Magistrate Judge Julie Cowell (Pawnee County of the 24th Judicial District);

District Judge Steven Hornbaker (Geary County, of the 8th Judicial District);

District Magistrate Judge Paula Keller (Cheyenne County of the 15th Judicial District);

District Judge John Weingart (Brown County of the 22nd Judicial District);

District Judge Robert Wonnell (Johnson County of the 10th Judicial District).

Reappointed was District Magistrate Judge Douglas Jones (Chase County of the 5th Judicial District)

U.S. Attorney Stephen McAllister and Kansas Attorney General Derek Schmidt, along with others, co-sponsored a two-day conference on human trafficking in July. The confer-
Municipal Judge Jason Maxwell and Municipal Judge Nancy Muck were appointed by the Kansas Supreme Court to serve on the Municipal Court Judges Education Committee. Maxwell is the municipal judge for the city of Liberal. Muck is the municipal judge for the city of Osborne. Their terms began July 1 and end on June 30, 2021. The committee recommends and organizes education and training for municipal judges and certifies municipal judges who are not lawyers.

Patricia Riley retired from active practice as a civil rights attorney with Goodell Stratton Edmonds & Palmer LLP. She was honored with the Kansas Bar Association Outstanding Service Award in 2015.

F. James Robinson, senior partner with Hite, Fanning & Honeyman in Wichita, has been appointed to complete the unexpired term of Nick Badgerow on the Kansas Judicial Council. The term will run through June 30, 2021. Overland Park attorney Badgerow stepped down after 24 years on the council. The council reviews administration of justice in the state. It can make recommendations to the Kansas Supreme Court or the Kansas Legislature for changes regarding specific areas of the law or rules used by the court. It may also be asked to draft legislation and/or court rules.

Cassie Routh, a Wamego High School alumnus, completed her law degree at Pepperdine School of Law in Malibu, Calif. Graduating with a certificate in Dispute Resolution, Cassie served as a mediator for the Los Angeles Superior courts and traveled to Uganda to plea bargain in African prisons. She clerked for Kansas Supreme Court Justice Marla Luckert while doing an internship with Martin, Pringle, Oliver, Wallace, & Bauer, LLP in Wichita. Her externship was with Wilmer, Hale Law Firm while studying at the Pepperdine Campus in London.

Joe A. Schremmer, attorney/member of Depew Gillen Rathbun & McInteer LC was profiled in the Wichita Business Journal this summer as one of the 40 Under 40 Hall of Fame. In the profile, Schremmer expressed his secret dream of joining the Peace Corps. (Ed. Note: See Joe’s most recent substantive article for The Journal of the KBA: November/December 2017 (Vol. 86, No. 10, pg. 22) Oil and Gas Secured Transactions in Kansas.)

The Wichita Bar Association this summer installed its officers and board members:

**John Rapp** - Hinkle Law Firm - President.

**Rebecca Mann** - Young, Bogle, McCausland, Wells & Blanchard – President-Elect

**C. Edward Watson** – Foulston Siefkin – Vice-President

**Kelly Rundell** – Hite, Fanning & Honeyman – Secretary-Treasurer

Board members include:

**Christine Campbell** – Kansas Legal Services

**Amanda Marino** – Sedgwick County District Attorney’s Office

**Mary (Mindy) McPheeters** – Spirit Aero Systems

**Robert Moody** – Martin, Pringle, Oliver, Wallace & Bauer

**Trent Wetta** - The Law Office of Trent H. Wetta

**Hon. Warren Wilbert** – 18th Judicial District Court

In July, the Wichita Business Journal again published The List in which Wichita law firms are ranked by the number of Wichita-area attorneys. This year, the top three firms were: Foulston Siefkin LLP with 65; Hinkle Law Firm LLC with 41 and Martin, Pringle, Oliver, Wallace & Bauer LLP with 30.


He grew up in Westfall, KS, and was a graduate of Lincoln High School. It was at the University of Kansas where he met Linda, the love of his life, Linda, and earned a degree in business and accounting as well as a Juris Doctor from the University of Kansas School of Law. Following graduation, he served in the U.S. Army, earning the rank of captain. For the past 46 years, Royce has practiced estate planning and tax law at Hampton and Royce, LC.

He was currently serving on the board of Salina Family Health Care and served as president for many years. He was also a past president of the Salina Country Club board of directors. Royce loved his family and gardening and had unwavering loyalty for his Kansas Jayhawks. He spent many summers coaching various softball teams for each of his daughters, forging life-long cherished bonds with his players.


He was preceded in death by: his father, Nels Richard Nelson.

Visitation was held Friday evening, May 25, at Ryan Mortuary, Salina, with the family receiving guests and a Vigil service.

Mass of Christian Burial was said Saturday, May 26, at St. Mary Queen of the Universe Catholic Church, Salina, with interment in Mt. Calvary Catholic Cemetery.

