

LAW WISE



KANSAS BAR ASSOCIATION

SEPTEMBER 2010

Greetings from the Kansas Supreme Court and the Kansas Bar Association (KBA). Welcome to this edition of *Law Wise* and the first edition of the 2010-2011 school year. The theme of September's edition is The Judiciary.

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WELCOME

Welcome to the first 2010 -2011 school-year edition of *LawWise*. This is an exciting year for all of us State and federal elections in November, the 90th anniversary of the 19th amendment and women's suffrage (Aug. 18, 2010, but we are still celebrating!), the sesquicentennial in January, and a whole host of other legal and civic activities to share. Look for all of them in upcoming issues. This month, we bring you a trip report from Scott Shipman, the history teacher supported by the Kansas Bar Association and selected by Streetlaw to attend the Supreme Court Summer Institute in June. Scott shares his adventures this month, and in the coming months will provide lesson plans based on his time with Streetlaw and the Supreme Court. It is never too early to begin planning for Mock Trial and Jennifer Michaels has an article about getting teachers involved in Moot Court. Also look for information related to the Law Related Education Clearinghouse located at Emporia State University for great resource ideas. Next month we will have a report from John Steere, of The Independent School, who coached a mock trial team at the national competition this year.

Thank you to all who have sent me current email addresses. If you have not sent me your email address, please do so to mwickham@ksbar.org. ■

CALENDAR OF EVENTS

Jan. 29, 2011	Kansas Day – Sesquicentennial
March 12, 2011	Regional Mock Trial (Olathe and Wichita)
April 2, 2011	State Mock Trial (Olathe)
May 4-8	National Mock Trial Competition (Phoenix, AZ)



COACH STUDENTS TOWARD A FUTURE IN THE LEGAL PROFESSION

by Jenny Michaels, Parker & Hay LLP • Kansas Bar Association (KBA) Young Lawyers Section (YLS) Mock Trial/Pro Bono Liaison

If you have students in your high school interested in the legal profession or are simply motivated to learn more about the judicial system, The KBA YLS Mock Trial Competition presented by Shook, Hardy, & Bacon, L.L.P. is a fun, intellectually challenging, and rewarding experience available to high school students across Kansas. Mock trial helps students develop skills in analyzing, public speaking, drama, debate, teamwork, and camaraderie. Students will compete at one of two regional tournaments in Olathe or Wichita on March 12, 2011 and six teams will compete at the state tournament in Olathe on April 2, 2011.

However, the success of the mock trial program is entirely dependent on coaches willing to teach and encourage students during practices and competition. Although more than 20 high schools in Kansas provide this valuable learning experience to their students, there are many high schools that do not participate. As a coach, you will provide the students in your high school with a unique first-hand experience of a profession they may someday join. Whether you have knowledge of trial procedure

or are new to the program, you will be provided with resources to help you learn how the program works. In many areas, we also may be able to connect you with a local attorney who can help answer your questions and give advice to your students!

If you have any questions or simply want to know how to sign up, Jenny Michaels at (785) 228-5736 or Meg Wickham

at (785) 234-5696. You can also email Michaels at jmichaels@parkerhaylaw.com or Wickham at mwickham@ksbar.org. For more information about the program, check out the Kansas High School Mock Trial website: www.ksbar.org/public/mock-trial.shtml. We look forward to hearing from you soon! ■

HOW I SPENT MY SUMMER VACATION (OR AT LEAST AN AMAZING WEEK OF IT)

by Scott Shipman, Social Studies teacher, Washburn Rural High School, Topeka

Like all of us, my life has had its share of fascinating experiences. It makes sense that some are more interesting than others. There is very little, however, that can compare with one amazing week in June courtesy of an organization called "Streetlaw." With a little help, ok a lot of help, from the Kansas Bar Association, I experienced one of a social studies teacher's wildest dreams – to study the U.S. Supreme Court in Washington, D.C. It was a certified, jaw-dropping, utterly amazing, once-in-a-lifetime adventure that I would not hesitate to recommend to any history or government teacher!

