Approved April 8, 1989
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY.

The meeting was called to order by Representative Michael O'Neal at
Chairperson

3:30 ~~x~~p.m. on March 20, 19 89 in room 522-S of the Capitol.

All members were present except:

Representatives Buehler, Lawrence, Peterson, Scott and Snowbarger, who were excused.

Committee staff present:

Jerry Donaldson, Legislative Research Department
Jill Wolters, Revisor of Statutes Office
Mary Jane Holt, Committee Secretary

Conferees appearing before the committee:

Judge Wm. Randolph Carpenter, Administrative District Judge, Shawnee County District Court
Gene Johnson, Kansas Community Alcohol Safety Action Project Coordinators Association
Senator Lana Oleen
Judge Pat Caffey, Municipal Judge, Manhattan
Judge John D. Sherwood, Municipal Judge, Oswego
Judge Jay Scott Emler, Municipal Judge, Lindsborg
Jim Kaup, League of Kansas Municipalities
Judge Robert A. Thiessen, Administrative Judge, Wichita, submitted written testimony
David E. Johnson, Director, Kansas Bureau of Investigation
Jim Clark, Kansas County and District Attorneys Association

HEARING ON S. B. 262 - Method of trial for misdemeanor and traffic infraction cases

Judge Wm. Randolph Carpenter, Administrative District Judge, Shawnee County District Court, testified S.B. 262 provides that the trial for misdemeanor and traffic infraction cases shall be to the court unless a jury trial is requested in writing by the defendant not later than 7 days after first notice of trial assignment is given to the defendant or such defendant's counsel. This would be more efficient and would facilitate case flow management and reduce delay. He urged the Committee to pass S.B. 262.

Gene Johnson, Kansas Community Alcohol Safety Action Project Coordinators Association, supported S.B. 262 as a means of speeding up the judicial process in the case of DUI offenders. The bill would reduce the time from the arrest to the time of education or treatment for those people who are in need of that type of positive therapy, see Attachment I.

The hearing was closed on S.B. 262.

HEARING ON S.B. 126 - Municipal judges, training, testing & continuing judicial education.

Senator Lana Oleen testified S.B. 126 would require continuing judicial legal education for municipal judges. She stated Kansans deserve to have their cases heard by Judges who know current law, who meet basic training and testing requirements and who participate in continuing judicial legal education, see Attachment II.

Judge Patrick Caffey, Municipal Judge, Manhattan, testified S.B. 126 would establish for municipal court judges a continuing education system almost exactly like that currently used for district magistrates. The Kansas Municipal Judges propose funding be an assessment charged to each defendant in the municipal court who is convicted, who pleads guilty or no contest, or who receives a diversion. The assessment could not exceed $1.00 per case, see Attachment III.

In answer to Committee questions, Judge Caffey responded the training and continuing education would be supervised by the Office of Judicial Administration. The Municipal Judges Association currently provides training but only about 100 out of 400 judges attend. Some cities fund the training and some judges pay for their own continuing education. In addition to 10 hours of continuing judicial education each year, S.B. 126 also requires a person to complete an examination or meet the qualifications prescribed by K.S.A. 12-4105 to be certified by the Supreme Court as being qualified to hold the office of municipal judge. Municipal judges could be removed from office if they do not complete their continuing education.

Judge John Sherwood, Municipal Judge, Oswego, testified there are 373 municipal courts in Kansas in which Judges are not required to have any training, legal or otherwise. S.B. 126 is designed to provide Kansas citizens with well educated and trained municipal judges, see Attachment IV.

Judge Jay Scott Emler, Municipal Judge, Lindsborg, testified that continuing education and training for municipal judges has been a prevalent concern since 1983. He said the concern of who will pay how much is not the point. The entire population of the state of Kansas will benefit by the passage of this bill, see Attachment V.

Jim Kaup, League of Kansas Municipalities, testified the public interest would likely be benefited by a mandatory certification, training and continuing education program for nonlawyer municipal judges. He took exception to the financing of the Municipal Judges Training Fund. The fees assessed in municipal courts in the larger cities, which do not have nonlawyer municipal judges, would subsidize the training costs for nonlawyer judges in other cities. Since adequate moneys for the Training Fund probably could not be obtained without some subsidization of training costs for nonlawyer judge cities by fees assessed from lawyer judge cities, he proposed some amendments to S.B. 126. He proposed adding after line 72 "(c) No expenditures from the municipal judge training fund shall be made for travel or subsistence expenses of municipal judges attending certification, examination or continuing judicial education programs provided for in Section 1." He said it was not unreasonable to expect each city which chooses to establish a municipal court to pick up the training subsistence expenses of its own municipal judge. He also proposed an amendment to line 87 to allow the cities to remit training fund fees to the State Treasurer quarterly instead of monthly, see Attachment VI. He said the cost of funding such an amended bill would be $75,000.

Judge Robert A. Thiessen, Administrative Municipal Judge, Wichita, submitted a letter opposing the funding proposal contained in S.B. 126. The funding mechanism in S.B. 126 would place an unfair burden upon the residents of Wichita and all larger cities. He said this legislation would cost the residents of Wichita $105,000 annually. He suggested that the municipality that hires the judge should be expected to bear the expense of that judge's training, see Attachment VII.

The hearing on S.B. 126 was closed.