In lieu of flowers, memorials may be made to: St. Mary Queen of the Universe Catholic Church, Salina, or Salina Family Health Care.
**Attorney Discipline**

**ORDER OF DISCHARGE FROM PROBATION**
**IN THE MATTER OF JARED WARREN HOLSTE**
**NO. 113,970—JULY 12, 2018**

FACTS: Holste was placed on a two-year suspension in October 2015. Holste was told that he could apply for reinstatement after six months, subject to terms and conditions. Holste requested and received an early reinstatement in 2016. He was allowed to return to practice subject to an 18-month term of probation. In June 2018, Holste requested that he be discharged from probation. The disciplinary administrator did not object to the request.

HELD: In the absence of an objection, Holste’s motion was granted. He was discharged from probation.

**Civil**

**REAL PROPERTY—STATUTE OF LIMITATIONS**
**LCL V. FALEN**
**RICE DISTRICT COURT—COURT OF APPEALS**
**IS AFFIRMED**
**DISTRICT COURT IS REVERSED—CASE REMANDED**
**NO. 115,434—JULY 27, 2018**

FACTS: The Mary Louise Falen-Olsen Trust entered a contract to sell 200 acres of real property to Sammy Dean. The Trust owned all of the surface rights plus an undivided one-half mineral interest. It is undisputed that the Trust intended to sell the surface rights and retain the mineral interest. RCAT was the closing agent and title insurer. The deed prepared by RCAT did not include any reference to the mineral reservation. Neither of the co-trustees noticed this omission before they signed and filed the deed. LCL purchased the property in April 2014. At the time, LCL acknowledged that the mineral rights would not come with the property. RCAT again acted as the closing agent, and the deed again did not note the Trust’s mineral rights reservation. After the sale closed, LCL inquired about the difference between the deed’s language and its understanding of what it purchased. RCAT conducted a title search and discovered that none of the deeds included the reservation of the Trust’s mineral interest. LCL refused to sign a corrected deed. The Trust first learned of this in August 2014, when royalty payments were suspended. LCL filed a petition to quiet title to the mineral interests. The Falens both filed an answer denying LCL’s ownership and filed a third-party petition against RCAT for negligence and breach of contract. RCAT moved for summary judgment, claiming that the statute of limitations began to run in January 2008, when the original deed was prepared. The district court granted that motion, but that decision was reversed by the court of appeals, which found that the Falens did not sustain any damage until August 2014, when the royalty payments stopped. RCAT’s petition for review was granted.

ISSUES: (1) Negligence cause of action; (2) breach of fiduciary duty cause of action

HELD: In the context of a statute of limitations, ”substantial injury” means ”actionable injury”. There are two inquiries relevant to determining when the statute of limitations began to run – when did the Falens suffer actionable injury, and when did the existence of that injury become reasonably ascertainable? They were injured when the 2008 deed was filed because their mineral interest title became clouded. This injury was compounded in 2013, when their ability to reform the title became much more limited. But there remains a genuine issue of material fact about whether the Falens reviewed or understood the deed before signing and filing it. And factual questions remain about the Falens’ continued receipt of royalty payments. Because of these factual disputes, summary judgment was inappropriate and the case must be remanded for further factfinding. The Falens’ breach of fiduciary duty claims extended to the 2014 deed, meaning that the petition was filed well within the statute of limitations.

STATUTE: K.S.A. 58-2222, 60-511(5), -513(a)(4), -513(b)
NEGLIGENCE
MANLEY V. HALLBAUER
LABETTE DISTRICT COURT—COURT OF APPEALS
IS AFFIRMED
DISTRICT COURT IS AFFIRMED
NO. 115,531—AUGUST 10, 2018

FACTS: Manley died in a car accident which occurred at the intersection of two gravel roads. Neither road had a traffic sign. A law enforcement investigation concluded that vegetation on one of the corners likely created a blind spot, making it impossible for either driver to see approaching traffic. The Hallbauers owned the property with the trees, which had been there since before they purchased the lot. Manley’s estate’s wrongful death suit included the Hallbauers as defendants. The Hallbauers moved for summary judgment, claiming they could not be held liable for failing to remove trees or other vegetation. The district court granted that motion and Manley’s estate appealed. The Court of Appeals turned to the Restatement of Torts (Second) in concluding that the Hallbauers had no duty to clear vegetation from their lot. The estate’s petition for review was granted.

ISSUE: (1) Existence of duty

HELD: Kansas law reflects a public policy not to impose tort liability on a landowner for natural obstructions on the landowner’s property. Because it is not necessary to do so, the court takes no position at this time on whether the Restatement (Third) should be used in Kansas. There is no justification to depart from the established rule that a landowner owes no duty in a case such as this. It is especially true when, as was the case here, the landscape was rural.