In the interest of full disclosure, I must admit that I had vaguely heard of "Streetlaw" before. I stumbled upon them while scavenging the Internet for various lesson ideas. I'll confess that, upon initial inspection, it was just one of many sites that I'd looked at during my frantic, late-night Internet searches. You know the type, when you are desperate for something new to do but the pressures of other teaching duties keep you from developing things on your own. Naturally, teachers are expert "borrowers" of materials. They have to be in order to survive. Streetlaw was, admittedly, a little more detailed than many others were but I'm afraid that I never looked too deeply. Through the Kansas Bar Association's *Law Wise Newsletter*, I discovered that they offered some sort of Supreme Court summer program. An interesting thought, to be sure, but with so many budget cuts in the last couple of years for Kansas schools, I never seriously entertained the notion of going.

If not for the Kansas Bar Association, that would have been that. I discovered, however, that they offer full financial support to a Kansas teacher to attend the program. In fact, they even write letters to help advance that individual's candidacy. Hmm, a fully-funded trip to Washington, D.C. to study the Supreme Court? Absolutely! I took the plunge, along with the other applicants, and filled out the application materials. Much to my continuing amazement, I was accepted to the program and offered the financial support by the Kansas Bar Association. Streetlaw Summer Supreme Court Institute, here I come! After making my arrangements, the hard part began . . . the waiting.

Finally, it came ... the big week! The location was perfect – the hotel was in downtown Washington right across from Georgetown Law School! We were only a fifteen-minute walk from the National Mall. As for the conference agenda, it was beyond amazing! As it turned out, Streetlaw has been in existence since 1972. Thus, they had fine-tuned this program for years and had deep contacts in the legal community who prac-

tices before the Supreme Court. In short, they really knew their stuff. The 30 teachers selected from across the United States were going to have a unique and utterly rewarding professional opportunity. We were going to have the opportunity to interact with attorneys, professors, journalists, and officials from both Democratic and Republican administrations. There would be lectures, discussions, and hands on activities. We would even get to tour the Court and go "behind the scenes" to talk to people who worked at the Court.

To top it off, however, we would get to go to the Court and sit in the chamber while the Justices handed down rulings on cases we had discussed in our sessions. I couldn't even think about it without getting excited. To be a history and government teacher sitting in that chamber, where so many historic events in the life of our nation had occurred, and to hear rulings handed down. Wow! I would be lying if I didn't admit I got goose bumps at the very thought of witnessing this event. I would see the rule of law, the bedrock on which our democ-

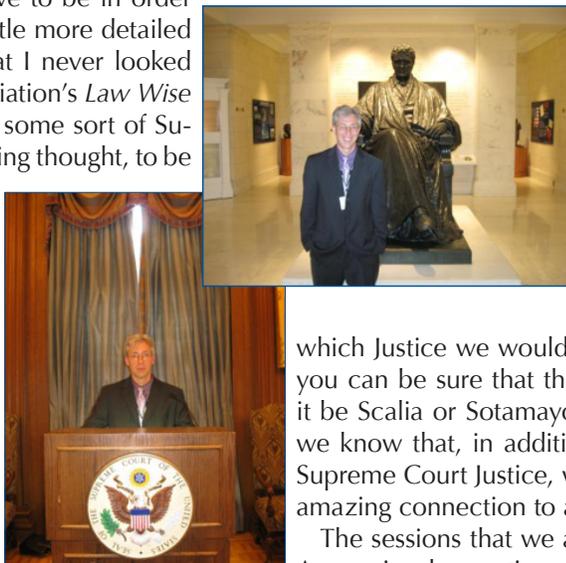
racy is based, in action at the highest possible level.

As a capstone experience, we were invited back to the Court for a reception that was hosted by the Supreme Court Historical Society. Traditionally, a Justice dropped by to make a brief address. Of course, the good folks at Streetlaw kept us in suspense the entire week by not telling us

which Justice we would get to hear. It drove us crazy and you can be sure that there was much speculation. Would it be Scalia or Sotomayor? Thomas or Ginsburg? Little did we know that, in addition to listening to the address of a Supreme Court Justice, we would also get to meet a living, amazing connection to a great American jurist.