HEARING ON S.B. 151 - Unlawful to arrange drug sale or purchase using communications facilities

David E. Johnson, Director, K.B.I. testified on behalf of the Attorney General's Task Force on Drugs. He recommended passage of S.B. 151 which would make it a crime to arrange for illegal drug sales or purchases by use of a communication facility such as by a telephone, wire, radio, computer, computer network, beeper, pager and all other means of communication, see Attachment VIII. He included a membership list of the Attorney General's Task Force on Drugs with his testimony.

The hearing was closed on S.B. 151.

HEARING ON S. B. 263 - Notice of plea of insanity

Jim Clark, Kansas County and District Attorneys Association testified S.B. 263 expands the provisions of K.S.A. 22-3219 to include other forms of mental disease or defect. The proposed change to the statute recognizes the advances in scientific evidence, and enhances the adversary proceeding of a criminal trial by making both sides privy to the scientific evidence being presented. His attachments included an amendment from Dean Raymond L. Spring, Professor of Law, Washburn University which was adopted by the Senate Judiciary Committee, see Attachment IX.

The Committee meeting was adjourned at 5:00 p.m. The next meeting will be Tuesday, March 21, 1989, at 3:30 p.m. in room 522-S.

TESTIMONY

Senate Bill No. 262

Senate Judiciary Sub-Committee
February 27, 1989
10:00AM

Mr. Chairperson and Members of the Committee:

I represent the Kansas Community Alcohol Safety Action Project Coordinators Association for the State of Kansas. We support Senate Bill No. 262 as a means of speeding up the judicial process in the case of DUI offenders. Our organization has always felt that those persons who have been arrested for DUI should be processed through the judicial system as quickly as possible. For the most part, those people who are strictly social drinkers, it is to their best interest to have speedy adjudication. These people for the most part want to pay their money, do their jail time and get their driver's license suspension over as quickly as possible in order for them to resume their normal lives.

However, we have those people are suffering from the disease of alcoholism or just plain do not care and choose to drink and drive at their convenience. This type of individual will use every legal means to postpone or maneuver around facing the fact that he or she is guilty of the charge they were arrested for. In the field of alcoholism we call this the denial problem. These people will seek out attorneys who are notorious for finding loopholes in the judicial system in order to prolong or prevent a DUI conviction.

Our Association feels that Senate Bill No. 262 would be a means of reducing the time from the arrest to the time of education or treatment for those people who are in need of that type of positive therapy. Many times in the past our membership has observed individuals who circumvent the judicial process and beat the system. These are the people who probably will continue to drink and drive until a tragedy happens in their life in which somebody is maimed or killed.

We ask your support in passing favorably on Senate Bill No. 262 as another means of making Kansas a safer place to live.

Respectfully,

Gene Johnson

Gene Johnson
Legislative Liasion
Kansas Community Alcohol Safety Action Project Coordinators Association

House Judiciary
3/20/89
Attachment I

STATE OF KANSAS

LANA OLEEN
SENATOR, 22ND DISTRICT
RILEY AND GEARY COUNTIES

TOPEKA

SENATE CHAMBER

COMMITTEE ASSIGNMENTS
CHAIRPERSON: GOVERNMENTAL ORGANIZATION
VICE-CHAIRPERSON: CONFIRMATIONS
LABOR, INDUSTRY AND SMALL BUSINESS
MEMBER: ASSESSMENT AND TAXATION
ECONOMIC DEVELOPMENT
JUDICIARY
LEGISLATIVE EDUCATIONAL PLANNING COMMITTEE
CHILDREN AND YOUTH ADVISORY COMMITTEE

HOUSE COMMITTEE ON JUDICIARY

TESTIMONY OF SENATOR LANA OLEEN ON SB 126

Monday, March 20, 1989 - 3:30 p.m.

Chairman O'Neal and Members of the House Judiciary Committee

I would like to thank you for the opportunity to testify as a proponent of SB 126. Until I was asked by Municipal Court Judge Pat Caffey of Manhattan to file the bill, I was unaware of the fact that continuing education for Municipal Judges was not required, even though all other components of our judicial system must meet.

Most Kansans who appear in court do so in front of municipal courts scatterd across our state. These same Kansans deserve to have their cases heard by judges who know current law; they deserve to have their cases heard by judges who meet basic training and testing requirements, and they deserve to have their cases decided by competent judges who participate in continuing judicial education.

SB 126 with amendments,passed the Senate Judiciary Subcommittee and Judiciary Committee unanimously; it passed the full Senate 39-1. I now ask for your consideration and support of this bill so that Kansans will profit with quality courtrooms throughout our state.

1631 FAIRCHILD
MANHATTAN, KANSAS 66502
(913) 537-7718

STATE CAPITOL
TOPEKA KANSAS 66612
(913) 296-7360

House Judiciary
3/20/89
Attachment II

TESTIMONY CONCERNING SENATE BILL 126

In 1983 Judge Robert Thiessen of Wichita, who was then president of the Kansas Municipal Judges Association, appointed a committee charged with the task of obtaining statistics concerning caseload and disposition of cases in each of the municipal courts of the state and also to deal with continuing legal education and certification of lay judges.

In part as a result of the appointment of that committee, a system was established for voluntary reporting caseload and disposition of cases to the office of judicial administration. There has also been a complete revision of the Municipal Court Manual including a system for annual revision. This is likewise a result of the establishment of this committee.