STATUTES: No statutes cited

NEGLIGENCE
STATE V. MEARS
SEDGWICK DISTRICT COURT—COURT OF APPEALS
IS AFFIRMED
DISTRICT COURT IS REVERSED—CASE REMANDED
NO. 115,278—AUGUST 10, 2018

FACTS: Mears was charged with DUI. Because he had two prior municipal convictions for DUI, the State charged him with a felony. One of the prior convictions was obtained under a Wichita municipal ordinance. Mears’ counsel filed a motion to dismiss, arguing that a Wichita municipal conviction could not serve as the basis for a felony DUI conviction. The motion was denied and Fisher was convicted. The Court of Appeals reversed the conviction, finding that the sentencing court should have used the categorical approach in analyzing the similarity of the statutes. The State's petition for review was granted.

ISSUE: (1) Ability to use municipal conviction to establish a felony

HELD: The Court of Appeals is affirmed under the rationale applied this day in State v. Gensler.

DISSENT: (Stegall, J.) He dissents for the reasons established in State v. Gensler.

STATUTES: K.S.A. 2017 Supp. 21-6620(e) -6620(e)(3), 6624(A), -6624(f)

STATE V. LLOYD
SEDGWICK DISTRICT COURT—COURT OF APPEALS
IS AFFIRMED
DISTRICT COURT IS AFFIRMED
NO. 115,834—AUGUST 10, 2018

FACTS: Lloyd was convicted of first-degree premeditated murder, felony murder, and abuse of an infant victim. Hard 50 sentence imposed without a jury. Convictions affirmed on direct appeal, but remand ordered for resentencing in compliance with Alleyne v. United States, 570 U.S. 99 (2013). State v. Lloyd, 299 Kan. 620 (2014). At resentencing, same evidence presented but in part through prior testimony of a key witness (Loudermilk) who was unavailable for the resentencing proceeding. Hard 50 sentence again imposed, based on jury’s finding that Lloyd’s 2007 guilty plea to aggravated assault for shooting Loudermilk in the foot was a prior felony resulting in great bodily harm, and that Lloyd committed the instant crime in an especially heinous, atrocious, or cruel manner. Lloyd appealed, claiming district court erred by allowing Loudermilk’s coerced pretrial statements and testimony from the first trial. Lloyd also claimed the State presented insuffi- cient evidence that he had a prior felony conviction for a crime in which he inflicted great bodily harm because the crime of aggravated assault contains no such essential legal element.

ISSUES: (1) Coerced testimony, (2) sufficient evidence of prior conviction as aggravating factor

HELD: United States Supreme Court case has not addressed whether testimony of a coerced witness may be used against a defendant at trial, but Kansas Supreme Court has held that basing a conviction in whole or in part on the coerced statement of a witness may deprive a criminal defendant of due process. State v. Daniels, 278 Kan. 53 (2004). Assuming without deciding the admission of Loudermilk’s transcribed testimony was erroneous, any such error was harmless under facts in this case.

Nothing in K.S.A. 2017 Supp. 21-6624(a) requires that bodily harm be an element of the felony serving as an aggravating factor. Jury had sufficient evidence to enable it to reach the reasonable conclusion that Lloyd committed a felony that inflicted great bodily harm or disfigurement on Loudermilk.

STATUTE: K.S.A. 2017 Supp. 21-6620(e) -6620(e)(3), 6624(A), -6624(f)

STATE V. GENSLER
SEDGWICK DISTRICT COURT—COURT OF APPEALS
IS AFFIRMED
DISTRICT COURT IS AFFIRMED
NO. 115,834—AUGUST 10, 2018

FACTS: Mears was charged with DUI. Because he had two prior municipal convictions for DUI, the State charged him with a felony. One of the prior convictions was obtained under a Wichita municipal ordinance. Mears’ counsel filed a motion to dismiss, arguing that a Wichita municipal conviction could not serve as the basis for a felony DUI conviction. The motion was denied and Fisher was convicted. The Court of Appeals reversed the conviction, finding that the sentencing court should have used the categorical approach in analyzing the similarity of the statutes. The State’s petition for review was granted.

ISSUE: (1) Ability to use municipal conviction to establish a felony

HELD: The Court of Appeals is affirmed under the rationale applied this day in State v. Gensler.

DISSENT: (Stegall, J.) He dissents for the reasons established in State v. Gensler.

STATUTES: K.S.A. 2017 Supp. 8-1567, -1567(i)(1); K.S.A. 2016 Supp. 8-1567(b); K.S.A. 8-1485
**DUI—STATUTORY INTERPRETATION**

**STATE V. SCHRADER**

**SEDGWICK DISTRICT COURT—COURT OF APPEALS IS AFFIRMED**

**DISTRICT COURT IS VACATED—CASE REMANDED**

**NO. 115,196—AUGUST 10, 2018**

FACTS: Schrader was charged with five counts including involuntary manslaughter while driving under the influence. After entering a no contest plea, Schrader objected to the inclusion in his criminal history score of a prior felony under a Wichita municipal DUI ordinance. The court overruled the objection and Schrader’s sentence included the disputed municipal conviction. On appeal, the Court of Appeals agreed that the municipal ordinance’s breadth precluded its use as a person felony in Schrader’s criminal history. The State’s petition for review was granted.