The sessions that we attended were uniformly excellent. As previously mentioned, the Streetlaw staff has had years to perfect this program. The polish, professionalism, and organization showed at every turn. Truly, it seemed as if Streetlaw left no stone unturned. Even now, looking back at this adventure, it seems an embarrassment of riches to have been exposed to the people and materials that were offered. We worked with a group of past Supreme Court clerks to gain insight into how and why the Court issued its Writs of Certiorari. Officials from the Bush and Clinton administrations offered us a behind the scenes look at the nomination process. It was amazing to find out what occurs the moment a president makes the fateful call to his nominee. To complete our "insiders look" we also had the opportunity to speak with Court staff who are involved in the process of granting stays of execution in capital cases. It

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was a rare privilege to speak to people involved with such an awe-inspiring responsibility.

Though this was fascinating, mere knowledge alone would not serve us well when we returned to our schools. Once again, the StreetLaw folks came through for us by providing us with highly useful classroom activities. In addition to their own staff instruction, they dipped into their rolodex to provide us with quality facilitators. In fact, the resource people involved were nothing short of spectacular! We explored how and when to apply the *Miranda* warnings with Pam Harris, a Georgetown Law Professor and expert in the field. The group explored whether or not the death penalty should be applied to juveniles. The approach for that exploration was to do a Moot Court/Mock trial exercise. After talking through the procedure, we were split into multiple groups and sent with resource people to walk us through the process. The difference was that these resource people had argued this case before the Court! The mock trial itself took place in Georgetown's replica of the actual Court chambers! Though the setting was spectacular, the activity can be replicated in any of our classrooms to great effect.

In addition to the educational activities, we also learned about various resources available for teaching about the Court. There was time in the computer lab to explore the various on-line resources for the teaching of law and government. Though StreetLaw has extensive on-line resources, there are many more available out there for educators. We sampled the various video programs available as well. Furthermore, we had a workshop in analyzing media bias by examining major news coverage of the Court's decisions. Finally, we looked at the available on-line coverage of the Court. The highlight of this session was a Q&A session with Lyle Denniston, who has been covering the Court since the Eisenhower administration! We

picked his brain for observations and anecdotes over some delicious pizza from a local restaurant.

Truly this was an amazing workshop to attend. It was packed full of content material, insight, and run and taught by people who have a genuine passion to share their knowledge and give teachers something truly useful. Now, the only question left is which justice would we get? Well, while I was standing there talking to another teacher at the reception, we glanced over at the doorway. Standing there was none other than the Chief Justice John Roberts! As you might expect, he was personable and eloquent. He addressed us for between five and ten minutes. I don't know the exact length because you don't look at your watch when the Chief Justice is speaking to you! As it turns out, Roberts had been a long time supporter of this program, even before his tenure on the Court. He gave a brief address and graciously spared us enough time for a group photograph. The connection to an historic American was just as much of a thrill. We then had the honor of meeting Mrs. Thurgood Marshall. She was exceedingly kind and unfailingly gracious. Truly, the whole evening was a great honor and a profound privilege. It is difficult to say this without sounding like a commercial but the StreetLaw program is truly a once-in-a-lifetime experience!

Naturally, I would be remiss if I did not thank the Kansas Bar Association. This experience would not have been possible had it not been for their educational outreach efforts. Both LawWise and the generous financial support offered to this very, very lucky teacher, are a credit to their organization. I would strongly encourage any eligible teacher to apply to this program. It is offered every year and it is truly amazing. It's definitely the greatest week of professional development out there! In future articles, I plan to share some of the excellent lesson plans provided through this institute. ■

Take a Field Trip!

Looking for a field trip idea? Interested in an interactive learning experience? Want to give your students a chance to meet with a federal judge? Need materials to help you teach about the courts?

Contact the U.S. District Court for the District of Kansas for help! We offer tours of our three courthouses and fun, timely, and interactive EDUCATIONAL programs designed for

students of all ages.

Check out the program offerings at <http://www.uscourts.gov/outreach/index.html> and contact Neely Fedde, the Court's Public Outreach Specialist, at neely_fedde@ksd.uscourts.gov or (913) 551-6692 for more information or to schedule a session in our Kansas City, Wichita, or Topeka courthouses or at your school.

TERRIFIC TECHNOLOGY FOR TEACHERS



Check out these great websites ...