In 1987 another committee was established to carry on the effort. That committee has proposed the plan embodied in Senate Bill 126. The proposal was approved by an overwhelming majority of the municipal judges at both the 1987 and 1988 municipal judges conferences. In fact, of the nearly 100 judges present at the 1988 conference in Dodge City, there was only one "no" vote. The Senate passed Senate Bill 126 by a vote of 39 to 1.

Most Kansans will have some contact with a municipal court at some time in their life. Maybe it will be as a result of getting a speeding ticket or a neighbor disturbing the peace, but to them that case is a very important one. They deserve to have their case heard by an efficient, polite and knowledgeable municipal judge.

Many Kansas cities are quite small. More than half have judges who are non-lawyers. The Kansas Municipal Judges Association believes that all judges, lawyer and lay judges alike, should receive training and continuing education. There should be a program for testing and certifying lay judges. Most municipal court judges are part time and many are not at all well paid. It would be unfair, as well as unrealistic, to expect those judges to pay for this training, testing and continuing education out of their own pockets. This program could be funded by the taxpayers from the genernal fund, but the Kansas Municipal Judges Association proposes instead that it be funded by an assessment charged to each defendant in the municipal court who is convicted, who pleads guilty or no contest, or who receives a diversion. The amount of the assessment would be fixed by the Supreme Court, but could not exceed $1 per case.

House Judiciary
3/20/89
Attachment III

Senate Bill 126 would establish for municipal court judges a system almost exactly like that currently used for district magistrates. The funding mechanism is much like the funding of the county and district attorney's education program for which there is an assessment of $1 per case in district court.

I have attached some exhibits hereto, including part of the Fiscal Year 1988 Municipal Court Caseload Report. That report contains statistics from 119 cities (not all by any means). Perhaps these statistics can give you a better idea about the volume and kinds of cases that municipal courts handle. I would welcome your questions.

Respectfully submitted.

Patrick Caffey
Municipal Judge, Manhattan, KS
Chairman Ad Hoc Committee
on Education, Kansas Municipal
Judges Association

Attachments:

1. Letter of November 21, 1983, from Robert A. Thiessen
2. Minutes of meeting of June 5, 1987, of Ad Hoc Committee on Education
3. Excerpts from Municipal Court Caseload Report, FY 1988
4. Support letter from Colt Knutson
5. Support letter from Hon. Paul E. Miller, District Judge

H. J. 3/20/89
Att III

Kansas Municipal Judges Association

A division of the Kansas League of Municipalities

21 November 1983

Mr. Howard Schwartz
Judicial Administrator
Kansas Judicial Center
310 West 10th
Topeka, Ks 66612

Re: Our meeting of 11/16/83

Dear Howard:

Sue and I so enjoyed the dinner and conference. Your ideas and those of members of the Municipal Judges Association coincide in many particulars - Judge Emler of Lindsborg has often remarked that the Municipal Judges Association should develop a closer relationship with the Kansas Supreme Court. To this end, we agreed:

1. Your office will be provided with a current list of all Kansas Municipal Judges, insofar as they are known to our association.

2. The following people are requested to serve, with me, as a Standing Committee to coordinate with your office:

   Judge Fred Benson, Chairman
   2323 North Woodlawn, Apt. #921
   Wichita, Kansas 67220
   (316/681-0998)

   Judge Jay Scott Emler
   115 West Lincoln Street
   Lindsborg, Kansas 67456
   (913/227-3924)

   Judge Virginia M. Schraeder
   Box 187
   Jetmore, Kansas 67854
   (316/357-8434)

EXHIBIT #1

H. J. 3/20/89
Att III

3

Judge Patrick Caffey
1010 Westloop
Manhattan, Kansas 66502
(913/776-1000)

Judge Gene F. Anderson
201 West 11th Street
Hays, Kansas 67601
(913/628-1242)

Judge James E. Wells
214 East 8th Street
Topeka, Kansas 66603
(913/354-1781)

3. The above committee is concerned with:

(a) Obtaining statistics concerning caseload and disposition in each of the Municipal Courts of this State. You said that Kansas is the only State that does not compile those statistics, you explained a monetary benefit coupled with the foregoing statistics.

(b) Work with your office to supplement and enlarge the Continuing Legal Education Program that the Municipal Judges Association has started. The desireability of a program for the certification of lay judges will be considered.

Copies of this letter are being sent to all of the foregoing who were selected without notice to them or permission from them. It is my hope that they can find time in their schedule to permit participation in this service.

Cordially,

Robert A. Thiessen, President
Kansas Municipal Judges Association

RT:dla

Enclosure

7. J. 3/20/89
Att III

4

AD HOC COMMITTEE ON EDUCATION

Meeting June 5, 1987

The meeting was called to order at 4:30 p.m.. Those in attendance Patrick Caffey, chairman and James Wilson, William Sinclair, Joseph Cox, Laurance Hollis and John Sherwood. Jay Emler, President was also present for the last half of the meeting.

It was decided that the committee would recommend legislation to require continuing education for judges and promote continuing education for court clerks and city prosecutors. This proposed legislation would also require certification for municipal court judges. This would be funded by a $1.00 surcharge of court costs on all non-parking tickets issued by the cities in theState of Kansas. The fund would be administered by the Municipal Judges Association which would be required to account annually to the Kansas Supreme Court for all income and expenditures.