ISSUES: (1) Use of prior conviction in criminal history

HELD: Prior municipal convictions may be used to enhance sentencing only if the ordinances are the same as, or narrower than, the state DUI statutes. The comparison of the ordinance and the statutes is driven by their elements. The Wichita ordinance under examination here defines “vehicle” more broadly than the state statute. Because this results in the ordinance criminalizing more behavior than the statute, Schrader’s prior conviction under that ordinance cannot be used to enhance his sentence here.

DISSENT: (Stegall, J.) He dissents for the reasons established in *State v. Gensler*.


**DUE PROCESS—HABEAS CORPUS**

**IN RE HABEAS CORPUS BY SNYDER ORIGINAL ACTION—WRIT DENIED**

**NO. 117,167—JULY 27, 2018**

FACTS: Clay Snyder was charged with several off-grid felonies in 2012. He was found not competent to stand trial because of an intellectual disability in 2013; Snyder has microcephaly. That finding has renewed on multiple occasions, most recently in 2016. Snyder was involuntarily committed for the first time in 2014. Medical personnel have testified that it is unlikely that Snyder will ever be competent to stand trial. Snyder petitioned for original habeas relief, asking that he be released from confinement because of violations to his speedy trial, due process, and equal protection rights.

ISSUES: (1) Speedy trial; (2) due process; (3) equal protection

HELD: The speedy trial clock for Snyder’s criminal trial remains suspended because Snyder is not competent to stand trial. Although Snyder maintains the right to a speedy trial, he cannot be constitutionally tried until he is competent. The competency statutes in Kansas provide deadlines that suggest a reasonable time to attempt to restore a defendant’s competency. The state complied, and then used a lawful civil commitment procedure to justify his continued restraint. Compliance with statutory procedures must be strict, and delay could serve as the basis for a constitutional claim. Snyder’s equal protection argument was not adequately briefed and is thus deemed abandoned.

CRIMINAL

POLICE POWERS—SEARCH AND SEIZURE
IN RE J.O.
JOHNSON DISTRICT COURT—COURT OF APPEALS
IS AFFIRMED
DISTRICT COURT IS AFFIRMED
NO. 116,954—JULY 27, 2018

FACTS: In 2015, the Prairie Village Police Department arranged for controlled drug buys in Shawnee, Kansas. On two occasions, a confidential informant was sent to buy drugs from J.O. in Shawnee. There were no Shawnee officers present at either buy and the Shawnee Police Department never provided assistance. After the buys, J.O. was charged with multiple drug offenses. J.O. moved to suppress all evidence obtained from the controlled buys on grounds that PVPD had no jurisdiction to operate in Shawnee. The district court agreed that PVPD exceeded its jurisdiction by operating in Shawnee. But the motion to suppress was denied because J.O. had a voluntary encounter with the CI and was neither searched nor seized by PVPD officers. The district court admonished the PVPD to respect its jurisdictional boundaries and warned of potential recriminations if those boundaries were not followed. J.O. appealed, and the court of appeals agreed with the district court that the exclusionary rule was not an appropriate remedy for this case. The petition for review was granted.

ISSUE: (1) Application of exclusionary rule

HELD: Statutory limits exist to protect the local autonomy of neighboring cities and not to protect citizens from encroachment by law enforcement. The court of appeals erred when it found that the PVPD properly requested assistance. The PVPD’s continued failure to follow K.S.A. 2017 Supp. 22-2401a is troubling. But in the absence of an individual right, J.O. cannot claim any injury that would justify suppression.


CONSTITUTIONAL LAW—CRIMINAL LAW
TRAFFIC STOP
STATE V. GLOVER
DOUGLAS DISTRICT COURT—AFFIRMED
COURT OF APPEALS—REVERSED
NO. 116,446 - JULY 27, 2018

FACTS: Officer stopped a vehicle assuming the driver was the registered owner (Glover) whose driver’s license had been revoked. No other information supported this assumption, and the officer did not try to confirm the driver’s identity before initiating the traffic stop. Glover was in fact the driver. State charged him with driving as a habitual violator. He filed motion to suppress evidence obtained during the stop, arguing the officer lacked a reasonable suspicion of illegal activity when he stopped the car. District court granted the motion on stipulated facts, finding the officer’s assumption was unreasonable. State filed interlocutory appeal. Court of Appeals reversed, 54 Kan. App.2d 377 (2017). Review granted.

ISSUE: Reasonable suspicion for vehicle stop

HELD: Officer lacked an articulable and reasonable suspicion that the unidentified driver did not have a valid driver’s license. Officer’s assumption was only a hunch unsupported by a particularized and objective belief. Opinion reviews general principles about reasonable searches and seizures, the distinction between assumptions and inferences, and reasons for rejecting the owner-is-the-driver presumption. State has burden to prove the officer had reasonable suspicion that the driver of the vehicle—not just the registered owner—had a suspended driver’s license. To draw inferences in favor of the State based on lack of evidence in the record impermissibly relieves State of its burden. Court of appeals is reversed. District court’s judgment is affirmed.

