

Nancy L. Moritz
301 S.W. Tenth Ave., Ste. 389
Topeka, Kansas 66612

January 6, 2014

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

I have reviewed the responses to the Senate Judiciary Questionnaire that I submitted in connection with my nomination on August 1, 2013, to be a United States Circuit Judge for the Tenth Circuit. Incorporating the additional information itemized below, I certify that the information contained in these documents is, to the best of my knowledge, true and accurate.

Question 12b:

The web link I listed in my Questionnaire for the narrative profile I provided to the Kansas Commission on Judicial Performance in connection with my 2010 Judicial Performance Survey Report is no longer operating. I provided a copy of that document in my response to Senator Grassley's written question No. 4 on December 4, 2013, and I have also attached a copy to this letter.

Question 13b:

Since the submission of my Questionnaire, I have authored five additional opinions, which I have listed below:

State v. Hurd, Nos. 104,198 & 104,765, 2013 WL ___, ___ P.3d ___ (Kan. Dec. 27, 2013)

State v. Hensley, No. 102,055, 2013 WL 6383039, ___ P.3d ___ (Kan. Dec. 6, 2013)

Iron Mound v. Nueterra Healthcare Mgmt., LLC, No. 101,647, 2013 WL 6383036, ___ P.3d ___ (Kan. Dec. 6, 2013)

State v. Bird, No. 103,855, 2013 WL 6145300, 312 P.3d 1265 (Kan. Nov. 22, 2013)

State v. Cheeks, No. 104,858, 2013 WL 5495257, 310 P.3d 346 (Kan. Oct. 4, 2013)

Additionally, the following updated citation pertains to an opinion I included in my Questionnaire: *N. Natural Gas v. ONEOK Field Services Co.*, 296 Kan. 906, 296 P.3d 1106 (Kan. 2013), *cert. denied* 134 S. Ct. 162 (Oct. 7, 2013).

Question 13c:

Updated citation: *N. Natural Gas v. ONEOK Field Services Co.*, 296 Kan. 906, 296 P.3d 1106 (Kan. 2013), *cert. denied* 134 S. Ct. 162 (Oct. 7, 2013).

Question 13d:

Updated citation: *N. Natural Gas v. ONEOK Field Services Co.*, 296 Kan. 906, 296 P.3d 1106 (Kan. 2013), *cert. denied* 134 S. Ct. 162 (Oct. 7, 2013).

Question 13e:

Certiorari was requested, but denied, in the following cases:

State v. Rochelle, 297 Kan. 32, 298 P.3d 293 (2013), *cert. denied*, 134 S. Ct. 270 (2013).

State v. Cheffen, 297 Kan. 689, 303 P.3d 1261 (2013), *cert. denied*, 134 S. Ct. 627 (2013).

State v. Haberlein, 296 Kan. 195, 290 P.3d 640 (2012), *cert. denied*, 134 S. Ct. 148 (2013).

State v. Schaeffer, 295 Kan. 872, 286 P.3d 889 (2012), *cert. denied*, 2013 WL 1655299 (2013).

State v. Martin, 294 Kan. 638, 279 P.3d 704 (2012), *cert. denied*, 134 S. Ct. 114 (2013).

Additionally, the following citations are updated from my Questionnaire:

N. Natural Gas v. ONEOK Field Services Co., 296 Kan. 906, 296 P.3d 1106 (Kan. 2013), *cert. denied* 134 S. Ct. 162 (Oct. 7, 2013).

State v. Cheever, 295 Kan. 229, 284 P.3d 1007, *vacated and remanded by Kansas v. Cheever*, 134 S. Ct. 596 (Dec. 11, 2013).

Question 13f:


In *Kansas v. Cheever*, 134 S. Ct. 596 (Dec. 11, 2013), the United States Supreme Court reversed the Kansas Supreme Court's decision, which had unanimously vacated Cheever's capital murder conviction and death sentence and remanded to the trial court for a new trial, *State v. Cheever*, 295 Kan. 229, 284 P.3d 1007 (2013). The Supreme Court held the Fifth Amendment did not prohibit the State from using a psychiatric expert's examination of Cheever to rebut his voluntary intoxication defense and remanded to this court for further proceedings consistent with the Court's opinion.

Question 14:

In *Via Christi Regional Med. Center, Inc. v. Reed* Case No. 101690, 2013 WL ____, ____ P.3d ____ (Kan. Dec. 20, 2013), I recused *sua sponte* based upon my former husband's employment at the appellee hospital.

I am also forwarding an updated net worth statement and financial disclosure report requested in the Questionnaire. I thank the Committee for its consideration of my nomination.

Sincerely,



Nancy L. Moritz

Enc.

cc: The Honorable Charles Grassley
Ranking Member
Committee on the Judiciary
United States Senate
135 Hart Senate Office Building
Washington, D.C. 20510

Kansas Commission on Judicial Performance



Honorable Nancy Landis Caplinger

2010 Review

Court of Appeals

The Kansas Commission on Judicial Performance recommends that Judge Nancy Landis Caplinger BE RETAINED.

Judge Caplinger was appointed to the Kansas Court of Appeals in 2004. Before her appointment to the bench, she served as Assistant United States Attorney for the District of Kansas from 1995 to 2004 and engaged in the private practice of law from 1989 to 1995. She has also worked as a law clerk for a United States District Court judge and as a research attorney for a Kansas Supreme Court Justice. Judge Caplinger is a graduate of Washburn University and Washburn University School of Law.

Judge Caplinger served on the Board of Editors of the Kansas Bar Association for nearly 20 years, including two years as Chair. She has co-authored three published articles for the KBA Journal and received the KBA's Outstanding Service Award. She has also served on the Kansas CLE Commission and the Board of Governors of the Washburn Law School Association. Judge Caplinger enjoys participating in professional educational activities, making presentations for numerous bar associations and schools. Her primary community involvement is focused on volunteering at and supporting her daughters' schools and their activities. Also, she has delivered Meals on Wheels for more than six years.

Judge Caplinger believes her greatest strengths are that she writes clear and concise opinions and respects the rule of law. She states that she comes prepared for oral argument and enjoys the "give and take" of that process. She also respects her colleagues on the bench and the attorneys who appear before her. Judge Caplinger acknowledges that she sometimes adopts an adversarial position with counsel at oral argument and with her colleagues during case conferences, and that she does not always use her time as effectively as possible especially when it comes to reviewing the large volume of briefs each month. Her professional goals are to consistently exhibit an appropriate demeanor on the bench, to more effectively manage her time, and to continue to be an emissary for the judiciary particularly with our youth across the state.

The Commission received survey responses from 59 attorneys and 128 district judges. Survey results showed that 92% of attorneys and 96% of district judges recommended that Judge Caplinger be retained in office. Judge Caplinger received an overall average score from attorneys of 3.64 on a 4.0 scale and an overall average score from district judges of 3.62. Judge Caplinger's scores exceed the required minimum average grade of 2.0 from each category of respondents. The Commission recommends that she BE RETAINED.

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. **Name**: State full name (include any former names used).

Nancy Louise Moritz

Former Names: Nancy Moritz Landis and Nancy Landis Caplinger

2. **Position**: State the position for which you have been nominated.

United States Circuit Judge for the Tenth Circuit

3. **Address**: List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

Kansas Supreme Court

Kansas Judicial Center

301 Southwest Tenth Avenue

Topeka, Kansas 66612

4. **Birthplace**: State year and place of birth.

1960; Beloit, Kansas

5. **Education**: List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

1982 – 1985, Washburn University School of Law; J.D., 1985

1978 – 1982, Washburn University; B.B.A., 1982

6. **Employment Record**: List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

2011 – present

Kansas Supreme Court

Kansas Judicial Center

301 Southwest Tenth Avenue

Topeka, Kansas 66612
Justice

2004 – 2011
Kansas Court of Appeals
Kansas Judicial Center
301 Southwest Tenth Avenue
Topeka, Kansas 66612
Judge

1995 – 2004
United States Attorney's Office for the District of Kansas
United States Courthouse
444 Southeast Quincy, Suite 290
Topeka, Kansas 66683
Appellate Coordinator (2000 – 2004)
Assistant United States Attorney (1995 – 2004)
(From 1995 to 1996, I worked in the Kansas City office, located at United States Courthouse, 500 State Avenue, Suite 360, Kansas City, Kansas 66101.)

1989 – 1995
Spencer Fane Britt & Browne, LLP
9401 Indian Creek Parkway
Corporate Woods Building 40, Suite 700
Overland Park, Kansas 66210
Associate
(From 1991 to 1993, I worked in the firm's Kansas City office, located at 1000 Walnut Street, Suite 1400, Kansas City, Missouri 64106.)

1987 – 1989
United States District Court for the District of Kansas
United States Courthouse
401 North Market Street
Wichita, Kansas 67202
Law Clerk to the Honorable Patrick F. Kelly

1985 – 1987
Kansas Supreme Court
Kansas Judicial Center
301 Southwest Tenth Avenue
Topeka, Kansas 66612
Research Attorney to the Honorable Harold S. Herd

1984 – 1985
Shawnee County District Court
Shawnee County Courthouse

200 Southeast Seventh Street
Topeka, Kansas 66603
Law Clerk for District Court Judges (part-time)

1983 – 1984
Davis, Unrein, Hummer & McCallister
29th Street & Gage Boulevard
Topeka, Kansas 66614
Law Clerk (part-time)

Summer 1982
Washburn Law School Library
1700 College
Topeka, Kansas 66621
Library Clerk (part-time)

Other Affiliations (uncompensated)

2001 – 2008
Washburn Law School Alumni Association
1700 Southwest College
Topeka, Kansas 66621
Member, Board of Governors

1999 – 2005
Kansas Continuing Legal Education Commission
400 South Kansas Avenue, Suite 202
Topeka, Kansas 66603
Board Member
 Vice-Chair (2001 – 2003)
 Secretary (2003 – 2005)

7. **Military Service and Draft Status:** Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received, and whether you have registered for selective service.

I have not served in the military. I was not required to register for selective service.

8. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

Professional

Superior Achievement in Law Award, Washburn University School of Law (2007)
United States Attorney's Office Sustained Superior Performance Award (2002)

United States Attorney's Office Sustained Superior Performance Award (2001)
United States Attorney's Office Sustained Superior Performance Award (2000)
United States Attorney's Office "On the Spot" Award (1999)
Kansas Bar Association Outstanding Service Award (1998)

Educational

Washburn Law Journal Notes Editor (1984 – 1985)
Award for Best Law Journal Comment (1984)
American Jurisprudence Award, Contracts I & II (1982 – 1983)
NONOSO (Senior Women's Honorary Society) (1981 – 1982)
Garvey Scholar (1978 – 1982)

9. **Bar Associations:** List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

American Bar Association
American Bar Foundation
Earl E. O'Connor Kansas Inn of Court
Johnson County Bar Association
 Program Committee (1995 – 1996)
 Chair
Kansas Bar Association
 Board of Editors, *Journal of the Kansas Bar Association* (1985 – 2006)
 Chair (1996 – 1998)
 Vice-Chair (1994 – 1996)
 Continuing Legal Education Committee (1996 – 1998)
 Chair, Handbook Committee (1997 – 1998)
 Ethics Advisory Committee (1996 – 1997)
Kansas Bar Foundation
Kansas Board of Court Reporters
 Supreme Court Liaison (2011 – present)
Kansas City Metropolitan Bar Association
Kansas Client Protection Fund
 Supreme Court Liaison (2011 – present)
Kansas Continuing Legal Education Commission
 Secretary (2003 – 2005)
 Vice-Chair (2001 – 2003)
Kansas Criminal Justice Coordinating Council
 Member/Chief Justice designee (2011 – present)
Kansas Judicial Council
 Chair, Criminal Law Advisory Committee (2010)
Kansas Women Attorneys Association
Tenth Circuit Court of Appeals Advisory Committee
 Kansas Attorney Representative (2001 – 2004)
Topeka Bar Association

Topeka Women Attorneys Association
Twelfth Judicial District Nominating Commission
Non-Voting Chair (2011 – present)
Wichita Bar Association

10. **Bar and Court Admission:**

- a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

Missouri, 1989 (inactive)
Kansas, 1985

There have been no lapses in membership, although as indicated, my membership in Missouri is inactive.

- b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

United States Court of Appeals for the Tenth Circuit, 1997
United States District Court for the District of Kansas, 1985

There have been no lapses in membership.

11. **Memberships:**

- a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Topeka Lawyers' Club (2012 – present)
SOABS (statewide fraternal organization of litigation attorneys) (2009 – present)
Meals on Wheels (Topeka) (2002 – present)
Washburn Law School Alumni Association Board of Governors (2001 – 2008)
Mentoring Program (2004 – present)
Dean Search Committee (2008)

- b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above

currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

I believe that years before I became a member, the Topeka Lawyers Club and SOABS limited their membership to men. To my knowledge, none of the other organizations listed above currently discriminates or formerly discriminated on the basis of race, sex, religion, or national origin, either through formal membership requirements or the practical implementation of membership policies.

12. **Published Writings and Public Statements:**

- a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

Oral Argument, in APPELLATE PRACTICE HANDBOOK (Kansas Judicial Council ed., 4th ed. 2009). Copy supplied.

Vengeance is Not Mine: A Survey of the Law of Title VII Retaliation, 73 J. KAN. B. ASS'N 20 (2004) (with Diane S. Worth). Copy supplied.