James Wilson and Larry Hollis will meet with Justice Tyler Lockett to determine what questions and material should be covered on the proposed certification for the judges.

Patrick Caffey is to meet with the Court Administrator to determine what recomendations the Supreme Court has for handling the funding of the program.

The meeting was adjourned.

The next meeting will be called by the chairman as soon as he has met with the judicial administrator.

EXHIBIT #2

J.J. 3/20/89
Att III

SUMMARY OF CASELOAD COLLECTION
AS OF JUNE 30, 1988

390 Municipal courts on the mailing list.

119 Municipal courts have responded to the collection of caseload information during fiscal year 1988.

12 Municipal courts have been removed from caseload collection by their request. These courts are on the mailing list.

EXHIBIT #3

H.J. 3/20/89
Att III

STATEWIDE

MUNICIPAL COURT CASELOAD FILINGS
JULY 1, 1987 THROUGH JUNE 30, 1988
FY 1988

Reckless Driving	Driving Under Influence	Fleeing Police	Other Traffic Violations	Crimes Against Persons	Crimes Against Property	Other Crimes	Total
608	4,047	221	140,046	3,385	3,868	13,897	166,072

MUNICIPAL COURT CASELOAD DISPOSITIONS
JULY 1, 1987 THROUGH JUNE 30, 1988
FY 1988

DUI						ALL OTHER					
Guilty Pleas	Bond Forfeitures	Dismissals	Trials	Diversions	Total DUI	Guilty Pleas	Bond Forfeitures	Dismissals	Trials	Diversions	Total Other
920	159	883	757	1,840	4,559	111,696	8,761	22,355	8,901	1,304	153,017

H.J. 3/20/89
Att III

MUNICIPAL COURT CASELOAD FILINGS
FY 1988

JULY 1, 1987 THROUGH JUNE 30, 1988

	Reckless Driving	Driving Under Influence	Fleeing Police	Other Traffic Violations	Crimes Against Persons	Crimes Against Property	Other Crimes	Total
Abilene	4	75	1	833	25	43	90	1,071
Alma	-	-	-	29	-	-	6	35
Alta Vista	-	-	-	1	-	-	1	2
Argonia	-	-	-	15	-	-	-	15
Arma	3	-	8	33	3	-	-	47
Atchison	3	27	10	768	22	41	64	935
Augusta	3	28	1	314	8	6	57	417
Baxter Springs	6	29	7	570	16	96	36	760
Belle Plaine	5	1	-	122	-	-	11	139
Beloit	-	6	1	450	6	4	4	471
Blue Rapids	2	-	-	19	3	-	10	34
Bonner Springs	2	28	5	664	78	20	52	849
Caney	2	13	-	148	6	11	25	205
Chanute	4	33	-	1,358	-	1	215	1,611
Cheney	1	-	-	9	-	-	-	10
Cherryvale	3	2	4	177	1	3	27	217
Chetopa	6	4	2	218	23	5	12	270
Clay Center	1	17	1	245	3	7	14	288
Clyde	2	-	-	44	-	2	7	55
Colby	10	35	6	995	11	9	153	1,219
Colwich	2	6	-	182	1	-	2	193
Concordia	1	15	2	432	15	1	-	466
Conway Springs	-	-	-	22	-	-	-	22
Council Grove	1	9	-	291	20	20	19	360
DeSoto	2	1	-	248	6	2	20	279
Eastborough	-	-	1	301	-	4	16	322
Edgerton	-	-	-	18	-	-	9	27
Elkhart	4	14	2	49	-	2	62	133
Ellsworth	2	6	-	175	-	-	-	183
Emporia	13	206	15	4,373	154	192	267	5,220

D. J. 3/20/89
Att III

MUNICIPAL COURT CASELOAD FILINGS
FY 1988

JULY 1, 1987 THROUGH JUNE 30, 1988

	Reckless Driving	Driving Under Influence	Fleeing Police	Other Traffic Violations	Crimes Against Persons	Crimes Against Property	Other Crimes	Total
Enterprise	-	1	-	55	-	3	30	89
Erie	-	5	-	154	-	-	8	167
Eskridge	-	-	-	19	-	-	-	19
Eureka	-	-	-	243	6	-	24	273
Fairway	2	29	3	1,036	2	-	116	1,188
Florence	-	1	-	50	-	-	1	52
Fort Scott	17	57	6	1,385	-	-	-	1,465
Fredonia	5	-	-	284	-	2	30	321
Garden City	10	-	2	5,219	174	256	1,453	7,114
Garden Plain	-	-	-	48	1	-	-	49
Garnett	2	19	-	430	-	-	49	500
Glen Elder	1	-	-	1	-	2	-	4
Goddard	1	4	1	238	3	10	33	290
Grandview Plaza	2	7	-	154	9	5	25	202
Great Bend	19	114	7	4,055	103	84	99	4,481
Greensburg	1	-	-	46	-	-	9	56
Hays	3	72	3	4,440	25	126	358	5,027
Haysville	5	144	5	386	6	1	68	615
Herington	4	20	3	349	5	3	123	507
Hiawatha	4	8	1	555	3	-	73	644
Horton	3	12	-	142	4	2	4	167
Hoxie	-	2	-	115	4	2	-	123
Humboldt	3	3	-	102	3	5	11	127
Independence	9	49	3	1,402	15	6	183	1,667
Iola	2	27	2	650	6	13	84	784
Junction City	20	217	5	3,487	97	182	555	4,563
Kanopolis	-	1	1	13	-	-	1	16
Kansas City	-	598	-	18,141	1,520	1,049	2,044	23,352
Kingman	3	19	-	484	9	3	63	581
Kinsley	7	5	-	62	-	-	23	97