PBS Supreme Court lesson plan

<http://to.pbs.org/apCUZd>

State by state judicial selection process

<http://www.judicialselection.us/>

Federal judicial selection process

http://www.ajs.org/selection/sel_fedselect.asp

THE SELECTION OF KANSAS SUPREME COURT JUSTICES

The Supreme Court of Kansas is our state's highest court. Seven justices sit on the Court. When there is a vacancy, a new justice is selected in a two-part process. First, the Supreme Court Nominating Commission (Commission) meets and considers every applicant. The Commission considers the qualifications of each applicant and submits its three favorite applicants to the Governor. Then the Governor selects one of the three applicants; that person is appointed the new justice on the Court.¹

The Commission has nine members. Five of the members are attorneys selected by the members of the Kansas bar (attorneys licensed to practice law in Kansas); four of the members are nonattorneys chosen by the governor.² Kansas's justice selection is known as a "merit" process, rather than a "political" process.³ Kansas is the only state to use this system. There are several other selection methods. Eight states use a method similar to Kansas's, but the ratios are flipped: four members of the nomination commissions are attorneys and five members are non-attorneys.⁴ Nineteen states either divide selection of commission members between the governor, the bar, and/or other publicly-elected officials, and/or they require confirmation of commission selections by the Legislature.⁵ The remaining 22 states elect supreme court justices in either partisan or non-partisan elections.⁶

POTENTIAL ADVANTAGES OF KANSAS'S SELECTION PROCESS

Proponents of Kansas's selection process assert that justices are chosen based solely on merit, not on their politics. And who better than attorneys to consider applicant qualifications, since attorneys may be particularly "well-suited to recognizing which candidates for a judgeship are especially knowledgeable and skilled lawyers."⁷ Commission members allege that politics (and the issues that are normally related to politics, such as abortion) simply do not come up during conversations about applicants.⁸ "Applicants are chosen on the basis of their intellectual and technical abilities and not on the basis of their political or social connections."⁹

Until 1958, Kansas voters did elect our Supreme Court justices. But in 1956, then-Governor Fred Hall breached the trust of voters in a "triple play" fiasco. The details of the triple play were this: while Hall was governor, a justice resigned. Under the law in 1956, the Governor had absolute authority "to appoint replacement justices in between elections." Hall used that law to his advantage. He resigned his post as Governor to his Lieutenant Governor; the Lieutenant Governor then appointed Hall to the Supreme Court. It took voters and the state Legislature only two years to implement Kansas's current Nomination Commission method.¹⁰

POTENTIAL DISADVANTAGES OF KANSAS'S SELECTION PROCESS

There have been several attempts to change the current selection process. Critics maintain that the Commission gives too much control to attorneys. The state bar (around 10,000 members in Kansas) has a majority vote in the selection of Commission members and, ultimately, new justices; whereas the remainder of Kansas's population (about 2.7 million people) have no real voice in the selection of Commission members or justices.¹¹

And regardless of whether the current system is touted as one based on "merit," opponents argue that attorneys themselves are an "interest group" that base selections of Commission members on politics. Those in favor of reform advocate for one of several changes:

1. reduce the number of attorney members on the Commission so that they constitute a minority (along with allowing other publicly-elected officials to choose the nonattorney members);
2. elect justices by statewide vote; or
3. maintain the Nomination Commission, but implement a requirement that the state legislature must confirm the Governor's selection.¹²

QUESTIONS FOR DISCUSSION

1. Can you think of any other advantages or disadvantages to Kansas's current system?
2. Of the alternatives for reform listed, which would address the concerns of Kansas's current system?
3. What are the disadvantages of the proposed alternatives?¹³
4. Can you think of a way to address the disadvantages to Kansas's current system and/or the proposed alternatives by changing the retention process?¹⁴
5. A federal lawsuit has been filed to block the filling of the current vacancy on the Kansas Supreme Court. What effect could this lawsuit have?¹⁵

Dionna Ford is a 2005 graduate of the Washburn University School of Law. She served as a career clerk for the Honorable Leslie C. Smith at the United States District Court, District of New Mexico until moving back to the Kansas City area. She is currently enjoying her family and doing contract legal research and writing work. You can contact Dionna at dionna.ford@gmail.com.