Prediscovery, in FEDERAL PRACTICE HANDBOOK FOR THE DISTRICT OF KANSAS (2d ed. 1997). Copy supplied.

Bar Luncheon, THE BARLETTER (Vol. 10, Issue 3; March 1996). Copy supplied.

January Bar Luncheon, THE BARLETTER (Vol. 10, Issue 1; Jan. 1996). Copy supplied.

Bar Luncheon, THE BARLETTER (Vol. 9, Issue 11; Nov. 1995). Copy supplied.

October Bar Luncheon, The BARLETTER (Vol. 9, Issue 10; Oct. 1995). Copy supplied.

Charlie Schnider: Gentleman Lawyer or Knockout Champ?, JOHNSON COUNTY BARLETTER (Vol. 9, Issue 8; August 1995). Copy supplied.

Fire at Will? The Status of Judicially Created Exceptions to Employment-at-Will in Kansas, 64 J. KAN. B. ASS'N 22 (1995) (with Diane S. Worth). Copy supplied.

Discovery, in FEDERAL PRACTICE HANDBOOK FOR THE DISTRICT OF KANSAS (1st ed. 1992) (with Janice Miller Karlin). Copy supplied (annotations by co-author).

Does Membership Have its Privileges? The Limits on Permissible Discrimination in Private Clubs, 60 J. KAN. B. ASS'N 27 (1991) (with Diane S. Worth). Copy supplied.

Comment, *Evidence: Placing Limits on the Admissibility of Hypnotically Refreshed Testimony*, 24 WASHBURN L. J. 697 (1984). Copy supplied.

- b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

Memorandum regarding Washburn Law School Association – Long Range Planning Committee Report, submitted by Washburn Law School Association Board of Governors Planning Committee, June 7, 2005. Copy supplied.

Annual Reports of the Kansas Continuing Legal Education Commission, 1999-2005. Copies supplied.

- c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

In Spring 2010, I provided a brief self-evaluation to the Kansas Commission on Judicial Performance in connection with my 2010 Judicial Performance Survey Report. The evaluation can be viewed at:
<http://www.kansasjudicialperformance.org/evaluation.cfm?JudgeID=122>.

- d. Supply four (4) copies, transcripts or videos of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or video of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

June 6, 2013: Speaker, remarks to Sunflower Girls' State participants visiting Judicial Center, American Legion Girls' State, Topeka, Kansas. Notes supplied.

April 3, 2013: Speaker, question and answer session about my work at the Kansas Supreme Court with Concordia high school students visiting Judicial Center, Concordia High School, Topeka, Kansas. I have no notes, transcript or recording. The address of Concordia High School is 217 West Seventh Street, Concordia, Kansas 66901.

March 22, 2013: Speaker, remarks to attorneys being sworn in to practice in Kansas pursuant to Kansas Supreme Court Rule 708, Kansas Supreme Court, Topeka, Kansas. Notes supplied.

March 20, 2013: Speaker, question and answer session about my work at the Kansas Supreme Court with Tipton high school students visiting Judicial Center, Tipton Catholic High School, Topeka, Kansas. I have no notes, transcript or recording but press coverage supplied. The address of Tipton High School is 301 State Street, Tipton, Kansas 67485.

October 3, 2012: Panelist, “*A CLE Roundtable on Oral Argument: Best Practices When Appearing Before the High Court*,” a panel presentation by all members of the Kansas Supreme Court, Johnson County Bar Association, Overland Park, Kansas. Outline supplied.

September 7, 2012: Speaker, *Appellate Practice*, Southwest Kansas Bar Association, Dodge City, Kansas. Outline supplied.

May 18, 2012: Speaker, brief remarks as Departmental Justice for the Fifteenth Judicial District, Fifteenth Judicial District Bench-Bar, Goodland, Kansas. I have no notes, transcript or recording, but the presentation would have been similar to the one given on September 16, 2011, for which notes have been supplied.

May 4, 2012: Speaker, remarks regarding Kansas appellate court system at breakfast meeting of Topeka South Rotary Club, Topeka, Kansas. Notes supplied.

March 30, 2012: Speaker, brief remarks to attorneys being sworn in to practice in Kansas pursuant to Kansas Supreme Court Rule 708, Kansas Supreme Court, Topeka, Kansas. Notes supplied.

March 29, 2012: Guest speaker for legal writing class, Washburn School of Law, Topeka, Kansas. Notes supplied.

March 12, 2012: Speaker, brief remarks regarding the appellate courts to a group of ten women, Seward County Historical Society, Topeka, Kansas. I have no notes, transcript, or recording. The address of Seward County Historical Museum is 567 East Cedar Street, Liberal, Kansas 67901.

February 24, 2012: Panelist, *Recent Appellate Cases of Interest*, Women Attorneys Association of Topeka and Washburn Women Attorneys Association, Topeka, Kansas. Outline supplied.

January 13, 2012: Speaker, *Stewardship & Professionalism in the Study and Practice of Law*, Washburn School of Law, Topeka, Kansas. Outline supplied.

November 8, 2012: Panelist, *Recent Appellate Cases of Interest*, for regional training of district court judges, Kansas Judicial Branch Office of Judicial Administration, Hays, Kansas. I have no notes, transcript or recording. The address of the Kansas Judicial Branch Office of Judicial Administration is 301 Southwest Tenth Street, Topeka, Kansas 66612.

October 14, 2011: Speaker, remarks about achievements of my research attorney upon her swearing-in to the Missouri Bar, Topeka, Kansas. Notes supplied.

September 29, 2011: Panelist, “*A Roundtable on Oral Argument: Applying Practical Steps as you Go*,” a panel presentation by all members of the Kansas Supreme Court, Wichita Bar Association, Wichita, Kansas. Outline supplied.

September 16, 2011: Speaker, brief remarks as Departmental Justice for the Twelfth Judicial District at an annual meeting, Twelfth Judicial District, Washington, Kansas. Notes provided.

September 16, 2011: Speaker, remarks to high school and junior high assembly about my legal and judicial career, Hanover Junior High and High Schools, Hanover, Kansas. I have no notes, transcript or recording. The address of Hanover High School is 209 East North Street, Hanover, Kansas 66945.

July 1, 2011: Speaker, remarks about career of newly appointed District Court Judge Preston Pratt following his swearing-in in Oberlin, Kansas. I have no notes, transcript or recording. The address of the Decatur County Courthouse is 120 East Hall, Oberlin, Kansas 67749.

June 10, 2011: Speaker, presentation on recent appellate cases of interest to joint annual meeting of state district and appellate judges, Kansas Bar Association, Topeka, Kansas. I have no notes, transcript or recording. The address for the KBA is 1200 Southwest Harrison Street, Topeka, Kansas 66612.

April 8, 2011: Speaker, presentation on appellate practice, Wichita Bar Association, Wichita, Kansas. Outline supplied.

January 19, 2011: Speaker, brief remarks and swearing-in of clinical law students, Washburn Law School, Topeka, Kansas. Notes provided.

January 7, 2011: Speaker, remarks made at proceedings upon my taking the oath of office for the Kansas Supreme Court, Kansas Supreme Court, Topeka, Kansas. Remarks supplied.

December 1, 2010: Speaker, remarks about the work of the Kansas Supreme Court to three Criminal Justice Classes, Washburn Rural High School, Topeka, Kansas. I have no notes, transcript or recording. The address of Washburn Rural High School is 5900 Southwest Sixty-First Street, Topeka, Kansas 66619.

November 9, 2010: Judge, commented on and judged moot court practice rounds, Kansas University School of Law, Lawrence, Kansas. I have no notes, transcript or recording. The address of the Kansas University School of Law is Green Hall, 1535 West Fifteenth Street, Lawrence, Kansas 66045.

March 23, 2010: Panelist, presentation regarding appellate practice for all first-year legal writing students after moot oral arguments, Kansas University School of Law, Lawrence, Kansas. I have no notes, transcript or recording. The address of the Kansas University School of Law is Green Hall, 1535 West Fifteenth Street, Lawrence, Kansas 66045.

March 10, 2010: Speaker, brief remarks to “Grow Your Own Attorneys,” a program sponsored by the Wichita Bar Association for underprivileged high school students interested in legal careers, Kansas Judicial Center, Topeka, Kansas. Notes provided.

February 12-13, 2010: Judge for forensic tournament, Washburn Rural High School, Topeka, Kansas. I did not give a presentation at this event and have no notes, transcript or recording. The school’s address is 5900 Southwest 61st Street, Topeka, Kansas 66619.

December 10, 2009: Panelist, *Judge’s Road Show 2009*, a panel review of appellate cases of interest with Kansas Court of Appeals Judges Joseph Pierron and Michael Buser and United States District Court Judge Thomas Marten, Wichita Bar Association, Wichita, Kansas. I have no notes, transcript or recording. The address of the Wichita Bar Association is 225 North Market Street, Suite 200, Wichita, Kansas, 67202.

September 24, 2009: Dinner speaker about the importance of pre-law school training and networking for gathering of regional college Pre-Law Advisors, Washburn School of Law, Topeka, Kansas. I have no notes, transcript or recording. The law school’s address is 1700 Southwest College, Topeka, Kansas 66621.

July 17-18, 2009: Panelist, *Appellate Case Update*, a panel presentation with Kansas Court of Appeals Judges Richard Greene and Melissa Standridge, Kansas Women Attorneys Association, Lindsborg, Kansas. I have no notes, transcript or

recording. The association's address is Post Office Box 598, Topeka, Kansas 66601.

March 2009: Lunch speaker about the strengths of Washburn Law School for the orientation program for law school admittees and their guests, Washburn School of Law, Topeka, Kansas. I have no notes, transcript or recording. The law school's address is 1700 Southwest College, Topeka, Kansas 66621.

January 28, 2009: Panelist, *Appellate Practice*, a panel presentation along with Kansas Supreme Court Chief Justice Kay McFarland, Kansas Court of Appeals Judge Melissa Standridge, and attorney Patricia Peterson-Klein, Topeka Women Attorneys Association and Washburn Women Law Students Association, Topeka, Kansas. I have no notes, transcript or recording. The law school's address is 1700 Southwest College, Topeka, Kansas 66621.

January 23-24, 2009: Judge, 6A State Debate Tournament, Washburn Rural High School, Topeka, Kansas. I have no notes, transcript or recording. The school's address is 5900 Southwest 61st Street, Topeka, Kansas 66619.

December 5, 2008: Judge, Moot Court, Washburn Rural High School, Topeka, Kansas. I have no notes, transcript or recording. The school's address is 5900 Southwest 61st Street, Topeka, Kansas 66619.

November 12, 2008: Guest Speaker for appellate writing class, Washburn School of Law, Topeka, Kansas. I have no notes, transcript or recording. The school's address is 1700 Southwest College, Topeka, Kansas 66621.

September 17, 2008: Speaker, remarks in recognition of Constitution Day regarding the importance of an independent judiciary, Manhattan Downtown Kiwanis Club, Manhattan, Kansas. I have no notes, transcript or recording. The Club's Address is Post Office Box 876, Manhattan, Kansas 66506-0876.

September 16, 2008: Panelist, panel discussion on racial profiling, Kansas State University's Dorothy L. Thompson Civil Rights Lecture Series, Manhattan, Kansas. I have no notes, transcript or recording. The address of the Lecture Series is Office of the Provost, Kansas State University, 106 Anderson Hall, Manhattan, Kansas 66506.

January 22, 2008: Speaker, brief remarks and conducted swearing-in of clinical law students, Washburn School of Law, Topeka, Kansas. I have no notes, transcript or recording, but my remarks were similar to my remarks at the January 19, 2011, clinic swearing-in, for which notes have been supplied.

April 20, 2007: Speaker, *Oral Argument, Making a Difference*, Appellate Practice Symposium, Kansas Bar Association and Kansas Judicial Council, Topeka, Kansas. I have no notes, transcript or recording, but I submitted a copy

of the oral argument chapter I wrote for the Appellate Practice Handbook, which was supplied in response to 12.a.

April 2007: Guest Speaker on Judicial Process for political science class, Kansas State University, Manhattan, Kansas. I have no notes, transcript or recording. The address of Kansas State University is 244 Waters Hall, Kansas State University, Manhattan, Kansas 66506.

March 9, 2007: Panel Moderator, *The Winning Brief, What Appellate Court Judges Expect from Advocates*, Legal Writing Symposium, the panel included Tenth Circuit Court of Appeals Judges Mary Beck Briscoe, Deanell Reece Tacha, and Neil M. Gorsuch, Washburn School of Law, Topeka, Kansas. I have no notes, transcript or recording. The school's address is 1700 Southwest College, Topeka, Kansas 66621.

March 2007: Lunch speaker about the strengths of Washburn Law School for the orientation program for law school admittees and their guests, Washburn School of Law, Topeka, Kansas. I have no notes, transcript, or recording. The law school's address is 1700 Southwest College, Topeka, Kansas 66621.

December 2006: Speaker, brief remarks about legal and judicial careers with participants in career fair, Washburn Rural High School, Topeka, Kansas. I have no notes, transcript or recording. The school's address is 5900 Southwest 61st Street, Topeka, Kansas 66619.

November 2006: Judge, Judged Regional National Moot Court Competition, Kansas University School of Law, Lawrence, Kansas. I have no notes, transcript or recording. The address of the University of Kansas School of Law is Green Hall, 1535 West Fifteenth Street, Lawrence, Kansas 66045.