H.J. 3/20/89
att III 9

MUNICIPAL COURT CASELOAD FILINGS
FY 1988

JULY 1, 1987 THROUGH JUNE 30, 1988

	Reckless Driving	Driving Under Influence	Fleeing Police	Other Traffic Violations	Crimes Against Persons	Crimes Against Property	Other Crimes	Total
Osborne	2	1	-	98	-	-	9	110
Oswego	-	-	-	204	-	-	58	262
Overland Park	74	661	17	29,251	219	536	2,235	32,993
Paola	5	20	3	518	56	23	-	625
Park City	1	8	-	308	10	7	239	573
Parsons	19	27	8	2,033	48	46	331	2,512
Pawnee Rock	-	-	-	53	1	-	-	54
Phillipsburg	1	4	-	139	1	4	-	149
Plains	2	-	-	88	9	3	2	104
Prairie Village	8	75	11	5,185	3	2	99	5,383
Pratt	11	18	6	518	22	63	10	648
St. Francis	2	3	-	25	1	-	2	33
St. George	1	2	1	75	-	1	1	81
St. John	-	5	1	44	4	2	2	58
Salina	30	129	10	8,991	129	61	1,447	10,797
Satanta	-	1	-	28	1	-	12	42
Scott City	5	9	1	249	-	2	49	315
Seneca	2	3	-	86	-	6	2	99
Sharon Springs	1	3	-	13	1	-	15	33
Shawnee	30	116	8	7,277	48	84	452	8,015
Silver Lake	-	2	-	203	-	-	-	205
Solomon	2	5	-	115	3	2	6	133
Sublette	-	-	-	4	-	-	1	5
Valley Center	-	2	-	123	9	11	1	146
Valley Falls	-	-	-	22	4	4	12	42
Wamego	4	76	-	464	5	10	30	589
Waterville	-	-	-	4	-	-	4	8
Wellington	13	50	3	329	21	2	70	488
Winfield	10	33	1	744	46	28	125	987
TOTAL	608	4,047	221	140,046	3,385	3,868	13,897	166,072

D. J. 3/28/89
Att III
10

MUNICIPAL COURT CASELOAD FILINGS
FY 1988

JULY 1, 1987 THROUGH JUNE 30, 1988

	Reckless Driving	Driving Under Influence	Fleeing Police	Other Traffic Violations	Crimes Against Persons	Crimes Against Property	Other Crimes	Total
Kiowa	-	-	-	46	-	-	2	48
LaCrosse	-	-	-	18	-	-	-	18
Larned	7	14	2	459	1	-	-	483
Lawrence	108	294	6	10,619	80	371	455	11,933
Leavenworth	8	25	1	932	11	4	469	1,450
Lenora	-	-	-	-	-	-	-	-
Leoti	-	-	-	169	-	-	-	169
Lincoln Center	1	1	1	50	-	-	7	60
Lindsborg	2	9	3	386	12	14	146	572
Little River	-	-	-	8	-	-	1	9
Logan	-	1	1	6	-	1	-	9
Louisburg	4	9	1	242	15	3	-	274
Lyons	5	21	1	159	10	7	-	203
Macksville	-	-	-	67	2	-	2	71
Maize	3	9	1	235	-	1	7	256
Manhattan	21	325	19	8,887	112	280	756	10,400
Mankato	-	-	-	-	-	-	-	-
Marquette	-	1	-	9	-	-	1	11
Marysville	4	8	2	359	-	-	-	373
McFarland	-	-	-	-	-	-	2	2
McPherson	14	60	3	1,239	46	9	82	1,453
Meade	-	3	-	592	-	1	3	599
Milford	-	-	-	-	-	-	1	1
Minneapolis	-	-	-	143	17	-	-	160
Montezuma	1	2	-	2	-	-	1	6
Moran	2	-	-	24	-	1	5	32
Neodesha	-	-	-	204	12	5	28	249
Ness City	-	1	1	43	-	-	7	52
Newton	-	42	1	938	30	51	60	1,122
North Newton	-	-	-	171	-	-	2	173

N.J. 3/20/89
Att III

11

Colt Knutson

Attorney-at-Law
Suite 301
Union National Bank Tower
727 Poyntz

P.O. Box 315
Manhattan, Kansas 66502

(913) 776-0304

February 15, 1989

Senator Lana Oleen
State Capitol Building
Office No. 143 North
Topeka, Kansas 66612

Dear Lana:

I have been informed by the Honorable George Catt, Municipal Judge of Lawrence, Kansas, and the Honorable Patrick Caffey, Municipal Judge of Manhattan, Kansas, that hearings will be conducted in (or around) Topeka on Friday, February 17, regarding the advisability of mandatory Continuing Judicial Legal Education for municipal judges in Kansas.