ENDNOTES:

1. Stephen J. Ware, *Selection to the Kansas Supreme Court* at 3 (available at http://www.fed-soc.org/doclib/20071126_Kansas-Paper.pdf (citations omitted)).
2. *Selection to the Kansas Supreme Court* at 3 (citations omitted).
3. *Selection to the Kansas Supreme Court* at 3 (citations omitted).
4. There are also differences in how the non-attorneys are selected. See *Selection to the Kansas Supreme Court* at 3-4 (citations omitted).
5. *Selection to the Kansas Supreme Court* at 4-6 (citations omitted).
6. *Selection to the Kansas Supreme Court* at 5-6 (citations omitted).
7. *Selection to the Kansas Supreme Court* at 9.
8. Chris Grenz, Critics question Democratic majority on high court, *Hutchinson News*, Aug. 9, 2005 (quoted in *Selection to the Kansas Supreme Court* at 7, n.23).
9. F. James Robinson Jr., Op-ed, *Don't Put Politics Back into Selection of Justices*, *Wichita Eagle*, Feb. 21, 2007, at 7A (quoted in *Selection to the Kansas Supreme Court* at 7, n.23).
10. *Selection to the Kansas Supreme Court* at 8-9 (citations omitted).

(Continued on next page)

11. Jeannine Koranda, *How Kansas Picks its Supreme Court Justices Becomes Issue in Governor's Race*, (available at [http://www.kansascity.com/2010/08/10/2141178/how-kansas-picks-](http://www.kansascity.com/2010/08/10/2141178/how-kansas-picks-its-supreme-court.html#ixzz0yhYNXUvV)

[its-supreme-court.html#ixzz0yhYNXUvV](http://www.kansascity.com/2010/08/10/2141178/how-kansas-picks-its-supreme-court.html#ixzz0yhYNXUvV))
12. *Selection to the Kansas Supreme Court* at 11-14 (citations omitted).

COURT EDUCATION VIDEO AVAILABLE

The Kansas Supreme Court has released a new educational video along with talking points on four court-related topics. The video, called *Justice in Kansas*, and the talking points may be accessed below.

Justice in Kansas Video: Published by the Kansas Supreme Court, produced in January 2009 and hosted by then Chief Justice Robert E. Davis, the video provides information regarding the structure and function of the Kansas Judicial Branch. Copies of the video are available upon request to teachers or anyone interested in law-related education. Contact Ron Keefover, Education and Information Officer of the Office of Judicial Administration, Topeka, (785) 296-4872 to order. Video is approximately seven (7) minutes in length. Window Media Player 9.0 or above is required. [Free Download for WMP.](#)

Talking Points:

- Interesting facts regarding the Kansas Judicial System
- Types of courts
- Case statistics
- Jury service in Kansas
- About Kansas courts

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Resources at the Law-Related Education Inventory



1. **The Short Story of Sam Snead's Search at School: A 4th Amendment Adventure MS/HS DVD.** This video explores the subject of illegal search as it pertains to students. Teaching materials accompany this new DVD provided by the KBA. Contact Meg Wickham, KBA manager of public services to reserve your copy mwickham@ksbar.org or call (785)234-5696.
2. **The Constitution at 200: Why Does it Still Work: MS/HS VHS.** This video follows the evolution of the Constitution, focusing on the basic principles of the document – human rights, republicanism, federalism, separation of powers, and checks and balances. 342.02/G578.
3. **Law in the Classroom: Activities and Resources**, by Mary Jane Turner – Law-study and teaching (book) Developed in an effort to provide practical assistance to resource persons who will be making presentations about law and the justice system in school and organizational settings. 340.07/T8551

The Law-Related Education Inventory has many resources to help teach about law-related topics. The Kansas Bar Association and the lawyers in your community sponsor the Law-Related Education Inventory. To order a catalog, call Meg Wickham at the Kansas Bar Association, (785) 234-5696. The clearinghouse will mail free copies of law-related posters, games, mock trials, booklets, lesson plans, and other aids. It is open Monday through Thursday, 8 a.m. to 7 p.m., and Friday, 8 a.m. to 5 p.m. The director of the Teachers College Resource Center, which houses the Law-Related Education Inventory, Janice Romeiser, can be reached at jromeise@emporia.edu.

Update: *The Kansas Bar Association Law-Related Education Clearinghouse Inventory catalog is available. To request a new copy, please call Meg Wickham, KBA Public Services Manager, at (785) 234-5696 or e-mail her at mwickham@ksbar.org.*

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