October 2006: Panelist, panel discussion on appellate practice, Washburn School of Law Center for Excellence in Advocacy, Topeka, Kansas. I have no notes, transcript or recording. The school's address is 1700 Southwest College, Topeka, Kansas 66621.

October 2006: Panelist, *The Judges' Perspectives, Orientation to Kansas Practice*, Kansas Trial Lawyers Association, Topeka, Kansas. I have no notes, transcript or recording. The address of the association (now known as the Kansas Association for Justice) is 719 Southwest Van Buren, Suite 222, Topeka, Kansas 66603.

September 2006: Panelist, *Oral Argument-It Ain't Over 'Til it's Over*, Southwest Kansas Bar Association, Dodge City, Kansas. I have no notes, transcript or recording, but my presentation primarily was based on the oral argument chapter of the Appellate Practice Handbook, which was supplied in response to 12.a.

September 2006: Panelist, *Judicial Review and Constitutional Democracy*, moderated by former Kansas Governor John Carlin as part of Constitution Day activities, Kansas State University, Manhattan, Kansas. I have no notes, transcript or recording. The address of the university is Anderson Hall, Kansas State University, Manhattan, Kansas 66506.

August 2006: Speaker, brief remarks and conducted swearing-in of clinical law students, Washburn School of Law, Topeka, Kansas. I have no notes, transcript or recording. However, my remarks were similar to the remarks I gave when conducting the swearing-in on January 19, 2011, for which notes have been supplied.

June 2006: Speaker, *Preparation for Oral Argument*, Appellate Practice Seminar, Kansas Trial Lawyers Association, Topeka, Kansas. I have no notes, transcript or recording, but my presentation primarily was based upon the oral argument chapter of the Appellate Practice Handbook, which was supplied in response to 12.a.

May 2006: Judge, three-day National Finals of the High School Competition, *We the People: The Citizen and the Constitution*, Center for Civic Education, Washington, D.C. I have no notes, transcript or recording. The address of the program is 21600 Oxnard Street, Suite 500, Woodland Hills, California 91367.

March 2006: Lunch speaker about the strengths of Washburn Law School for a day long orientation program for law school admittees and their guests, Washburn School of Law, Topeka, Kansas. I have no notes, transcript or recording. The law school's address is 1700 Southwest College, Topeka, Kansas 66621.

February 2006: Panelist, *Appellate Advocacy*, for first-year research and writing classes, Washburn School of Law, Topeka, Kansas. I have no notes, transcript or recording. The school's address is 1700 Southwest College, Topeka, Kansas 66621.

January 2006: Judge, State High School Qualifying Competitions, *We the People: The Citizen and the Constitution*, Center for Civic Education, Topeka, Kansas. I have no notes, transcript or recording. The address of the program is 21600 Oxnard Street, Suite 500, Woodland Hills, California 91367.

October 2005: Lunch speaker about the strengths of Washburn Law School for a day long orientation program for law school admittees and their guests, Washburn School of Law, Topeka, Kansas. I have no notes, transcript or recording. The law school's address is 1700 Southwest College, Topeka, Kansas 66621.

September 22, 2005: Dinner Speaker, remarks about the mentoring and support necessary to achieve success, Women of Achievement Awards Banquet, Salina Girl Scouts and Salina YWCA, Salina, Kansas. I have no notes, recording or

transcript of my presentation, but press coverage is supplied. The address of the Salina Girl Scouts is 3115 Enterprise Drive, Suite 66901, Salina, Kansas 67401.

January 2005: Judge, State High School Qualifying Competitions, *We the People: The Citizen and the Constitution*, Center for Civic Education, Topeka, Kansas. I have no notes, transcript or recording. The address of the program is 21600 Oxnard Street, Suite 500, Woodland Hills, California 91367.

October 1, 2004: Speaker, remarks on the occasion of my swearing-in ceremony as a Judge on the Kansas Court of Appeals, Kansas Court of Appeals, Topeka, Kansas. Remarks supplied.

September 19, 2004: Speaker, remarks about the importance of mentoring at Washburn Law School Alumni Association Mentor/Mentee reception, Washburn School of Law, Topeka, Kansas. I have no notes, transcript or recording, but press coverage is supplied. The address of the Law School is 1700 College, Topeka, Kansas 66621.

August 2002: Speaker, *Supreme Court and Tenth Circuit Review*, United States Attorney's Office Annual District Conference, United States Attorney's Office, Emporia, Kansas. I have no notes, transcript or recording. The address of the United States Attorney's office in Topeka is 444 Southeast Quincy, Suite 290, Topeka, Kansas 66683.

June 2002: Speaker, *Supreme Court and Tenth Circuit Review*, Kansas County and District Attorney's Association, Wichita, Kansas. I have no notes, transcript or recording. The association's address is 1200 Southwest Tenth Avenue, Topeka, Kansas 66604.

September 2001: Speaker, *Tenth Circuit Review and Appellate Training*, United States Attorney's Office Annual District Conference, United States Attorney's Office, Manhattan, Kansas. I have no notes, transcript or recording. The address of the United States Attorney's Office in Topeka is 444 Southeast Quincy, Suite 290, Topeka, Kansas 66683.

September 1999: Speaker, *Government Ethics Training and Appellate Practice Training*, United States Attorney's Office Annual Conference, United States Attorney's Office, Kansas City, Missouri. I have no notes, transcript or recording. The address of the United States Attorney's Office in Topeka is 444 Southeast Quincy, Suite 290, Topeka, Kansas 66683.

Summer 1999: Speaker, *Interpretation and Application of the McDade Amendment to DOJ Attorneys* presented to Assistant United States Attorneys in three separate locations: Kansas City, Wichita, and Topeka, Kansas. I have no notes, transcript or recording. The address of the United States Attorney's Office in Topeka is 444 Southeast Quincy, Suite 290, Topeka, Kansas 66683.

September 1998: Speaker, *Professional Responsibility Training and Government Ethics Training* at United States Attorney's Office Annual District Conference, United States Attorney's Office, Wichita, Kansas. I have no notes, transcript or recording. The address of the United States Attorney's Office in Topeka is 444 Southeast Quincy, Suite 290, Topeka, Kansas 66683.

April 1998: Speaker, *Evaluation of Disability and Injury*, Symposium for Women Physicians, Kansas City, Missouri. I have no notes, transcript or recording, nor do I have a record of who sponsored the program.

September 1997: Speaker, *Federal Practice Handbook Overview, Professional Responsibility and Government Ethics Training* at the United States Attorney's Annual Conference, Lindsborg, Kansas. I have no notes, transcript or recording, but my remarks primarily were based on the chapter of the Federal Practice Handbook, which was supplied in response to Q12.a.

June 1997: Speaker, *Evolving Issues Concerning Federal Court Discovery, "Hot Topics in Federal Law,"* Kansas City Metropolitan Bar Association, Kansas City, Missouri. I have no notes, transcript or recording of my remarks, but the address of the association is Two Pershing Square, 2300 Main Street, Suite 100, Kansas City, Missouri 64108.

June 1997: Speaker, *Federal Practice Handbook Seminar*, sponsored by Federal District Courts, in Overland Park, Kansas. I have no notes, transcript or recording, but my remarks primarily were based upon the chapter of the Federal Practice Handbook, which was supplied in response to 12.a.

August 1996: Speaker, *Professional Responsibility Training at Government Ethics Training* for the United States Attorney's Office Annual Conference, Lindsborg, Kansas. I have no notes, transcript or recording. The address of the United States Attorney's Office in Topeka is 444 Southeast Quincy, Suite 290, Topeka, Kansas 66683.

August 1995: Speaker, *Employment Discrimination Litigation Update* at United States Attorney's Office Annual Conference, United States Attorney's Office, Council Grove, Kansas. I have no notes, transcript or recording. The address of the United States Attorney's Office in Topeka is 444 Southeast Quincy, Suite 290, Topeka, Kansas 66683.

June 1995: Speaker, *Employment Law Update* at "Greatest Hits" Seminar, Kansas Bar Association, Topeka, Kansas. I have no notes, transcript or recording. The association's address is 1200 Southwest Harrison Street, Topeka, Kansas 66612.

April 1995: Speaker, *Personnel Law Update*, Council on Education in Management, Wichita, Kansas. I have no notes, transcript or recording. I am unable to locate an address for the Council on Education in Management.

March 1995: Coordinator and Moderator of panel presentation regarding recent issues in employment law, Employment Law Institute, Kansas City Metropolitan Bar Association, Kansas City, Missouri. I have no notes, transcript or recording. The association's address is Two Pershing Square, 2300 Main Street, Suite 100, Kansas City, Missouri 64108.

December 1994: Speaker, *The Whittling Away of Employment at Will: An Update*, Kansas Association of Defense Counsel, Kansas City, Missouri. I have no notes, transcript or recording, but my presentation primarily was based on the article on this same subject which I co-authored and supplied in response to 12.a.

July 1994: Speaker, *Employment Law Update*, Kansas Women Attorneys Association, Lindsborg, Kansas. I have no notes, transcript or recording. The association's address is Post Office Box 598, Topeka, Kansas 66601.

September 1993: Speaker, *Wrongful Discharge, Have the Exceptions to Employment at Will Become the Rule?* at Employment Law Seminar, Kansas Bar Association, Overland Park, Kansas and Wichita, Kansas. I have no notes, transcript or recording. The association's address is 1200 Southwest Harrison Street, Topeka, Kansas 66612.

- e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

July 2012: At the request of the former Admissions Director for Washburn School of Law, Karla Whitaker, I provided a brief, recorded statement about the importance of the school to my life and career. That recording is now part of the "Alumni" section of a "virtual tour" on the school's website. It can be viewed at: <http://washburnlaw.edu/admissions/virtualtour/alumni.html>.

April 14, 2011: Brief interview (along with Chief Justice Lawton Nuss) with KWCH of Wichita, Kansas prior to Supreme Court conducting oral arguments in Salina, Kansas. I contacted the station and requested a copy of the clip or transcript of the interview, but none is available.

January 7, 2011: Brief interview with Topeka television station, WIBW, following my swearing-in to the Kansas Supreme Court. I contacted the station and requested a copy of the clip or transcript of the interview, but none is available.

January 5, 2011: Radio interview with Wichita radio station regarding my appointment to the Supreme Court. I contacted the station and requested a copy of the clip or transcript of the interview, but none is available.

Kansas Bar Ass'n, *In Memoriam Hon. Jerry G. Elliot*, 71 J. KAN. B. ASS'N 10 (2010). Copy supplied.

Erin Mathews, *Sacred Heart Grad Named to State Supreme Court*, Salina Journal (Nov. 2, 2010). Copy supplied.

Tim Carpenter, *Topekan Named to Opening on State Supreme Court*, Capital-Journal (Nov. 2, 2010). Copy supplied.

David Klepper, *Parkinson Selects Caplinger for Kansas Supreme Court*, Olathe News (Nov. 1, 2010). Copy supplied.

Women Judge Kansas Appeals on Anniversary of Suffrage, Wichita Eagle (Aug. 26, 2008). Copy supplied.

October, 2004: Interview with Professor Stephanie Matthews, Washburn Law School, regarding my appointment to the Kansas Court of Appeals. A transcript of the interview is available at <http://washburnlaw.edu/news/2004/2004-11alumni-caplinger.php>.

Kansas Court of Appeals: New judge gives siblings credit, Salina Journal (Aug. 25, 2004). Copy supplied.

Susan M. McKaskle, *Nuss Appointment to the Supreme Court Revisits History*, 71 J. KAN. B. ASS'N 6 (2002). Copy supplied.

13. **Judicial Office:** State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I was appointed to the Kansas Court of Appeals by Governor Kathleen Sebelius in October 2004, following a merit selection process, to fill a vacancy created by the death of Judge Robert Lewis. The Kansas Court of Appeals is an intermediate appellate court that has jurisdiction over all direct appeals from the state district courts in civil and criminal cases, except those cases that can be directly appealed to the Kansas Supreme Court. It also has jurisdiction over original habeas corpus actions.

In January 2011, I was appointed to the Kansas Supreme Court by Governor Mark Parkinson, again following a merit selection process, to fill a vacancy created by the death of Justice Robert Davis. The Kansas Supreme Court is the state's court of last resort. It has original jurisdiction over the most serious crimes and cases in which a statute has been declared unconstitutional. The Court also reviews decisions of the

Kansas Court of Appeals and can transfer cases on its own motion. The Kansas Supreme Court also has general administrative authority over all Kansas courts including authority to develop and monitor rules for appellate practice and district court procedures. The Court develops and monitors the code of professional responsibility and the canons of judicial ethics and administers discipline to attorneys and judges. Additionally, the Court adopts and administers the pay plan governing court employees and develops and submits the judicial branch annual budget to the Kansas Legislature.

- a. Approximately how many cases have you presided over that have gone to verdict or judgment?

I have not been a trial judge and have not presided over any trials that have gone to verdict.

- i. Of these, approximately what percent were:

jury trials:	___%
bench trials:	___% [total 100%]
civil proceedings:	___%
criminal proceedings:	___% [total 100%]

- b. Provide citations for all opinions you have written, including concurrences and dissents.

See attached list of cases.