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

COMPETENCY—CRIMINAL PROCEDURE
EVIDENCE—JURIES
STATE V. JENKINS
SALINE DISTRICT COURT—AFFIRMED
NO. 106,741—JULY 27, 2018

FACTS: Jenkins, Parker, and two others burglarized two apartments and killed one resident. Jenkins was convicted of first-degree murder, aggravated burglary, and theft. For threats and actions thereafter against his wife and son, Jenkins also was convicted of criminal threat, domestic battery, and criminal restraint. Jenkins appealed. Some nine months later, prosecutor reported that a juror sent her gifts which the prosecutor returned, and some two months later the same juror sent the prosecutor a holiday greeting. District court conducted a hearing each time, finding no juror misconduct had influenced the jury’s verdict. Jenkins also sought resolution of his pretrial motion for a competency hearing. Case was remanded to district court which found a retrospective competency determination was feasible and that Jenkins had been competent at time of his trial. On appeal Jenkins claimed: (1) insufficient evidence supported his convictions of first-degree murder, aggravated burglary, and theft; (2) district court erred in finding no evidence of juror misconduct; and (3) district court erred in concluding a retrospective competency hearing was feasible.

ISSUES: (1) Sufficiency of the evidence, (2) juror misconduct, (3) retrospective competency hearing
HELD: Under facts of case, the evidence viewed in light most favorable to the State was sufficient to establish that Jenkins aided or abetted others in committing the aggravated burglaries and theft, and that Parker shot and killed the fatality victim during the aggravated burglary of that victim’s apartment.

No abuse of district court’s discretion in finding no juror misconduct had occurred. Juror did not contact prosecutor until well after trial had ended, and juror had based his verdict on the evidence. No need to consider whether the alleged juror misconduct created a fundamental failure in the proceeding.

Factors in *McGregor v. Gibson*, 248 F.3d 946 (10th Cir.2001), are applied to determine if it is feasible to retrospectively determine a defendant’s competency. Here, three McGregor factors are discussed with factual comparison to *State v. Ford*, 302 Kan. 455 (2015), and *State v. Murray*, 302 Kan. 478 (2015). All three factors support the district court’s ruling that a retrospective competency determination on Jenkins’ competency at the time of trial was feasible.

STATUTES: K.S.A. 2017 Supp. 21-5402(a), -5402(c)(1) (J), -5801, -5807(b); K.S.A. 21-3205, 22-3302

ISSUES: (1) Reasonable suspicion, (2) preservation of length of time issue

HELD: No error found in panel’s analysis. Government had reasonable suspicion to seize the package, whether reasonable suspicion was needed or not.

Ton affirmatively narrowed the scope of his Fourth Amendment claim in the suppression hearing to an argument that reasonable suspicion did not support seizure of the package. Record on appeal thus lacks findings Ton needs to support argument about the detention being an unreasonable amount of time. Panel’s decision to not address the merits of this additional argument is upheld.

STATUTES: None

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**APPELLATE PROCEDURE—CONSTITUTIONAL LAW—CRIMINAL LAW—SEARCH AND SEIZURE**

**STATE v. TON**

**JOHNSON DISTRICT COURT—AFFIRMED**

**COURT OF APPEALS—AFFIRMED**

**NO. 113,220—JULY 27, 2018**

FACTS: Using a confidential informant tip, supporting information, and drug dog alert, officer obtained search warrants to open a UPS package and to search a residence once the resealed package was delivered hours after the scheduled delivery time. Marijuana discovered in the package and the residence led to Ton’s conviction for possession of marijuana with intent to sell and failure to pay Kansas drug tax stamp. Ton filed motion to suppress, arguing the officers lacked a reasonable suspicion to detain the package past the scheduled delivery time. District court denied the motion, finding the package was not seized until police removed it from the UPS facility after the scheduled delivery time, and there was reasonable suspicion to seize the package. Ton appealed the reasonable suspicion ruling, and also argued the package was detained for an unreasonable length of time. Court of appeals affirmed in unpublished opinion, concluding the police had reasonable suspicion of criminal activity that justified seizing Ton’s package, and did not reach question of whether reasonable suspicion was required or not. Panel declined to address Ton’s unreasonable-length-of-time claim which was presented for first time on appeal. Ton’s petition for review granted.
FACTS: Thirteen-year-old P.W.G. was questioned at police station about allegations of fondling his younger stepbrother. Father of both boys brought P.W.G. to police station as directed, and remained with P.W.G. during questioning. P.W.G. eventually made incriminating statements after they both signed waiver of Miranda rights. State charged P.W.G. with aggravated indecent liberties with a child. District court granted P.W.G.’s motion to suppress statements made during interrogation, finding the police interrogation was custodial and that the Miranda waiver was invalid under K.S.A. 2017 Supp. 38-2333(b). State filed interlocutory appeal arguing the statute did not apply because the interrogation was not custodial, and even if custodial, the presence of P.W.G.’s father when P.W.G. waived his Miranda rights satisfied the statute.