I unequivocally support such a measure and requirement. I feel strongly that such continuing judicial education will greatly contribute to the professionalism and dignity of our municipal courts. After all, most Kansans have their only court exposure at the municipal court level and leave either with a favorable or disfavorable impression of that particular court which colors and reflects upon the entire judicial and legal professions.

I make these comments as the municipal judge of the City of St. George, Kansas, and as the city attorney and city prosecutor for the City of Ogden, Kansas. I was the first fulltime city prosecutor in Lawrence (1979 to 1983).

I am respectfully requesting that Judge Caffey hand carry this correspondence and deliver it to you on Friday.

Thank you for your attention to this matter.

Sincerely,

Colt Knutson
Attorney at Law

CK:lk

CC: Honorable George Catt

EXHIBIT #4 H.J. 3/20/89 Att III

State of Kansas
21st Judicial District

PAUL E. MILLER
District Judge, Div. I

Riley County Courthouse
100 Courthouse Plaza
Manhattan, Kansas 66502
Phone: 913-537-6371

February 16, 1989

To Whom It May Concern:

Judge Patrick Caffey of Manhattan Municipal Court asked that I write a letter in support of Senate Bill 126 which provides for certification, training and the funding therefor for the municipal judges of this state. I have read the bill. I believe its purpose is meritorious and thus as an individual, and not on behalf of any court sponsored organization, I urge passage of this bill.

Very truly yours,

PAUL E. MILLER
District Court Judge, Div. I

EXHIBIT #5

H.J. 3/20/89
Att III

CITY OF OSWEGO

703 5TH STREET P. O. BOX 210
OSWEGO, KS 67356
316-795-4433

March 20, 1989

Chairman Michael R. O'Neal
House Juiciary Committee
State Capital Building
Topeka, Kansas 66612

Dear Chairman O'Neal and Fellow Committee Members:

I wish to encourage you to vote to recommend passage of Senate Bill No. 126.

There are approximately 397 municipal courts in Kansas. The law requires that judges of the municipal court of cities of the first class be admitted to practice law in Kansas. There are 24 cities of the first class. This leaves 373 municipal courts in which the judges are not required to have any training, legal or otherwise.

Of Kansas citizens' contact with the judicial system, approximately eighty-five percent is in municipal courts.

These Kansas citizens are entitled to well educated judges and properly run courts, courts that understand their rights and are willing to protect those rights.

Senate Bill No. 126 is designed to move Kansas toward the goal of having well educated and trained municipal judges.

Kansas has similar requirements for magistrate judges, requires continuing legal education for all lawyers, continuing judicial education for all district judges, justices of the court of appeals and supreme court. At the present time, the municipal judges are the only judges in Kansas lacking required education. Ironically, they process more cases than all the other courts combined.

We request your favorable vote on Senate Bill No. 126 with the purpose of attaining the standard of having a well educated and trained judiciary, from top to bottom.

Thank you.

Yours truly,

John D. Sherwood, Municipal Judge
425 Commercial, Oswego, Ks. 67356
telephone A/C 316 795-2754

JDS/hs
2G.JUDG.3

House Judiciary
3/21/89
Attachment IV

Testimony of Jay Scott Emler

March 20, 1989

Chairman O'Neal and members of the House Judiciary Committee:

Thank you for the opportunity to address you today.

My name is Jay Scott Emler. I am a practicing attorney in the City of Lindsborg, Kansas.

I have been a member of the Kansas Municipal Judges Association since 1978, when I was appointed to the bench in Lindsborg.

I was elected to the Kansas Municipal Judges Association board of directors in 1981 and served on that body until June, 1988. During that time I served one term as Vice President and two terms as President.

I am currently a member of the Kansas Supreme Court Municipal Judges Advisory committee, and have been since 1984. I also serve on the Kansas Judicial Council Municipal Court Handbook Revision committee, and have since 1985.

I offer this short history of myself so that you will know I have been, and continue to be, an active participant in the Kansas Municipal Judges Association.

I have enclosed with my written testimony copies of minutes of the 1983, 1985 and 1988 business meetings of our Association. The 1983 page also includes minutes of the "Officers Meeting". In another handout you received today, you have a copy of the minutes of the Association's Ad Hoc Committee On Education from 1987.

In addition to the minutes of those meetings, I have enclosed copies of two letters I received in 1986, as President of the Association, from municipal judges regarding training and continuing education.

From the handouts, you can readily determine that continuing education and training for municipal judges has been a prevalent concern since 1983. I can tell you that I personally have had many conversations since 1980 with municipal judges from across the state of Kansas and there has been very little opposition to

House Judiciary
3/20/89
Attachment V

the proposal contained in Senate Bill 126.

The primary opposition which I have heard has come from the larger cities of this state and, to a lesser extent, from the League of Kansas Municipalities. That opposition has not been to the expressed need for training and continuing education, but to the funding mechanism. Some allegation has been made that the Judges Association has not considered the financial impact of this legislation upon these larger cities. Please let me assure you that such is not the case. The Wichita Chamber of Commerce was contacted by Judge Hollis of Eastborough and the Chamber advised Judge Hollis that the seminars contemplated by this legislation could produce income for Wichita of approximately $170,000.00. I personally received an estimate from Overland Park Convention and Visitors Bureau of $131,000.00. To say a larger city would receive no benefit from this legislation is simply not true.