- c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

1. *N. Natural Gas v. ONEOK Field Services Co.*, 296 Kan. 906, 296 P.3d 1106 (2013), *petition for cert. filed June 11, 2013.*

In affirming the district court's grant of summary judgment in favor of several gas producers and gas purchasers, we resolved an issue of first impression regarding the interpretation of K.S.A. 55-1210(c). Specifically, we held that the statute abolished the common-law rule of capture as to injected storage gas that migrates horizontally within a geographic stratum to adjoining property or vertically to a different stratum, but preserved the rule of capture as to natural gas which migrates beyond those boundaries.

Appellant's counsel were Mark D. Coldiron, Corey A. Neller and Paula M. Jantzen, Ryan Whaley Coldiron Shandy PLLC, 119 North Robinson Avenue, Suite 900, Oklahoma City, Oklahoma 73102, 405.239.6040; and Richard A.

Olmstead, Kutak Rock LLP, 1605 North Waterfront Parkway, Suite 150, Wichita, Kansas 67206, 316.609.7904.

Appellees' counsel were Dennis C. Cameron, Tyson D. Schwerdtfeger and Bradley W. Welsh, Gable & Gotwals, 1100 ONEOK Plaza, 100 West Fifth Street, Tulsa, Oklahoma 74103, 918.595.4800, and Robert R. Eisenhauer, Johnston and Eisenhauer, 113 East Third Street, Pratt, Kansas 67124, 620.672.5533 (for ONEOK); David L. Heinemann and S.J. Moore, Shank & Hamilton, P.C., 2345 Grand, Suite 1600, Kansas City, Missouri 64108, 816.471.0909, and Brian J. Madden and Adam S. Davis, Wagstaff & Cartmell, LLP., 4740 Grand Avenue, Suite 300, Kansas City, Missouri 64112, 816.701.1100 (for Nash Oil & Gas, Inc.); Jim H. Goering and Timothy B. Mustaine, Foulston Siefkin LLP, 1551 North Waterfront Parkway, Suite 100, Wichita, Kansas 67206, 316.291.9709, and Larry E. Keenan and Timothy R. Keenan, Keenan Law Firm, P.A., 2200 Lakin Avenue, Post Office Drawer 459, Great Bend, Kansas 67530, 620.603.0049 (for L.D. Drilling, Inc.); and Mark Banner, Hall, Estill, Hardwick, Gable, Golden & Nelson, P.C., 320 South Boston Avenue, Suite 200, Tulsa, Oklahoma 74103, 918.594.0400 (for Lumen Energy Corporation and Lumen Midstream Partnership, LLC).

2. *Eastman v. Coffeyville Res. Ref. & Mktg. L.L.C.*, 295 Kan. 470, 284 P.3d 1049 (2012).

In the United States District Court for the District of Kansas, the plaintiff landowners sued the defendant refinery alleging that crude oil from the defendant's plant spilled into floodwaters that in turn damaged the landowners' pecan grove. The district court judge presiding over that case certified several questions to the Kansas Supreme Court. In answering those questions, we held that the statutory claim brought by the plaintiffs under K.S.A. 65-6203, unlike the common law strict liability cause of action, imposes a duty on the party responsible for the accidental release or discharge of polluting materials to compensate the injured owner without regard to whether the party was engaged in an abnormally dangerous activity. We further determined that the three-year statute of limitations applies to actions arising under the statute because the statute creates a wholly separate cause of action and is not subject to the two-year limitation period that controls the common law claim.

Plaintiff's counsel was Randall K. Rathbun, Depew Gillen Rathbun & McInteer, L.C., 8301 East Twenty-First Street North, Suite 450, Wichita, Kansas 67206, 316.262.4000.

Defendant's counsel was Arthur E. Rhodes, Smithyman & Zakoura, Chartered, 7400 West 110th Street, Suite 750, Overland Park, Kansas 66210, 913.661.9800.

3. *In re T.S.W.*, 294 Kan. 423, 276 P.3d 133 (2012).

In an appeal by the Cherokee Nation from the district court's order granting deviation from the Indian Child Welfare Act's (ICWA) placement preferences to permit an adoption agency to place the child with a non-Native American Indian adoptive couple, we obtained jurisdiction through the collateral order doctrine. We ultimately held that despite the non-Indian mother's stated preference for the child's placement with a non-Native American family, ICWA's parental placement preference applied to the child's placement. Further, we concluded that the mother's wish that the child not be placed with any member of the father's family, together with her wish that the child be placed with a non-Native American family, by itself, was not good cause to deviate from ICWA's placement preference statute.

Petitioner's counsel was Richard A. Macias, Dodd & Macias, 901 North Broadway, Wichita, Kansas 67214, 316.262.5103.

Intervenor Cherokee Nation's counsel were N. Cheryl Hamby, Cherokee Nation Office of the Attorney General, Post Office Box 948, Tahlequah, Oklahoma 74465, 918.453.5000, extension 5438, and Anita Settle Kemp, 200 West Douglas, Suite 350, Wichita, Kansas 67202, 316.618.0818.

4. *State v. Robinson*, 293 Kan. 1002, 270 P.3d 1183 (2012).

The defendant appealed his conviction for the capital murder of a 14-year-old girl who was pregnant with the defendant's child. We affirmed his conviction concluding the district court properly admitted evidence of defendant's internet searches on how to kill a baby, how to have a miscarriage, and how to find a missing person. We also rejected the defendant's suggestion that the district court erred in admitting hearsay statements of the victim under the forfeiture by wrongdoing exception to the hearsay rule and in denying the defendant's motion for a change of judge based on judicial bias. Finally, we rejected the defendant's argument that the identical offense doctrine entitled him to resentencing on his capital murder conviction.

Plaintiff's counsel was Lesley A. Isherwood, Sedgwick County District Attorney's Office, 1900 East Morris, Wichita, Kansas 67211, 316.660.3622.

Defendant's counsel was Reid T. Nelson, Capital Appeals and Conflicts Office, 701 Southwest Jackson, Topeka, Kansas 66603, 785.296.6764.

5. *Shrader v. Kansas Dep't of Revenue*, 45 Kan. App. 2d 216, 247 P.3d 681 (2011), *aff'd*, 296 Kan. 3, 290 P.3d 549 (2012).

We reversed the suspension of the plaintiff's driver's license following his refusal to submit to a breath test after his arrest for a non-alcohol-related offense. We

disagreed with another panel of the Court of Appeals and held that Kansas' implied consent law permits suspension of driving privileges for a breath test refusal only if the driver has been arrested for an alcohol-related offense. The Kansas Supreme Court affirmed our interpretation of the implied consent law and overruled the inconsistent decision of the prior panel.

Plaintiff's counsel was Daniel C. Walter, Ryan, Walter, McClymont, Chtd., Post Office Box 364, Norton, Kansas 67654, 785.877.5183.

Defendant's counsel was James G. Keller, Legal Services Bureau, Kansas Department of Revenue, 915 Southwest Harrison, Topeka, Kansas 66612, 785.877.5183.

6. *In re Sipe*, 44 Kan. App. 2d 584, 239 P.3d 871 (2010).

The petitioner, who was involuntarily civilly committed as a sexually violent predator, appealed from the district court's conclusion that he failed to establish probable cause to show he was safe to be discharged from treatment or to transitional release. We resolved two issues of first impression: (1) the standard of review to be applied to a trial court's order denying a petitioner's motion for transitional release, and (2) which party bears the burden of proof at the probable cause hearing to determine whether the petitioner is entitled to an evidentiary hearing. The Kansas Supreme Court adopted the *Sipe* panel's application of a *de novo* standard of review and further adopted its conclusion that a petitioner bears the burden to show probable cause justifying transitional release. See *In re Burch*, 296 Kan. 215, 291 P.3d 78 (2012).

Petitioner's counsel was Geoffrey Clark, Wilbert & Towner, P.A., 506 North Pine, Pittsburg, Kansas 66762, 620.231.5620.

Respondent, the State of Kansas, did not file a brief.

7. *Bd. of Cnty. Com'rs of Cnty. of Sumner v. City of Mulvane*, 43 Kan. App. 2d 500, 227 P.3d 997, *rev. denied* 291 Kan. ___ (2010).

The Board of County Commissioners of Sumner County brought a declaratory judgment and quo warranto action against the City of Mulvane, alleging the City's attempted consent annexation of a strip of land to connect to a proposed casino site was void. The landowners intervened. The district court denied the City's motions to dismiss and motion for summary judgment and granted the Board's motion for summary judgment in part. The City and a group of landowners appealed. We synthesized an inconsistent line of case law regarding the issue of standing in a zoning dispute, and we ultimately held the Board lacked statutory standing to bring a quo warranto action or to challenge the annexation. Finally, we held that the annexed strip "adjoined" the city.

Plaintiff's counsel were Teresa S. Watson and David R. Cooper, Fisher, Patterson, Saylor & Smith, L.L.P., Post Office Box 949, Topeka, Kansas 66601, 785.232.7761.

Defendant's counsel were James A. Walker and Paula D. Langworthy, Triplett, Woolf & Garretson, L.L.C., 2959 North Rock Road, Suite 300, Wichita, Kansas 67226, 316.630.8100.

The intervenors-landowner's counsel was Martin J. Peck, Security State Bank Building, 107 East Harvey, Wellington, Kansas 67152, 620.326.3641.

8. *Dodge City Implement, Inc. v. Bd. of Cnty. Com'rs of Cnty. of Barber*, 38 Kan. App. 2d 348, 165 P.3d 1060 (2007), *aff'd*, 288 Kan. 619, 205 P.3d 1265 (2009).

In this negligence action emanating from a train-truck collision, the panel affirmed the district court's dismissal of the plaintiffs' comparative implied indemnity claim. We analyzed a series of complex cases involving whether a defendant seeking to minimize its liability in a comparative fault situation not involving a chain of distribution or similar commercial relationship must compare the fault of other defendants in order to reduce its own share of liability and damages. We ultimately held that if the defendant chooses to settle and obtain a release of common liabilities involving other parties whom the plaintiff did not sue, the defendant does not have an action for comparative implied indemnity or post-settlement contribution for damages caused by the other tortfeasors. The Kansas Supreme Court affirmed our panel's opinion, quoting liberally from the panel's assessment of the case law.

Plaintiffs' counsel was Mark A. Buck, Fairchild & Buck, P.A., Post Office Box 865, Lawrence, Kansas 66044, 785.838.8950.

Defendants' counsel were Stephen M. Kerwick, Foulston Siefkin, LLP, 1551 North Waterfront Parkway, Suite 100, Wichita, Kansas 67206, 316.267.6371 (Board of County Commissioners), and Edward L. Keeley, McDonald, Tinker, Skaer, Quinn & Herrington, P.A., Post Office Box 207, Wichita, Kansas 67201, 316.263.5851 (Moore Township).

9. *Bd. of Cnty. Com'rs of Sumner Cnty. v. Bremby*, 38 Kan. App. 2d 557, 168 P.3d 1034 (2007), *aff'd*, 286 Kan. 745, 189 P.3d 494 (2008).

The petitioners challenged the district court's finding that they lacked standing to appeal the issuance of a permit granted by the state to construct a solid waste landfill in the county. We reversed the district court's standing determination, concluding the petitioners had standing to sue as "parties" under the Kansas Judicial Review Act, K.S.A. 77-601 *et seq.*, based on their participation as a group and individually in the public hearing process preceding issuance of the permit. We further held that the petitioning citizens' group met the three-part test

permitting it to sue as an association on behalf of its members. The Kansas Supreme Court affirmed the panel's decision.

Plaintiffs' counsel were Robert V. Eye, Kaufman & Eye, 123 Southeast Sixth Avenue, Suite 200, Topeka, Kansas 66603, 785.234.4040 (Board of County Commissioners), and Robert J. Vincze, 10446 West Walker Place, Littleton, Colorado 80127, 303.948.8266 (Tri-County and Holland).

Defendants' counsel were Nancy L. Ulrich, 1000 Southwest Jackson, Suite 560, Topeka, Kansas 66612, 785.296.0685 (Kansas Department of Health and Environment), and Robert H. Epstein, Gallup, Johnson & Newman, L.C., Interco Corporate Tower, 101 South Hanley, Suite 1700, St. Louis, Missouri 63105, 314.615.6205, and John Terry Moore of Moore Martin, L.C., 622 East Douglas Avenue, Wichita, Kansas 67202, 316.267.6001 (for Waste Connections of Kansas, Inc.).

10. *State v. Moody*, 34 Kan. App. 2d 526, 120 P.3d 1156 (2005), *aff'd in part, rev'd in part*, 282 Kan. 181, 144 P.3d 612 (2006).

We concluded the district court had jurisdiction to sentence the defendant as a fourth-time offender for driving under the influence (DUI) despite a lack of proof of her prior convictions. We reasoned that proof of prior convictions is not an element of DUI and the defendant's due process rights were not violated because the complaint properly charged the defendant with a nonperson felony and the defendant received notice at the plea stage of the penalties for a fourth offense. On review, the Supreme Court affirmed, agreeing with the due process analysis applied by the panel and with the panel's conclusion that the defendant received due process at sentencing.

Plaintiff's counsel was Kristi Barton, Sedgwick County District Attorney's Office, 535 North Main, Second Floor, Wichita, Kansas 67203, 316.660.3621.

Defendant's counsel was Shawn Minihan (previously of the Appellate Defender Office), Johnson County District Attorney's Office, Post Office Box 728, Olathe, Kansas 66051, 913.715.3124.