ISSUES: (1) Custodial interrogation of juvenile. (2) voluntariness of Miranda Waiver

HELD: Although a close call, under totality of the circumstances as set forth in the opinion, a 13-year-old child would not have felt free to terminate the interrogation and leave. District court’s finding that the interrogation was custodial is affirmed.

P.W.G. did not voluntarily and knowingly waive his Miranda rights under the requirements set forth in K.S.A. 2017 Supp. 38-2333. Interrogating officer in this case did not provide any time for father to consult, provide an explanation, or give guidance to P.W.G. State failed to comply with K.S.A. 2017 Supp. 38-2333(a), thus the totality of the circumstances test is not sufficient to ensure that P.W.G.’s waiver was intelligent and knowing. More than the mere presence of a parent is required; the parent must be acting with the interests of the juvenile in mind. While statute does not govern unique facts presented here, P.W.G.’s waiver would be invalid because the father of both the alleged victim and the alleged perpetrator had an irreconcilable conflict of interest. Better practice would have been contacting P.W.G’s mother who was not related to the alleged victim. District court’s finding that P.W.G.’s waiver of his Miranda rights was invalid under K.S.A. 2017 Supp. 38-2333 is affirmed.

DISSENT (Buser, J.): Does not agree that the officer conducted a custodial interrogation of P.W.G., thus K.S.A. 2017 Supp. 38-2333(a)-(b) are not applicable to facts and circumstances of this case. Instead, the officer’s questioning was an investigative interview for which a valid waiver of Miranda rights was not required. Factors to be considered in analyzing whether the interrogation was custodial are detailed, criticizing majority’s findings on seven of the eight factors. Would reverse the district court’s order of suppression and remand for further proceedings.

STATUTES: K.S.A. 2017 Supp. 38-2333, -2333(a), -2333(b); K.S.A. 74-7833 et seq.

FACTS: Calhoun was convicted of multiple high-level felonies. The jury was instructed that it could convict Calhoun if it believed Calhoun was either the principal or an aider or abettor. The jury instruction on aiding and abetting allowed the jury to find Calhoun guilty if it believed that the crimes were a “reasonably foreseeable” consequence of the intended crime. At trial, Calhoun admitted that he participated in the robbery but denied committing any of the violent crimes with which he was charged. After Calhoun was convicted of some, but not all, of the charges he faced, two jurors came forward with reports of a compromise verdict. Calhoun’s motion for a new trial was denied. Calhoun’s convictions were affirmed on direct appeal and his petition for review was denied. Calhoun then filed a timely K.S.A. 60-1507 motion which argued, in part, that both trial and appellate counsel were ineffective for failing to argue that the jury instruction on aiding and abetting was inappropriate. The motion was denied and this appeal followed.

ISSUES: (1) Trial errors; (2) aiding and abetting jury instruction

HELD: K.S.A. 60-1507 can be used to correct trial errors only if exceptional circumstances exist. Calhoun never argued
the existence of exceptional circumstances, and the court will not consider allegations of trial error in this proceeding. The aiding and abetting instruction given to the jury allowed for a guilty finding if the jury believed that any of the crimes with which Calhoun was charged were reasonably foreseeable consequences of the intended crime of aggravated robbery. Supreme Court precedent establishes that this jury instruction is not appropriate for defendants, such as Calhoun, charged with specific intent crimes. Trial counsel was ineffective for failing to object to this instruction, and appellate counsel was ineffective for failing to raise this issue on direct appeal. The jurors’ comments about their confusion shows that the jury was improperly influenced by the inappropriate instruction. For this reason, Calhoun’s convictions for aggravated kidnapping, attempted voluntary manslaughter, and criminal threat are reversed based on ineffective assistance of counsel.

STATUTE: K.S.A. 21-3205, 60-1507

ATTORNEY AND CLIENT—HABEAS CORPUS
ROBINSON V. STATE
SHAWNEE DISTRICT COURT—AFFIRMED
NO. 116,483—AUGUST 3, 2018

FACTS: Robinson was convicted of reckless second-degree murder and aggravated arson after he started a house fire which resulted in the death of an occupant. Those convictions were affirmed on direct appeal. Robinson then filed a motion for habeas corpus relief in which he alleged that he was prejudiced by the ineffective assistance of trial counsel. After an extensive evidentiary hearing, the district court found that trial counsel was ineffective for failing to investigate and present expert testimony that would counter the State’s expert witness. Finding that Robinson was prejudiced by these errors and the cumulative damage they did, the court ordered a new trial for Robinson. The State appeals that finding. Robinson cross-appealed the district court’s denial of other arguments.