In my area of Kansas there are few places to go on a shopping spree. Usually, we spend a day in Wichita of a weekend in the Overland Park/Kansas City area. Much of the income which these larger cities receive comes form those of us who live in rural Kansas.

The argument that the fees generated by this legislation are coming out of the pockets of the citizens of one particular jurisdiction over another is simply incorrect. From personal experience, I can tell this committee that simply because one is not a resident of one of the protestant larger cities does not mean tickets are not issued for violations.

The point is not "Who will pay how much?" The point is "What benefit will inure to the people of the state of Kansas?" Does not the resident of Overland Park have every right to expect the same legal procedure and minimum judicial quality in Lindsborg or Kanorado as they receive in Overland Park? This bill is designed to protect all of the citizens of this state equally.

I respectfully urge this committee not to be swayed by the "me" attitude of some opponents of this legislation, but to support the entire population of this great state and provide the mechanism for a quality municipal judiciary as set forth in Senate Bill 126.

J. J. 3/20/89
Att V

SPRING MEETING - KANSAS MUNICIPAL JUDGES ASSOCIATION - June 9 and 10, 1983 - Manhattan Kansas Holidome

Minutes - Business Meeting

1 - The meeting was called to order by President Johnson at 4:00 P.M. on Thursday, June 9, 1983.

2 - The minutes were read by the Pro-Tem Secretary Benson and approved as read. (Minutes read were from the last meeting of May - 1982)

3 - The fall meeting with the Leagus of Municipalities was discussed. Poor attendance was idscussed. The consensus of opinion was that a general meeting each Spring was adequate. The officers of the Association might meet at the League's fall meeting.

4 - Judge Caffey (Mahattan) discussed possible statutory amendments which were referred to the Legislative Committee for further action.

5 - Election of officers - the Nominating Commiteemade the following recommendations:

President - Robert Thiessen (WICHITA MUNICIPAL COURT)
Vice. Pres. - George Groneman (KANSAS CITY MUNICIPAL COURT)
Sec.-Treas. - Fred Benson (PARK CITY MUNICIPAL COURT)
Directors - #1 - Jay Emler (LINDSBORG MUNICIPAL COURT)
#2 - Jim Wilson (MULVANE MUNICIPAL COURT)
#3 - Virginia Schraeder (JETMORE MUNICIPAL COURT)

It was moved and seconded that the recommendations be accepted by the Association.

6 - The site of the next meeting was discussed and the selection was referred to the Board of Directors.

7 - President-elect Thiessen appointed the following Legislative Committee:

Pat Caffey (MANHATTAN COURT)
Jay Emler (LINDSBORG COURT)
George Catt (LAWRENCE COURT)
James Wells (TOPEKA COURT - Chairman)

8 - The need for the continuing education of the Municipal Judges was then discussed:

- Municipal Judges' notebooks need updating
- need communications to judges of changes in laws
- should be future projects of Association

9 - Outgoing President Johnson was presented a plague for his services by the new President Thiessen.

10 - The meeting was adjourned

Minuted - Officer's Meeting

1 - A brief meeting of the new officers was held just after the Business Meeting adjournment.

2 - The need for more continuing education for judges from our Association was discussed.

3 - It was agreed that Judge Barbara should have nore speaking time at our next meeting.

4 - The following sites were chosen for future meetings (so that the President would be the host for each meeting) (tantative locations for meetings):

one year off
1984 - Kansas City
1985 - Wichita
1986 - Hutchinson
1987 - Dodge City

5 - The Meeting was adjourned.

TJ-3/20/89
Att K

3

Kansas Municipal Judges Association

P.O. BOX 8258 Wichita, Kansas 67208

Secretary/Treasurer
Fred Benson
316-681-0998

SPRING BUSINESS MEETING - KANSAS MUNICIPAL JUDGES ASSOCIATION - SATURDAY - June 8, 1985

DOUBLETREE - Kansas City

1 - The meeting was called to order by President Groneman (Kansas City) at 10:25 AM.

2 - Vice-President Emler (Lindsborg) discussed the new changes that should be considered by the judges in regard to the Standard Traffic Ordinance - he gave the judges the phone number of Frank Bien (Kansas League of Municipalities) as an information phone number - 913-354-9565 (Topeka).

3 - The Spring-1986 meeting discussion was the next order of business - the issue was whether or not to meet with the National Judges Association/District Magistrate's meeting in Wichita or to maintain our individual meeting practice and meet at Bethany College in Lindsborg - the issue was resolved by a majority vote to:

- have our own meeting at the Canterbury Inn in Wichita beginning Wednesday evening (June 11) and concluding Saturday noon (June 14)
- our meeting would follow the NJA/DM meeting which also will meet at the Canterbury Inn from Sunday (June 8) through Wednesday (June 11)
- members could, if they so choose, attend both meetings.

4 - Judge Thiessen (Wichita) made a motion (which was seconded) to have the Association officers for the 1986-87 year nominated from the floor rather than by a Nominating Committee - the motion was carried by a majority vote.

5 - A discussion followed covering the need for continuing education of Municipal Court judges - it was pointed out the District Magistrate Judges have set standards to meet in order to be appointed judges and have to take a qualifying test to remain on the bench (every 18 months) - it was concluded that training sessions are needed for Municipal Court Judges.