- d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.
1. *N. Natural Gas v. ONEOK Field Services Co.*, 296 Kan. 906, 296 P.3d 1106 (2013), *petition for cert. filed June 11, 2013*.

Appellant's counsel were Mark D. Coldiron, Corey A. Neller and Paula M. Jantzen, Ryan Whaley Coldiron Shandy PLLC, 119 North Robinson Avenue,

Suite 900, Oklahoma City, Oklahoma 73102, 405.239.6040; and Richard A. Olmstead, Kutak Rock LLP, 1605 North Waterfront Parkway, Suite 150, Wichita, Kansas 67206, 316.609.7904.

Appellees' counsel were Dennis C. Cameron, Tyson D. Schwerdtfeger and Bradley W. Welsh, Gable & Gotwals, 1100 ONEOK Plaza, 100 West Fifth Street, Tulsa, Oklahoma 74103, 918.595.4800, and Robert R. Eisenhower, Johnston and Eisenhower, 113 East Third Street, Pratt, Kansas 67124, 620.672.5533 (for ONEOK); David L. Heinemann and S.J. Moore, Shank & Hamilton, P.C., 2345 Grand, Suite 1600, Kansas City, Missouri 64108, 816.471.0909, and Brian J. Madden and Adam S. Davis, Wagstaff & Cartmell, LLP., 4740 Grand Avenue, Suite 300, Kansas City, Missouri 64112, 816.701.1100 (for Nash Oil & Gas, Inc.); Jim H. Goering and Timothy B. Mustaine, Foulston Siefkin LLP, 1551 North Waterfront Parkway, Suite 100, Wichita, Kansas 67206, 316.291.9709, and Larry E. Keenan and Timothy R. Keenan, Keenan Law Firm, P.A., 2200 Lakin Avenue, Post Office Drawer 459, Great Bend, Kansas 67530, 620.603.0049 (for L.D. Drilling, Inc.); and Mark Banner, Hall, Estill, Hardwick, Gable, Golden & Nelson, P.C., 320 South Boston Avenue, Suite 200, Tulsa, Oklahoma 74103, 918.594.0400 (for Lumen Energy Corporation and Lumen Midstream Partnership, LLC).

2. *Eastman v. Coffeyville Res. Ref. & Mktg. L.L.C.*, 295 Kan. 470, 284 P.3d 1049 (2012).

Plaintiff's counsel was Randall K. Rathbun, Depew Gillen Rathbun & McInteer, L.C., 8301 East Twenty-First Street North, Suite 450, Wichita, Kansas 67206, 316.262.4000.

Defendant's counsel was Arthur E. Rhodes, Smithyman & Zakoura, Chartered, 7400 West 110th Street, Suite 750, Overland Park, Kansas 66210, 913.661.9800.

3. *In re T.S.W.*, 294 Kan. 423, 276 P.3d 133 (2012).

Petitioner's counsel was Richard A. Macias, Dodd & Macias, 901 North Broadway, Wichita, Kansas 67214, 316.262.5103.

Intervenor Cherokee Nation's counsel were N. Cheryl Hamby, Cherokee Nation Office of the Attorney General, Post Office Box 948, Tahlequah, Oklahoma 74465, 918.453.5000, extension 5438, and Anita Settle Kemp, 200 West Douglas, Suite 350, Wichita, Kansas 67202, 316.618.0818.

4. *State v. Robinson*, 293 Kan. 1002, 270 P.3d 1183 (2012).

Plaintiff's counsel was Lesley A. Isherwood, Sedgwick County District Attorney's Office, 1900 East Morris, Wichita, Kansas 67211, 316.660.3622.

Defendant's counsel was Reid T. Nelson, Capital Appeals and Conflicts Office, 701 Southwest Jackson, Topeka, Kansas 66603, 785.296.6764.

5. *Shrader v. Kansas Dep't of Revenue*, 45 Kan. App. 2d 216, 247 P.3d 681 (2011), *aff'd*, 296 Kan. 3, 290 P.3d 549 (2012).

Plaintiff's counsel was Daniel C. Walter, Ryan, Walter, McClymont, Chtd., Post Office Box 364, Norton, Kansas 67654, 785.877.5183.

Defendant's counsel was James G. Keller, Legal Services Bureau, Kansas Department of Revenue, 915 Southwest Harrison, Topeka, Kansas 66612, 785.877.5183.

6. *In re Sipe*, 44 Kan. App. 2d 584, 239 P.3d 871 (2010).

Petitioner's counsel was Geoffrey Clark, Wilbert & Towner, P.A., 506 North Pine, Pittsburg, Kansas 66762, 620.231.5620.

Respondent, the State of Kansas, did not file a brief.

7. *Bd. of Cnty. Com'rs of Cnty. of Sumner v. City of Mulvane*, 43 Kan. App. 2d 500, 227 P.3d 997, *rev. denied* 291 Kan. __ (2010).

Plaintiff's counsel were Teresa S. Watson and David R. Cooper, Fisher, Patterson, Saylor & Smith, L.L.P., Post Office Box 949, Topeka, Kansas 66601, 785.232.7761.

Defendant's counsel were James A. Walker and Paula D. Langworthy, Triplett, Woolf & Garretson, L.L.C., 2959 North Rock Road, Suite 300, Wichita, Kansas 67226, 316.630.8100.

The intervenors-landowner's counsel was Martin J. Peck, Security State Bank Building, 107 East Harvey, Wellington, Kansas 67152, 620.326.3641.

8. *Dodge City Implement, Inc. v. Bd. of Cnty. Com'rs of Cnty. of Barber*, 38 Kan. App. 2d 348, 165 P.3d 1060 (2007), *aff'd*, 288 Kan. 619, 205 P.3d 1265 (2009).

Plaintiffs' counsel was Mark A. Buck, Fairchild & Buck, P.A., Post Office Box 865, Lawrence, Kansas 66044, 785.838.8950.

Defendants' counsel were Stephen M. Kerwick, Foulston Siefkin, LLP, 1551 North Waterfront Parkway, Suite 100, Wichita, Kansas 67206, 316.267.6371 (Board of County Commissioners), and Edward L. Keeley, McDonald, Tinker, Skaer, Quinn & Herrington, P.A., Post Office Box 207, Wichita, Kansas 67201, 316.263.5851 (Moore Township).

9. *Bd. of Cnty. Com'rs of Sumner Cnty. v. Bremby*, 38 Kan. App. 2d 557, 168 P.3d 1034 (2007), *aff'd*, 286 Kan. 745, 189 P.3d 494 (2008).

Plaintiffs' counsel were Robert V. Eye, Kaufman & Eye, 123 Southeast Sixth Avenue, Suite 200, Topeka, Kansas 66603, 785.234.4040 (Board of County Commissioners), and Robert J. Vincze, 10446 West Walker Place, Littleton, Colorado 80127, 303.948.8266 (Tri-County and Holland).

Defendants' counsel were Nancy L. Ulrich, 1000 Southwest Jackson, Suite 560, Topeka, Kansas 66612, 785.296.0685 (Kansas Department of Health and Environment), and Robert H. Epstein, Gallup, Johnson & Newman, L.C., Interco Corporate Tower, 101 South Hanley, Suite 1700, St. Louis, Missouri 63105, 314.615.6205, and John Terry Moore of Moore Martin, L.C., 622 East Douglas Avenue, Wichita, Kansas 67202, 316.267.6001 (for Waste Connections of Kansas, Inc.).

10. *State v. Moody*, 34 Kan. App. 2d 526, 120 P.3d 1156 (2005), *aff'd in part, rev'd in part*, 282 Kan. 181, 144 P.3d 612 (2006).

Plaintiff's counsel was Kristi Barton, Sedgwick County District Attorney's Office, 535 North Main, Second Floor, Wichita, Kansas 67203, 316.660.3621.

Defendant's counsel was Shawn Minihan (previously of the Appellate Defender Office), Johnson County District Attorney's Office, Post Office Box 728, Olathe, Kansas 66051, 913.715.3124.

- e. Provide a list of all cases in which certiorari was requested or granted.

State v. Swindler, 296 Kan. 670, 294 P.3d 308 (2013), *petition for cert. filed*, 2013 WL 3477047 (U.S. July 9, 2013) (No. 13-52).

State v. Astorga, 295 Kan. 339, 284 P.3d 279 (2012), *vacated*, 81 U.S.L.W. 3701 (No. 12-7568), *remanded in light of Alleyne v. United States*, 570 U.S. ___, 133 S. Ct. 2151 (2013).

N. Natural Gas v. ONEOK Field Services Co., 296 Kan. 906, 296 P.3d 1106 (2013), *petition for cert. filed*, 2013 WL 2726793 (U.S. June 11, 2013) (No. 12-1436).

State v. Cheever, 295 Kan. 229, 284 P.3d 1007, *cert. granted in part*, 133 S. Ct. 1460 (2013).

State v. Gilliland, 294 Kan. 519, 276 P.3d 165 (2012), *cert denied*, 133 S. Ct. 1274 (2013).

State v. Kidd, 293 Kan. 591, 265 P.3d 1165 (2011), *cert. denied*, 132 S. Ct. 2433 (2012).

State v. Harris, No. 105,345, 2012 WL 1253215, 274 P.3d 25 (Kan. Apr. 6, 2012) (unpublished opinion) (per curiam), *cert. denied*, 133 S. Ct. 289 (2012).

State v. Jackson, No. 105,760, 2012 WL 1253377, 274 P.3d 26 (Kan. Apr. 6, 2012) (unpublished opinion) (per curiam), *cert denied*, 133 S. Ct. 282 (2012).

State v. Woodward, No. 103,555, 248 P.3d 280 (Kan. Mar. 18, 2011) (unpublished opinion), *cert. denied*, 132 S. Ct. 62 (2011).
In re: K.M.H., 285 Kan. 53, 169 P.3d 1025 (2007), *cert. denied*, 129 S. Ct. 36 (2008).

- f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.

During my six years on the Kansas Court of Appeals, I authored or participated in over 1600 opinions. Of those opinions, approximately 2% have been reversed.

Stechsulte v. Jennings, 43 Kan. App. 2d 47, 222 P.3d 507 (2010), *aff'd in part, rev'd in part*, No. 100,648, __ Kan. __, 298 P.3d 1083 (2013). The panel reversed summary judgment on several tort claims in favor of the sellers of a home, holding that the buyers had not waived reliance on sellers' alleged misrepresentations in disclosure form. The Kansas Supreme Court affirmed this holding. The panel also affirmed summary judgment in favor of the listing agent/broker and realty company. The Supreme Court reversed this holding, finding that the agent could be liable in tort for misrepresentations and that the agent's realty company could be vicariously liable.

State v. Peterson, No. 102,198, 2010 WL 3063159 (Kan. Ct. App. July 30, 2010), *rev'd*, 296 Kan. 563, 293 P.3d 730 (2013). The panel held a prosecutor's questioning at sentencing did not violate the State's obligation in the plea agreement to stand silent at sentencing. The Kansas Supreme Court reversed, concluding some of questions breached agreement to stand silent at sentencing.

In re Marriage of Brown, No. 103,758, 2010 WL 4157111 (Kan. Ct. App. Oct. 8, 2010) (per curiam), *rev'd*, 295 Kan. 966, 291 P.3d 55 (2012). The panel held the district court did not err in discharging all unpaid child support. The Kansas Supreme Court reversed, holding the district court was not authorized to vacate a temporary child support order.

State v. Galaviz, No. 101,084, 2009 WL 5206238 (Kan. Ct. App. Dec. 31, 2009) (per curiam), *rev'd*, 296 Kan. 168, 291 P.3d 62 (2012). The panel held the district court abused its discretion by failing to address an attorney's conflict of interest, but affirmed based on the defendant's failure to demonstrate prejudice. The Kansas Supreme Court reversed and remanded for a probation revocation hearing with a new attorney or for a hearing to address the conflict of interest.

State v. Lackey, 42 Kan. App. 2d 89, 208 P.3d 793 (2009), *rev'd*, 295 Kan. 816, 286 P.3d 859 (2012). The panel affirmed the district court's denial of a post-

conviction motion for DNA testing. The Kansas Supreme Court reversed, holding at least one item cited by the movant qualified for testing.

In re D.D.M., No. 101,868, 2009 WL 3428790 (Kan. Ct. App. Oct. 23, 2009) (per curiam), *rev'd*, 291 Kan. 883, 249 P.3d 5 (2011). The panel reversed the district court's denial of the State's motion to prosecute the juvenile as an adult. The Kansas Supreme Court reversed the panel, holding substantial competent evidence supported the district court's ruling.

Hill v. Kansas Dept. of Labor, Div. of Workers Compensation, 42 Kan. App. 2d 215, 210 P.3d 647 (2009), *rev'd in part*, 292 Kan. 17, 248 P.3d 1287 (2011). The panel held that the company's cab drivers were employees rather than independent contractors and the company knowingly failed to procure workers compensation insurance for the drivers, requiring imposition of a mandatory civil penalty. The Kansas Supreme Court agreed that the drivers were employees but reversed the panel's conclusion that the fine was mandatory.

State v. Neal, No. 100,366, 2009 WL 1140329 (Kan. Ct. App. April 24, 2009) (per curiam), *rev'd*, 292 Kan. 625, 258 P.3d 365 (2011). The panel affirmed the denial of a motion to correct an illegal sentence, concluding the district court did not err in aggregating three misdemeanor convictions into one person felony. The Kansas Supreme Court reversed and remanded for an evidentiary hearing to determine whether the movant waived his right to counsel regarding the misdemeanor convictions.