ISSUES: (1) Expert witness testimony; (2) cross-appeal

HELD: Although expert testimony about causation can be crucial in an arson case, defense counsel did not consult with an arson expert. He spoke with one witness less than two weeks before trial. Evidence presented at the habeas corpus hearing showed that expert testimony could have poked significant holes in the State’s case. Trial counsel’s failure to obtain assistance from an expert resulted in a less than complete investigation and provided prejudicially ineffective assistance to Robinson. None of the issues raised by Robinson in his cross-appeal independently require a new trial.

STATUTES: No statutes cited.

CRIMINAL

CRIMINAL LAW—CRIMINAL PROCEDURE
IMMUNITY—STATUTES
STATE V. COLLINS
SEDGWICK DISTRICT COURT—REVERSED AND REMANDED
NO. 117,743—JULY 20, 2018

FACTS: Three unarmed women followed Collins up an apartment stairwell following an earlier heated encounter in the parking lot. When Collins brandished a knife at the top of the second floor landing, he and the women fell down nine stairs after one pulled on Collins’ shirt, with Collins swinging the knife at least twice as he fell. Collins got up, closed
his knife, and went back up the stairs to his apartment, but
one woman had been fatally stabbed and another had a knife
wound. State charged Collins with intentional second-degree
murder and aggravated battery. Prior to trial, Collins filed a
motion seeking self-defense immunity under the Stand Your
Ground statute. District court conducted an evidentiary hear-
ing and found Collins' use of deadly force was lawful because
Collins reasonably believed deadly force was necessary to pre-
vent great bodily harm to himself. District court granted the
motion and dismissed the charges. State appealed, arguing
Collins lacked a reasonable belief that deadly force was needed
to prevent great bodily harm, and that as an aggressor, he was
not subject to a statutory safe harbor retreat exception.

21-5220 et seq.

HELD: Background of the Stand Your Ground statute is
reviewed, including immunity under K.S.A. 2017 Supp. 21-
5231 that prevents a case from going to trial. Here, the district
court was not required to decide whether Collins was justified
in his use of deadly force in self-defense. Instead, to overcome
a defendant's self-defense immunity claim, State has burden
of establishing probable cause the defendant's use of force was
not statutorily justified. That probable cause burden can be
met by evidence the defendant acted as an aggressor and pro-
voked the use of force. Under facts in this case, State met its
burden because a reasonable person—given the district court's
assessment of conflicting evidence—could have concluded
Collins’ acts were not justified. Thus Collins is not entitled to
immunity, and his claim of self-defense is appropriately left
for a jury to decide. District court’s grant of immunity and
dismissal of the charges is reversed, and case is remanded for
further proceedings.

STATUTES: K.S.A. 2017 Supp. 21-5220 et seq., -5221,
-5222, -5223, -5224(a)(2), -5225, -5226(c), -5230, -5231;
K.S.A. 2015 Supp. 21-5403(a)(1), -5413(b)(2)(B)

POLICE POWERS—SEARCH AND SEIZURE
IN RE J.O.
JOHNSON DISTRICT COURT—COURT OF APPEALS
IS AFFIRMED
DISTRICT COURT IS AFFIRMED
NO. 116,954—JULY 27, 2018

FACTS: In 2015, the Prairie Village Police Department
arranged for controlled drug buys in Shawnee, Kansas. On
two occasions, a confidential informant was sent to buy drugs
from J.O. in Shawnee. There were no Shawnee officers pres-
ent at either buy and the Shawnee Police Department never
provided assistance. After the buys, J.O. was charged with
multiple drug offenses. J.O. moved to suppress all evidence
obtained from the controlled buys on grounds that PVPD
had no jurisdiction to operate in Shawnee. The district court
agreed that PVPD exceeded its jurisdiction by operating in
Shawnee. But the motion to suppress was denied because
J.O. had a voluntary encounter with the CI and was neither
searched nor seized by PVPD officers. The district court ad-
monished the PVPD to respect its jurisdictional boundaries
and warned of potential recriminations if those boundaries
were not followed. J.O. appealed, and the court of appeals
agreed with the district court that the exclusionary rule was
not an appropriate remedy for this case. The petition for re-
view was granted.

ISSUE: (1) Application of exclusionary rule

HELD: Statutory limits exist to protect the local autonomy
of neighboring cities and not to protect citizens from en-
croachment by law enforcement. The court of appeals erred
when it found that the PVPD properly requested assistance.
The PVPD’s continued failure to follow K.S.A. 2017 Supp. 22-
2401a is troubling. But in the absence of an individual right,
J.O. cannot claim any injury that would justify suppression.