State v. Simmons, No. 98,770, 2009 WL 981685 (Kan. Ct. App. April 10, 2009) (per curiam), *rev'd*, 292 Kan. 406, 254 P.3d 97 (2011). The panel rejected the defendant's claims of ineffective assistance of counsel and prosecutorial misconduct. The Kansas Supreme Court reversed the panel's determination regarding prosecutorial misconduct.

Mitchell v. Petsmart, Inc., 41 Kan. App. 2d 523, 203 P.3d 76 (2009), *aff'd in part, rev'd in part*, 291 Kan. 153, 239 P.3d 51 (2010). The panel affirmed the Workers' Compensation Board's determinations regarding the claimant's repetitive injuries and held the Board properly determined the award by deducting temporary benefits from the total permanent award. The Kansas Supreme Court reversed this aspect of the panel's decision, holding an injured worker is entitled to an award at each separate level for multiple injuries to the same extremity.

In re J.M.D., 41 Kan. App. 2d 157, 202 P.3d 27 (2009), *rev'd*, 293 Kan. 153, 260 P.3d 1196 (2011). The panel reversed the termination of father's parental rights, finding insufficient evidence to support the findings that the father failed to provide financial or emotional support. The Kansas Supreme Court reversed, holding substantial competent evidence supported the district court's conclusions.

State v. Allen, No. 99,014, 2009 WL 196166 (Kan. Ct. App. Jan. 23, 2009) (per curiam), *rev'd*, 290 Kan. 540, 232 P.3d 861 (2010). The panel rejected the claim that two jury instruction errors deprived the defendant of a fair trial. The Kansas Supreme Court reversed, finding the failure to instruct on jury unanimity was clear error.

State v. Copes, No. 99,403, 2008 WL 5401449 (Kan. Ct. App. Dec. 19, 2008) (per curiam), *rev'd*, 290 Kan. 209, 224 P.3d 571 (2010). The panel affirmed an award of attorney fees and assessment of a statutory fine for the defendant's fourth conviction of driving under the influence. The Kansas Supreme Court reversed, holding the district court failed to consider the defendant's financial resources in determining the appropriate method of payment for the mandatory fine.

State v. Sheldon, No. 98,160, 2008 WL 4291510 (Kan. Ct. App. Sept. 19, 2008) (per curiam), *rev'd in part*, 290 Kan. 523, 231 P.3d 573 (2010). Finding insufficient evidence, the panel reversed three convictions of making a false information, but affirmed a conviction of felony obstruction of official duty. The Kansas Supreme Court reversed the felony obstruction conviction, finding the State failed to prove all essential elements of the crime.

State v. LaBelle, No. 98,136, 2008 WL 3915985 (Kan. Ct. App. Aug. 22, 2008) (per curiam), *aff'd in part, rev'd in part*, 290 Kan. 529, 231 P.3d 1065 (2010). The panel affirmed the defendant's criminal history score calculation and the defendant's sentencing as a persistent sex offender. The Kansas Supreme Court reversed, holding the district court erred in double counting the defendant's prior sex offense conviction and in classifying the defendant as a persistent sex offender based on a prior juvenile adjudication.

Nat'l Bank of Andover v. Kansas Bankers Sur. Co., No. 95,548, 2008 WL 939545 (Kan. Ct. App. April 4, 2008) (per curiam), *aff'd in part, rev'd in part*, 290 Kan. 247, 225 P.3d 707 (2010). The panel reversed the verdict for the bank in this action by the surety company to rescind bond. The Kansas Supreme Court held the panel erred in failing to reverse the judgment against the surety company regarding a specific question on the bond application, but ultimately affirmed the panel's reversal and remand.

State v. Schultz, No. 98,727, 2008 WL 713747 (Kan. Ct. App. Mar. 14, 2008) (per curiam), *aff'd in part, rev'd in part*, 289 Kan. 334, 212 P.3d 150 (2009). The panel affirmed a suppression, holding that a knock-and-talk encounter became a custodial interrogation requiring *Miranda* warnings. The Kansas Supreme Court reversed in part, holding that the failure to give timely *Miranda* warnings did not invalidate the subsequent consent to search.

State v. Overstreet, No. 95,682, 2008 WL 360642 (Kan. Ct. App. Feb. 8, 2008) (per curiam), *rev'd*, 288 Kan. 1, 200 P.3d 427 (2009). The panel affirmed the defendant's attempted first-degree murder conviction. The Kansas Supreme

Court reversed, finding error in aiding and abetting and deadlocked jury instructions and finding ineffective assistance of counsel prejudiced the defendant.

Deal v. Bowman, No. 96,868, 2007 WL 2768037 (Kan. Ct. App. Sept. 21, 2007) (per curiam), *rev'd*, 286 Kan. 853, 188 P.3d 941 (2008). The panel reversed the district court's denial of the plaintiff's motion for a directed verdict. The Kansas Supreme Court reversed, holding the district court properly submitted the negligence issue to the jury.

Rinke v. Bank of Am., 34 Kan. App. 2d 591, 121 P.3d 472 (2005), *rev'd*, 282 Kan. 746, 148 P.3d 553 (2006). The panel concluded the Workers' Compensation Board erred in finding that the parking lot in which the claimant fell was under employer's control. The Kansas Supreme Court reversed, finding the bank had control of the parking lot and suggesting the panel too narrowly construed the term "premises."

State v. Moody, 34 Kan. App. 2d 526, 120 P.3d 1156 (2005), *aff'd in part, rev'd in part*, 282 Kan. 181, 144 P.3d 612 (2006). The Kansas Supreme Court affirmed the panel's due process analysis but reversed the panel's decision on fees.

State v. Porting, 34 Kan. App. 2d 211, 116 P.3d 728 (2005), *rev'd*, 281 Kan. 320, 130 P.3d 1173 (2006). A majority of the panel affirmed the trial court's suppression of a warrantless search of the home of a soon-to-be released inmate. The Kansas Supreme Court reversed, disagreeing with the panel's determination that the defendant had common and apparent authority to consent to the search.

State v. Morton, No. 97,848, 2007 WL 2080540 (Kan. Ct. App. July 20, 2007) (per curiam), *rev'd*, 286 Kan. 632, 186 P.3d 785 (2008). The panel reversed a suppression order, holding that *Miranda* warnings were not required because the defendant was not in custody during the interrogation. The Kansas Supreme Court agreed that *Miranda* warnings were not required, but held that investigator's conduct during the interrogation rendered the defendant's statements involuntary.

State v. Tully, No. 92,764, 2007 WL 1109309 (Kan. Ct. App. April 13, 2007) (per curiam), *rev'd*, 293 Kan. 176, 262 P.3d 314 (2011). The panel rejected multiple alleged trial errors and affirmed the defendant's rape conviction. The Kansas Supreme Court reversed, holding the State violated the defendant's right to due process by eliciting testimony regarding invocation of his right to remain silent and the district court gave a clearly erroneous jury instruction on the level of force required to support rape charge.

Miller v. Westport Ins. Corp., No. 95,768, 2007 WL 519043 (Kan. Ct. App. Feb. 16, 2007) (per curiam), *rev'd*, 288 Kan. 27, 200 P.3d 419 (2009). The panel affirmed summary judgment in favor of the insurer who denied coverage for the

insurance agents' liability claims arising out of losses sustained by the agents' clients. The Kansas Supreme Court reversed, holding policy exclusions did not relieve the insurer of its duty to defend agents.

In re L.M., No. 96,197, 2006 WL 3775275 (Kan. Ct. App. Dec. 22, 2006) (per curiam), *rev'd*, 286 Kan. 460, 186 P.3d 164 (2008). The panel held the juvenile defendant was not entitled to a jury trial based on Kansas Supreme Court precedent, but questioned the rationale of that precedent. The Kansas Supreme Court then overruled its precedent, finding it no longer applied because of a legislative overhaul of the relevant statutes and concluded the juvenile had a right to a jury trial.

Wilkins v. State, No. 95,023, 2006 WL 3409418 (Kan. Ct. App. Nov. 22, 2006) (per curiam), *rev'd*, 286 Kan. 971, 190 P.3d 957 (2008). The panel determined the defendant was entitled to a new trial, in part, based on ineffective assistance of counsel. The Kansas Supreme Court acknowledged the close question regarding counsel's effectiveness, but ultimately concluded counsel's failure did not prejudice the defendant.

Jeremiah 29:11, Inc. v. Seifert, 36 Kan. App. 2d 19, 136 P.3d 357 (2006), *rev'd* 284 Kan. 468, 161 P.3d 750 (2007). The panel held that a deed unsigned by the grantee was a valid warranty deed, and the grantees were bound by restrictions in the deed. The Kansas Supreme Court disagreed, holding that without the grantees' signatures there was no evidence the grantees had notice of the restrictive covenant.

State v. Adams, 35 Kan. App. 2d 439, 131 P.3d 556 (2006), *rev'd*, 283 Kan. 365, 153 P.3d 512 (2007). The panel reversed one conviction and affirmed the defendant's remaining convictions and sentence. The Kansas Supreme Court concluded exceptional circumstance permitted review of a speedy trial issue not presented to the panel and reversed all of defendant's convictions on that ground.

State v. McKissack, No. 93,670, 2006 WL 619195 (Kan. Ct. App. Mar. 10, 2006) (per curiam), *aff'd in part, rev'd in part*, 283 Kan. 721, 156 P.3d 1249 (2007). The panel concluded that hearsay evidence was properly admitted, that there was not insufficient evidence to support a conviction because of inconsistent verdicts, and the district court did not err in determining criminal deprivation of property was a lesser included offense of misdemeanor theft. In reaching its third holding, the panel noted it was bound by precedent, but questioned the rationale of that precedent. The Kansas Supreme Court found its precedent inconsistent with applicable statutes and case law and overruled its earlier opinion. The court agreed with the panel that the hearsay was properly admitted but disagreed that an erroneous instruction did not require reversing a conviction.

State v. Parker, No. 92,541, 2005 WL 3434002 (Kan. Ct. App. Dec. 9, 2005) (per curiam), *rev'd*, 282 Kan. 584, 147 P.3d 115 (2006). In an opinion that I dissented

from, the panel held that the defendant's initial encounter with officers was voluntary and that officers had reasonable suspicion to detain the defendant at the time he was seized. The Kansas Supreme Court reversed, agreeing that the initial encounter was voluntary, but concluding the encounter later became involuntary and the officers lacked reasonable suspicion to detain the defendant.

State v. Hicks, No. 93,602, 2005 WL 2840295 (Kan. Ct. App. Oct. 28, 2005) (per curiam), *rev'd*, 282 Kan. 599, 147 P.3d 1076 (2006). In an opinion that I dissented from, the panel relied on corroborated anonymous tips, trash pulls, and the defendant's criminal history to find probable cause supported a search warrant affidavit. The panel also determined a review of a probable cause determination is deferential. The Kansas Supreme Court reversed, agreeing that a probable cause determination is not reviewed de novo, but holding that even under a deferential review, the affidavit did not establish probable cause.

Botkin v. Security State Bank, 33 Kan. App. 2d 914, 111 P.3d 182 (2005), *aff'd in part, rev'd in part*, 281 Kan. 243, 130 P.3d 92 (2006). The panel determined that the Statute of Frauds did not prevent a bank from enforcing 32 instruments guaranteeing a loan, reasoning the instruments contained the essential elements of the contract. The panel remanded for a determination as to the parties' intent regarding a phrase in the contract and held that if the parties' intent could not be determined, then the loan could be enforced against each instrument without limitation. The Kansas Supreme Court affirmed on all points except the panel's conclusion regarding interpretation of the contract.

- g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.

As a justice of the Kansas Supreme Court, I have not issued any unpublished opinions. During my service as a judge of the Kansas Court of Appeals, approximately 80% of the opinions I authored were unpublished. All such unpublished decisions are listed in response to Question 13b, are available on Westlaw and LexisNexis, and can be obtained in hard copy from the Clerk of the Kansas Appellate Court's Office.

- h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.

State v. Morales, 297 Kan. 397, 300 P.3d 1090 (2013).

State v. Williams, 297 Kan. 370, 300 P.3d 1072 (2013).

In re Burch, 296 Kan. 713, 294 P.3d 1155 (2013).

State v. Diaz-Ruiz, 42 Kan. App. 2d 325, 211 P.3d 836 (2009).

State v. Haffner, 42 Kan. App. 2d 205, 209 P.3d 734 (2009), *rev. denied*, 290 Kan. 1098 (2010).

State v. Chilson, 38 Kan. App. 2d 338, 165 P.3d 304 (2007).

State v. Palmer, 37 Kan. App. 2d 819, 158 P.3d 363 (2007).

State v. Shelinbarger, 33 Kan. App. 2d 678, 108 P.3d 445 (2005), *rev. denied*, 280 Kan. 990 (2005).

- i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.

I have never sat by designation on a federal court of appeals.

14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself *sua sponte*. Identify each such case, and for each provide the following information:

- a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself *sua sponte*;
- b. a brief description of the asserted conflict of interest or other ground for recusal;
- c. the procedure you followed in determining whether or not to recuse yourself;
- d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

Our Court of Appeals utilizes an automatic recusal system whereby each judge submits a list of automatic recusals – *i.e.*, a list of individuals, companies, or circumstances under which that judge will always recuse. This list is updated periodically as the judge reports additions or deletions to the list.

In the Court of Appeals, if a judge cannot hear an appeal because of an identified automatic recusal, the case is simply assigned to a panel on which the recusing judge will not be sitting and the judge is generally unaware of the consideration of the automatic recusal. After the automatic recusals are identified, the panel is provided with a list of ready case sheets, and those sheets are reviewed for any additional recusals. While I was on the Court of Appeals, I do not recall being required to recuse on any appeal once it had been assigned to the panel.

Our Supreme Court, like the Court of Appeals, utilizes an automatic recusal system whereby each justice submits a list of automatic recusals – *i.e.*, a list of individuals,

companies, or circumstances under which that justice will always recuse. The list is updated periodically as the justice reports additions or deletions to the list.

In the Supreme Court, after the clerk identifies the automatic recusals on a given docket, she circulates to each member of the court those cases identified along with ready case sheets, showing the parties and counsel involved in all cases on the docket. The justices then report back to the clerk whether there are any additional recusals.

In addition to these automatic recusals in the Supreme Court, effective upon my joining the Kansas Supreme Court in January 2011, I directed the clerk to show me as recused on any petition for review from a Court of Appeals opinion published on or before November 3, 2010, or any opinion on which I had served as a member of the Court of Appeals panel deciding the case. Effective January 2012, I modified that directive to include only petitions for review from opinions on which I had served as a member of the Court of Appeals panel deciding the case.

Since joining the Kansas Supreme Court, I have been automatically recused on the following cases based upon the automatic recusal list I provided to the clerk or because it was a petition for review which met the above circumstances.

Case No. 99,953, *Judith Berry v. National Medical Services, Inc., d/b/a NMS Labs, et al.* (Petition for Review)

Case No. 100,366, *State of Kansas v. Eric L. Neal* (Petition for Review)

Case No. 100,248, *Craig Alan Fischer v. State of Kansas* (Petition for Review)

Case No. 99,550, *Progressive Products, Inc. v. Tom Swartz, et al.* (Petition for Review)

Case No. 102,214, *Monica Harrison v. Adiel W. Tauheed* (Petition for Review)

Case No. 98,292/98,952, *State of Kansas v. Dana Wayne Deal* (Petition for Review)

Case No. 98,883, *State of Kansas v. Carlos E. Montes-Mata* (Petition for Review)

Case No. 100,012, *Cory Saylor v. Westar Energy, Inc.* (Petition for Review)

Case No. 99,503, *Tammy J. Adamson v. Kody J. Bicknell* (Petition for Review)

Case No. 98,822, *State of Kansas v. Rodolfo Gaona* (Petition for Review)

Case No. 102,731, *State of Kansas, et al. v. City of Topeka, et al.* (Recusal based upon district judge, who was the judge assigned to my 2010 divorce case)

Case No. 98,629, *State of Kansas v. Bernard Eugene Preston* (Petition for Review)

Case No. 99,232, *State of Kansas v. Saul Arthur Miller* (Petition for Review)

Case No. 100,246, *State of Kansas v. William E. McKnight, Jr.* (Petition for Review)

Case No. 100,286, *Keely Foster, et al. v. Michelle A. Klaumann, M.D.* (Petition for Review)

Case No. 100,215, *Tom Bates and Michelle Entriken, as Parents and Next Friends of Hayley Bates, A Minor v. Dodge City Healthcare Group, L.P., d/b/a Western Plains Regional Hospital* (Petition for Review)

Case No. 104,294, *Seaboard Corporation v. Marsh, Inc., et al.* (Recusal based on appellants' counsel, J. Nick Badgerow, my good friend and former supervising partner at Spencer Fane Britt & Browne)

Case No. 101,766, *Donald R. Rucker, et al. v. Earl R. Delay, et al.* (Petition for Review)

Case No. 101,812, *Waste Connections of Kansas, Inc. v. Ritchie Corporation* (Petition for Review)

Case No. 100,728, *State of Kansas v. Vicki L. Johnson* (Petition for Review)

Case No. 100,396, *State of Kansas v. Kerry D. Jenkins* (Petition for Review)

Case No. 100,489, *State of Kansas v. Chad Fleming* (Petition for Review)

Case No. 101,445, *Danny Douglas v. Ad Astra Information Systems, et al.* (Petition for Review)

Case No. 100,890, *State of Kansas v. Robert Henry Lackey, II* (Petition for Review)

Case No. 104,498, *Kansas One-Call System, Inc. v. State of Kansas* (Recusal based on district judge, who was the judge assigned to my 2010 divorce case.)

Case No. 100,648, *Daniel J. Stechsulte, Jr., et al. v. A. Drue Jennings, et al.* (Petition for Review)

Case No. 100,464, *State of Kansas v. Gabriel Nambo, Jr.* (Petition for Review)

Case No. 100,494, *State of Kansas v. Joshua B. Coman* (Petition for Review)

Case No. 100,497, *Margaret Russell Law v. Law Company Building Associates, et al.* (Petition for Review)

Case No. 100,178, *State of Kansas v. Anthony R. Murphy* (Petition for Review)

Case No. 100,173, *State of Kansas v. Angela Anderson* (Petition for Review)

Case No. 101,834, *In the Matter of the Marriage of Marc H. Hall and Susan C. Hall* (Petition for Review)

Case No. 100,362, *In the Matter of the Care and Treatment of Robert C. Ontiberos* (Petition for Review)

Case No. 101,912, *State of Kansas v. Dinah Sanchez-Loredo* (Petition for Review)

Case No. 100,596, *State of Kansas v. Alexander Tapia* (Petition for Review)

Case No. 101,392, *State of Kansas v. Kenneth D. Adams* (Petition for Review)

Case No. 101,378, *State of Kansas v. M.L. Snellings* (Petition for Review)

Case No. 100,888, *State of Kansas v. Christopher J. Brittingham* (Petition for Review)

Case No. 100,501, *Lynwood Baker v. State of Kansas* (Petition for Review)

Case No. 103,758, *In the Matter of the Marriage of Kristin L. Brown and John Jared Brown* (Petition for Review)

Case No. 101,084/101,085, *State of Kansas v. Jose Galaviz* (Petition for Review)

Case No. 102,122, *Marvin Hansford v. Silver Lake Heights, LLC, et al.* (Petition for Review)

Case No. 103,176, *Stanley L. Shrader v. Kansas Department of Revenue* (Petition for Review)

Case No. 102,198, *State of Kansas v. Robert C. Peterson* (Petition for Review)

My recusal has never been requested by motion by any party either in the Kansas Court of Appeals or the Kansas Supreme Court.

15. **Public Office, Political Activities and Affiliations:**

- a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

I have not held public office other than judicial office. I have not had any unsuccessful candidacies for elected office or unsuccessful nominations for appointed office.

- b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I have never held an office in any political party, nor have I held a position or played a role in a political campaign.

16. **Legal Career:** Answer each part separately.

- a. Describe chronologically your law practice and legal experience after graduation from law school including:
- i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

I served as a law clerk to Judge Patrick F. Kelly, United States District Court for the District of Kansas, from August 1987 to August 1989.

I served as a research attorney to Justice Harold S. Herd, Kansas Supreme Court, from August 1985 to August 1987.

- ii. whether you practiced alone, and if so, the addresses and dates;

I have never practiced alone.

- iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

1989 – 1995

Spencer Fane Britt & Browne, LLP
9401 Indian Creek Parkway
Corporate Woods Building 40, Suite 700
Overland Park, Kansas 66210

Associate

(From 1991 to 1993, I worked in the firm's Kansas City office, located at 1000 Walnut Street, Suite 1400, Kansas City, Missouri, 64106.)

1995 – 2004

United States Attorney's Office for the District of Kansas
United States Courthouse
444 Southeast Quincy, Suite 290
Topeka, Kansas 66683

Assistant United States Attorney

Appellate Coordinator (2000 – 2004)

(From 1995 to 1996, I worked in the Kansas City office, located at United States Courthouse, 500 State Avenue, Suite 360, Kansas City, Kansas 66101.)

- iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I have never served as a mediator or arbitrator in alternative dispute resolution proceedings.

b. Describe:

- i. the general character of your law practice and indicate by date when its character has changed over the years.

While an associate at Spencer Fane Britt & Browne, I practiced in the firm's Litigation Group and Labor and Employment Group. In my first two years at the firm, from 1989 to 1991, I handled various types of litigation including medical malpractice, employment litigation and personal injury cases. During this period of time, my practice primarily was a discovery and motion practice. From 1991 to 1995, I increasingly specialized in employment litigation defense. Approximately 90% of that litigation was before the United States District Court in Kansas City, Topeka and Wichita, Kansas. The cases I handled or worked on included federal claims of discrimination on the basis of race, sex, age and disability, retaliation, and state law claims of retaliatory discharge, negligent supervision and infliction of emotional distress. The cases seldom went to trial, mostly because we had a very successful discovery and motion practice, and nearly every case I handled involved one or more

dispositive motions. If we were not successful in resolving the case in our client's favor through pretrial rulings, we most often settled the case. During my last few years at the firm, as I became more specialized in the employment litigation arena, I began counseling employers and training employees on preventing employment claims and working with employers in the pre-litigation and Equal Employment Opportunity stages of the process.

During my first five years as an Assistant United States Attorney (AUSA), from 1995 to 2000, I handled the traditional responsibilities of a civil AUSA, including a caseload of approximately 70% general litigation and 30% non-litigation. During those years, I handled a variety of defensive litigation, including Federal Tort Claims Act litigation, medical malpractice claims and employment discrimination litigation. My non-litigation practice included handling bankruptcies, foreclosures and obtaining judgments on defaulted government loans. Until 1999, I also handled significant additional responsibilities for the District of Kansas when I served as both the Government Ethics Officer and the Professional Responsibility Officer for the district.

Beginning in 2000 until I left the United States Attorney's Office in 2004, I was the Appellate Coordinator for the district. As the Appellate Coordinator, I handled both civil and criminal appeals for the United States. Over my nearly five years in that role, I wrote approximately 100 briefs on behalf of the United States or its agencies, primarily as the appellee. I also argued approximately 25 appeals to the Tenth Circuit Court of Appeals. Among my duties as Appellate Coordinator, I was responsible for evaluating the viability of appeals by the United States from adverse decisions, preparing supporting memoranda and seeking authority from the Solicitor General of the United States for all such appeals. From 2002 to 2004, I took on a civil litigation caseload in addition to my appellate responsibilities. In that capacity, I handled three or four litigation matters at any given time, primarily employment litigation, in which I had developed an expertise.

- ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

At Spencer Fane Britt & Browne, our clients were primarily large manufacturers, retail employers in the Kansas City and Midwest region and municipalities, and I specialized in defensive employment counseling and litigation. As a civil AUSA, I represented various federal agencies in multiple capacities but primarily focused on defensive employment litigation. The employers we most frequently represented in defensive litigation included the United States Postal Service, the Veterans Administration, the Department of Housing and Urban Development, and

the Federal Bureau of Investigation. In non-defensive matters, I also represented the Internal Revenue Service, the Small Business Administration, the Department of Education, and the Farm Services Agency.

- c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

After clerking, approximately 90% of my practice was in litigation and I appeared in court occasionally from 1989 to 2000. From 2000 to 2004, my practice was approximately 80% appellate and 20% litigation, and I continued to appear in court occasionally. I have not practiced since I was appointed to the Kansas Court of Appeals in 2004.

- i. Indicate the percentage of your practice in:

- | | |
|-----------------------------|------|
| 1. federal courts: | 80 % |
| 2. state courts of record: | 15 % |
| 3. other courts: | 0% |
| 4. administrative agencies: | 5 % |

- ii. Indicate the percentage of your practice in:

- | | |
|--------------------------|-----|
| 1. civil proceedings: | 75% |
| 2. criminal proceedings: | 25% |

- d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I have tried three cases to verdict, judgment or final decision, one as sole counsel and two as associate counsel.

- i. What percentage of these trials were:

- | | |
|--------------|-----|
| 1. jury: | 67% |
| 2. non-jury: | 33% |

- e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I have not practiced before the Supreme Court of the United States.

17. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases

were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- a. the date of representation;
 - b. the name of the court and the name of the judge or judges before whom the case was litigated; and
 - c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.
1. *Barvick v. Cisneros*, No. 95-2326-JWL; 1996 WL157731 (D. Kan. Mar. 21, 1996); 941 F. Supp. 1007 (D. Kan. 1996) (before District Judge John Lungstrum (pre-trial) & Magistrate Judge Gerald Rushfelt (trial)).

The plaintiff, Barvick, originally alleged he was discriminated against by the Department of Housing and Urban Development (HUD) on the basis of his sex and his age when he was denied a promotion to a GS-13 criminal investigator position. He also alleged that he was subjected to several other discriminatory acts leading up to the promotion denial, that he was retaliated against and that he was subjected to violations of the Rehabilitation Act and Equal Pay Acts. I defended this reverse discrimination case on behalf of HUD. The Rehabilitation Act and retaliation claims were voluntarily dismissed by agreement of the parties. The district court thereafter granted my motion to dismiss in part and dismissed all but one of Barvick's failure to promote claims. Following extensive discovery on the remaining counts, I filed a motion for summary judgment on behalf of HUD which was granted in part and denied in part.