Supp. 22-2401a; K.S.A. 22-3216

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• Convenient pro bono opportunity that attorneys can fit into their schedule
• Attorneys can log in and provide answers 24/7/365
• Reaches volunteer populations with restricted time in which to provide pro bono, such as stay-at-home parents, corporate attorneys, and government attorneys

The American Bar Association offers:
• No cost to participating states
• Malpractice insurance for all volunteer attorneys will be provided
• Web hosting will be provided
• A national staff person to maintain the site, manage the queue, and collect and analyze data

QUESTIONS?
If your state is not already participating and you are interested in learning more, contact Tali Albukerk at 312.988.5704 or abafreelegalanswers@americanbar.org.
Positions Available

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

Attorney/Administrator–Disability
Crime Victims Unit
Help obtain justice for victims of crime with disabilities. Licensed attorney sought by Disability Rights Center of Kansas to provide legal services to crime victims with disabilities & to administer the federal grant. Experience administering grant programs a plus. Salary approx. $62,500, but depends on experience. Great benefits. Employer-paid BCBS health insurance, KPERS retirement, etc. Questions? Need an alternative format? Contact DRC: 1-877-776-1541 or info@drckansas.org. Get the full job description & application at www.drckansas.org/about-us/jobapp

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

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

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

Evans & Dixon, LLC seeks to hire an attorney with strong transactional expertise for our Overland Park office. We offer a rewarding work environment with a commitment to creating long-term relationships with our clients by providing excellent service. Qualified candidates must have:

- A license to practice law in KS and MO
- Substantial experience in large commercial transactions
- Some established clients or other prospective business generation potential, an excellent professional reputation and desire to further the firm’s business development efforts.

Email cover letter and resume to lhauf-vitalie@evans-dixon.com

McPherson firm seeks an associate attorney. Our firm is engaged in general practice in a community of approximately 13,000. Salary is negotiable. Must reside in McPherson. Please send introductory letter and resume to: tkarstetter@kklawoffices.com

Overland Park Law Firm. Ferree, Bunn, Rundberg & Ridgway seeking attorney experienced in complex Estate Planning and Probate work. Must be licensed in Missouri and Kansas. If interested, please forward introductory letter and resume for consideration to pbunn@br2law.com

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

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

Wichita Firm Seeks Associate Attorney.
Morris, Laing, Evans, Brock & Kennedy, Chtd. is seeking an associate attorney for our expanding Oil and Gas Practice in our Wichita office. 1-5 years of experience in traditional oil and gas matters is preferred. Litigation experience is a plus. Strong academic credentials, excellent verbal and written communication skills, and an ability to initiate and support business development efforts is required. To apply, please send a cover letter and resume to Sarah Briley (sbriley@morrislaing.com).

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

Wichita Firm Seeks Associate Attorney. Triplette Woolf Garretson, LLC, seeks an associate attorney to assist its civil litigation practice area. One to three years practice experience preferred. Strong academic record and superior research, writing, and verbal presentation skills required. Please send cover letter and resume to hr@twgfirm.com. All responses will be kept strictly confidential.

Attorney Services


Contract brief writing. Experienced brief writer is willing to take in appellate proceedings for any civil matter. Attorney has briefed approximately 40 cases before the Kansas Court of Appeals and 15 briefs before the Tenth Circuit, both with excellent results. If you simply don’t have the time to help your clients after the final judgment comes down, call or email to learn more. Jennifer Hill, (316) 263-5851 or email jhill@mcdonaldtinker.com.

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Florida legal needs. I’m here to help. Florida Bar board certified appellate lawyer and experienced trial lawyer. Contact tom@twylaw.com or visit www.TomAppeals.com. Also admitted to active practice in Kansas, 10th and 11th Circuit Courts of Appeal, and U.S. Supreme Court.

QDRO Drafting. I am a Kansas attorney and former pension plan administrator with 20 years of experience in employee benefit law. My services are available to draft your QDROs, communicate with qualification of your DROs or other retirement plan matters. Let me help you and your client through this technically difficult process. For more information call Curtis G. Barnhill at (785) 856-1628 or email cgb@barnhilllaw.com.

Security Expert Witness. Board Certified Protection Professional and former Senior Police Commander providing forensic consulting to both plaintiff and defense counsel in all areas/venues of security negligence. A comprehensive CV, impeccable reputation and both criminal and civil experience equate to expert litigation support. Michael S. D’Angelo, CPP, Secure Direction Consulting, LLC. www.securedirection.net. (786) 444-1109. expert@securedirection.net

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

Office Space Available

Office 1) Large window with large ledge; Office 2) Storage closet and large picture window. *Coffee bar, waiting area and reception/paralegal area. *Fax, Wifi and ground floor parking. Call Chris Fletcher: (913) 390-8555.

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

Leawood Law Office. 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@snysterlawfirm.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 Arbogast at 913-652-9937 or scott@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.

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

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

Elegant hand-crafted cherry wood counselor’s desk (29” high, 40.5” wide and 78” long) and a secretarial desk (29” high, 30” wide and 66” long) from the law office of the late Clyde Hill (Speaker of the Kansas House of Representatives, 1965). One-of-a-kind pair; fine wood craftsmanship. Call 620-496-7356.

One of a kind walnut 4x8 conference table/desk/Board of Directors table. Four drawers each side and embossed leather top. Priced to sell $575 by retiring lawyer. Topeka location. 785.766.2084.

The following books from my library are available due to retirement.


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