The case then proceeded to a one-week jury trial on Barvick's remaining claims of gender and age discrimination, which, pursuant to an agreement of the parties, was tried before United States District Magistrate Judge Gerald Rushfelt. I served as sole counsel at trial, handling all aspects of the case from start to finish. The jury rejected Barvick's age discrimination case, but found for him on his claim of gender discrimination and awarded him damages of \$80,000. In a post-trial ruling, Judge Rushfelt determined Barvick was entitled to post-judgment interest and equitable relief in the form of a promotion.

I was sole counsel in this case.

Opposing counsel was Andrew Marquardt, currently at Advantage Tech Inc., 4400 West 107th Street, Overland Park, Kansas 66207, 913.888.5050.

2. *Downey v. United States*, No. 96-4167-RDR (D. Kan.), 79 F. Supp. 2d 1250 (D. Kan. 1999) (before Senior District Judge Richard Rogers).

The plaintiff originally filed this case as two separate malpractice cases — one in federal court against the Veterans Administration and the other in state court against Dr. Tom Patterson. From 1997 to 2000, I defended the case on behalf of the United States, which intervened in the state court action and removed the case to federal court. The United States Attorney General filed a partial certification under the Westfall Act, 28 U.S.C. 2679, certifying that part of the actions for which plaintiff was suing occurred while Dr. Patterson was working within the scope of his employment for the United States. Following discovery, I filed a motion for summary judgment as to the Veterans Administration on statute of limitations grounds. The court held triable issues of material fact existed regarding the date the patient knew he was injured, precluding summary judgment. Eventually, because of my assignment as the Appellate Coordinator, the case was tried to the court by Assistant United States Attorney Mary Ramirez, resulting in a defense verdict.

Plaintiff's counsel was Brock Snyder, 1401 Southwest Topeka Boulevard, Topeka, Kansas 66612, 785.232.1400.

Co-defendant Patterson's counsel was Richard Anderson, currently a state district court judge for the Shawnee County District Court, 200 East Seventh Street, Room 411, Topeka, Kansas 66603, 785.233.8200.

3. *Lemons v. Dillard's Dept. Store*, Case No. 92-CV-4170 (D. Kan.) (before Senior District Judge Dale Saffels, now deceased (trial) and Magistrate Judge Ron Newman, now deceased (post trial)).

In this age discrimination and retaliation case, I represented Dillard's Department Stores. I do not recall the extent of my participation in discovery, although the docket sheet indicates the case was removed to federal court from state court. I, along with lead counsel, Michaela Warden, tried the case to a jury for approximately three days, resulting in a defense verdict. As second-chair, my responsibilities included conducting voir dire, direct and cross-examination of several witnesses, and preparation of all trial pleadings, including jury instructions. Post-trial, in proceedings before the magistrate, I obtained a judgment in excess of \$3000 on behalf of Dillard's for costs. I eventually conducted a judgment debtor's examination of plaintiff to assist in collecting those costs.

Lead counsel for defendant was Michaela Warden, currently Warden Law Firm, LLC, 6815 West 67th Street, Shawnee Mission, Kansas 66202, 816.516.5755.

Plaintiff's counsel were Glenn Griffeth, 401 Southwest Topeka Boulevard, Topeka, Kansas 66603, 785.296.4902, and A.J. Kotich, 1000 Southwest Jackson, Suite 500, Topeka, Kansas 66612, 785.296.5670.

4. *Anspach v. Tomkins Industries*, No. 91-2279 (D. Kan.), 817 F. Supp. 1499 (D. Kan. 1993) (before Judge Earl O'Connor, now deceased).

Plaintiffs, a husband and wife, brought suit against their mutual employer, their individual supervisors, the union and its agents. Lead counsel Michael Delaney and I represented the employer and its individual supervisors. I handled paper discovery, witness interviews, some depositions and prepared the summary judgment motion in which the company defendants obtained partial summary judgment on both plaintiffs' state law claims of intentional infliction of emotional distress and negligence against the employer, and the plaintiffs' state law claims against the union and its agents. Following summary judgment, we settled the remaining claims against the company defendants. I then worked with the company's corporate office to develop a program to educate the company's employees about policies and procedures to prevent harassment and then traveled to several of the company's plants nationwide to conduct the training.

Plaintiffs' counsel were Alan Johnson, Sloan, Listrom, Eisenbarth, Sloan & Glassman, L.L.C., 534 South Kansas Avenue, Suite 1000, Topeka, Kansas 66603, 785.357.6311 and Thomas Stratton, now Director of the City Council of New Orleans' Utilities Regulatory Office, 1300 Perdido Street Second Floor West, New Orleans, Louisiana 70112, 504.653.1110.

Defendants' lead counsel was Michael Delaney, Spencer Fane Britt & Browne, 9401 Indian Creek Parkway, Building 40, Suite 700, Overland Park, Kansas 66210, 913.327.5177.

5. *United States v. Youts*, 229 F.3d 1312 (10th Cir. 2000) (before Judges Seymour, Henry and McMurphy)

Youts was convicted by a jury in the United States District Court for the District of Kansas of "joyriding" a train engine and ultimately wrecking the train in downtown Wichita in violation of federal law. I wrote the brief and argued the appeal for the United States. The panel affirmed Youts' conviction ruling that: (1) putting the train in reverse at full throttle, causing subsequent derailment, constituted "willful" wrecking of the train; (2) admission of evidence that defendant had previously stolen and wrecked a semi-truck was harmless error; and (3) the district court's decision to readmonish jury rather than conduct a bias hearing following a juror's contact with the prosecutor was not "plain error."

Defendant's counsel was Steven Gradert, Assistant Federal Public Defender, 301 North Main, 850 Epic Center, Wichita, Kansas 67202, 316.269.6445.

6. *United States v. Zubia-Melendez*, 263 F.3d 1155 (10th Cir. 2001) (before Judges Ebel, Anderson and Baldock).

The defendant appealed from the denial of his motion to suppress. I wrote the brief and argued the appeal on behalf of the United States. The panel affirmed the conviction, finding: (1) the officer had probable cause to stop the defendant's vehicle for crossing into another lane of travel; (2) the officer was justified in requesting identifying information from passenger; (3) the officer had reasonable suspicion to detain the driver and his passenger to conduct further investigation; and (4) the defendant's consent to search was not rendered involuntary by his initial refusal or the officer's actions.

Defendant's counsel was Assistant Federal Public Defender Michael Harris. I could not locate contact information.

7. *United States v. Peterson*, 312 F.3d 1300 (10th Cir. 2002) (before Judges Seymour, Henry and Briscoe).

The defendant appealed his conviction pursuant to a guilty plea to mail fraud and tax evasion. I wrote the brief and argued this case on appeal on behalf of the United States. The panel affirmed, finding the trial court did not clearly err in calculating the total amount of the loss resulting from the defendant's illegal activities. Further, in a matter of first impression, the panel concluded the defendant's mail fraud and tax evasion offenses were properly not grouped together for a multiple count adjustment under the guideline for groups of closely related counts on the basis that one of the counts embodied conduct treated as a specific offense characteristic in, or other adjustment to, the guideline applicable to the other count.

Defendant's counsel was former Assistant Federal Public Defender Marilyn Trubey, who has since retired.

8. *United States v. Hathaway*, 318 F.3d 1001 (10th Cir. 2003) (before Judges Kelly, Brorby and Oberdorfer).

The defendant appealed his conviction of forcibly assaulting a federal officer under 18 U.S.C. Sec. 111(a), arguing that since both the indictment and the jury instructions failed to distinguish between simple and non-simple assault, he had been charged only with a misdemeanor violation and he could not in fact be convicted of a felony. I wrote the brief and argued the appeal on behalf of the United States. The panel held as a matter of first impression that the misdemeanor offense of simple assault of a federal officer or employee is an assault which does not involve actual physical contact, a deadly or dangerous weapon, bodily injury or the intent to commit murder or certain other felonies. The panel reversed the defendant's felony conviction and remanded the case for imposition of the misdemeanor simple assault conviction.

Defendant's counsel was Assistant Federal Public Defender Michael Harris. I could not locate contact information.

9. *Harms v. I.R.S.*, 321 F.3d 1001 (10th Cir. 2003) (before Judges Lucero, Portfilio and Murphy)

I wrote the brief and argued the appeal on behalf of the Internal Revenue Service (I.R.S.). Harms sued the I.R.S., alleging wrongful suspension and termination in violation of Title VII and Rehabilitation Act. Harms appealed from the district court's entry of summary judgment for the I.R.S. on his suspension claims and its dismissal of his termination claims for lack of subject matter jurisdiction. The panel affirmed the district court decision, holding that the district court: (1) did not abuse its discretion in declining to equitably toll the period for filing claims based on mental incapacity; (2) did not abuse its discretion in declining to equitably toll the period for filing claims based on the Treasury Complaint Center improperly instructing Harms to take his suspension claims to the Merit Systems Protection Board (MSPB); and (3) had jurisdiction to review the MSPB decision dismissing "mixed case" appeal for untimeliness.

Plaintiff's counsel was Alleen Castellani, Van Bebber, McDowell, Rice, Smith & Buchanan, 605 West 47th Street, Suite 350, Kansas City, Missouri 64112, 816.753.5400.

10. *United States v. Carter*, 360 F.3d 1235 (10th Cir. 2004) (Judges Seymour, McWilliams and Hartz).

I wrote the brief and argued this appeal from the denial of a motion to suppress that preceded defendant's plea to possession of a firearm after previously being convicted of three felonies. The panel held that: (1) the officers did not violate the Fourth Amendment in drawing weapons and placing the defendant in handcuffs; (2) the officers' entry into the backyard and sweep of the garage was not warranted by the possibility of destruction of evidence; and (3) the officers' entry into the backyard and their sweep of the garage was not justified as a protective sweep. The case was remanded to the district court for a determination of whether the consent to search was voluntary.

Defendant's counsel was Ron Wurtz, formerly Assistant Federal Public Defender. I was not able to locate contact information.

18. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

From 1995 to 2000, I served as a Government Ethics Officer at the United States Attorney's Office. In that capacity, I was responsible for providing annual training to all employees of the United States Attorney's Office in all three of the district's locations. Additionally, during that same period of time, I served as the Professional Responsibility Officer for the United States Attorney's Office. In that role, my responsibilities included training and counseling Assistant United States Attorneys in the district on professional responsibility issues that arose in criminal and civil litigation, including application of the Model Rules of Professional Conduct.

Throughout most of my career, I was an active member of the Board of Editors of the Journal of the Kansas Bar Association. The Journal is the monthly publication of the Kansas Bar Association. As a member, I solicited articles from members of the bar, co-authored several substantive legal articles, edited many other articles and eventually chaired the Board.

19. **Teaching:** What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

I have not taught any courses.

20. **Deferred Income/ Future Benefits:** List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

I expect to receive income from the Kansas Retirement System for Judges (KRSJ), which is under the umbrella of the Kansas Public Employees Retirement System (KPERS). I became vested in the KRSJ immediately upon my appointment. I have no other deferred income arrangements.

21. **Outside Commitments During Court Service:** Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

I have no such plans, commitment or agreements.

22. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding \$500 or more (if you prefer to do so, copies of the financial

disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

See attached Financial Disclosure Report.

23. **Statement of Net Worth**: Please complete the attached financial net worth statement in detail (add schedules as called for).

See attached Net Worth Statement.

24. **Potential Conflicts of Interest**:

- a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

At this time I do not anticipate any conflicts-of-interest from family members, other persons or financial arrangements if confirmed. The only category of litigation that might present a conflict would be habeas cases in which I sat on the appellate court, from which I would recuse myself.

- b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

If confirmed, I would carefully follow 28 U.S.C. 455 and Canon 3 of the Code of Conduct for United States Judges. I would also engage in prompt and immediate review of the parties, their affiliates, and the issues in any litigated matter to come before me so that I could make a prompt, informed decision regarding the propriety of my participation in the matter.

25. **Pro Bono Work**: An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

While employed at Spencer Fane Britt & Browne in Kansas City, Missouri, I represented biological mothers (whose children were in alternative care) in proceedings in the Juvenile Division of the Jackson County, Missouri Circuit Court. Since becoming a judge in 2004, I have volunteered my time at Washburn School of Law in many different capacities, but in particular, I have focused on the mentorship program. Each year I mentored at least one student in addition to maintaining mentoring relationships with previous mentees through law school and beyond. I have participated in many moot court activities and competitions at both our state law schools as well as at local high

schools. I also began delivering for Meals on Wheels in Topeka in approximately 2003, delivering a route every other week for more than seven years.

26. **Selection Process:**

- a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

In October 2012, I received a call from a representative from the White House Counsel's Office to discuss whether I would be interested in serving on the Tenth Circuit. Since October 12, 2012, I have been in contact with officials from the Office of Legal Policy at the United States Department of Justice. On May 21, 2013, I spoke by phone with United States Senator Jerry Moran regarding my interest in the position. On July 25, 2013, I met with officials from the White House Counsel's Office and the Department of Justice in Washington, D.C. On August 1, 2013, the President submitted my nomination to the Senate.

- b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, explain fully.

No.

AFFIDAVIT

I, Nancy L. Moritz, do swear
that the information provided in this statement is, to the best
of my knowledge, true and accurate.

08/01/2013

(DATE)

Nancy L. Moritz

(NAME)

Cindy Lowe

(NOTARY)