6 - The Nominating Committee's slate of officers for the 1985-85 year was accepted by majority vote - a new Board representing the entire state was also adopted - the 1985-86 officers and Board are:

President - - - - - - - - - Jay Scott Emler (Lindsborg)
Vice-President - - - - - James A. Wilson (Mulvane)
Secretary/Treasurer - - - Fred W. Benson (Park City) (elected 1984 - 3 years)

Directors

Past-President - - - - George Groneman (Kansas City)
Northeast - - - - - - - Pat Caffey (Manhattan)
North Central - - - - - (To be selected)
Northwest - - - - - - - Rick Ress (Colby)
Southeast - - - - - - - Bill Coombs (Chanute)
South Central - - - - - Joe Bribiesca (Maize)
Southwest - - - - - - - Virginia Schraeder (Jetmore)

7.J. 3/20/84
Att I

7 - Judge Thiessen (Wichita) made the following motions - each of which was carried by majority vote:

- that the Association incorporate as a non-profit corporation
- that the Association pay for bonding the Secretary/Treasurer position
- that the Association refund the Conference fee of $75.00 to the Secretary/Treasurer.

8 - A Presidential Plaque was presented to President Groneman by President-elect Emler.

9 - The Association was reminded of the next meeting date of June 11 (Wednesday) - 1986 in Wichita at the Canterbury Inn.

10 - The meeting was adjourned at Noon.

Fred Benson

Fred Benson - Secretary/Treasurer

N.J. 3/20/89
Att V

Kansas Municipal Judges Association

P.O. BOX 8258 Wichita, Kansas 67208

Secretary/Treasurer
Fred Benson
316-681-0998

Annual Conference - Kansas Municipal
Judges Association - June 2, 1988
Dodge House Inn - Dodge City
Business Meeting Minutes

1 - The meeting was called to order by President Schraeder at 2:40 P.M.

2 - The minutes from the annual meeting of 1987 were approved. Several members did not remember receiving the minutes which had previously been mailed to all 1987 Conference attendees.

3 - The Ad Hoc Committee On Education Meeting minutes (from June 5, 1987) were read to the meeting to reflect the fact that they had been read to the 1987 Business Meeting and had been approved.

4 - The following officers were nominated and elected without opposition:

President - Elect --- James Wilson, Mulvane

North Central Diretor --- Pat Caffey, Manhattan

South Central Director --- Larry Hollis, Eastborough

5 - The newly elected directors are to serve three year terms, the incumbent directors are as follows:

Northwest --- Rick Ress, Colby (1 year remaining)

Northeast --- George Catt (2 years remaining)

Southwest --- Vern Tribble (2 years remaining)

Southeast --- Bill Coombs (1 year remaining)

6 - A spirited discussion followed on the Continuing Education of Municipal Court Judges.

The main point of controversy was the finding mechanism to which the larger, full-time courts objected. The bulk of the funding would come from these courts.

Pat Caffey (Manhattan) explained the proposal to the members. Hal Flaigle (Wichita) spoke against the funding as proposed.

H.J. 3/20/89
att V

Kansas Municipal Judges Association
P.O. BOX 8258 Wichita, Kansas 67208
Secretary/Treasurer
Fred Benson
316-681-0998

Pat Caffey (Manhattan) explained the proposal to the members. Hal Flaigle (Wichita) spoke against the funding as proposed. Jim Wilson (Mulvane) spoke in favor of the current proposal. (attached minutes incorporated by reference)

Several proposals were made regarding sending members the copy of the defeated proposal. The main controversy was whether all members or just conference attendees were to be sent the copy. It was finally agreed that (if the association could afford it), conference attendees would receive copies of the bill. Pat Caffey is to send the latest amended copy to Fred Benson for distribution.

7 - The Presidential Plaque was presented to outgoing President Schraeder by Jay Emler (President-Elect Jim Wells was not available).

8 - The business meeting was adjourned at 4:40 P.M.

Fred Benson

H.J. 3/20/89
Att I

Kansas Municipal Judges Association
P.O. BOX 8258 Wichita, Kansas 67208
316-681-0998

Dear Fred:

Pursuant to your request, I took the following notes at the business meeting while you attempted to locate Jim Wells to present the plaque to outgoing President Schraeder.

The minutes of the ad hoc committee on education from June 5, 1987, were read to all members present. Motion was made, seconded and carried that today's minutes reflect that the June 5, 1987, minutes were read to the membership present on June 6, 1987, and approved at that time.

The next item of business was the election of a President-elect and two disrectors. The following persons were nominated:

James Wilson	President-elect
Pat Caffey	North Central
Laurence Hollis	South Central.

There were no other nominations. It was moved, seconded and carried that the nominations cease. It was then moved, seconded and carried that the nominees be elected by acclamation.

The next order of business was a discussion of the 1989 convention. The dates for the convention will be June 7 through June 10.

Judge Caffey inquired whether the Association desired to have the proposed legislation reintroduced during the 1989 legislative session. After a lengthy discussion, it was moved and seconded that Judge Caffey be directed to attempt to have the legislation reintroduced in 1989. Motion carried with Judge Flaigle of Wichita opposing the motion. There followed a lengthy discussion as to how the membership might be kept informed of the proposed legislation's status. It was moved and seconded that the secretery mail each member a copy of the bill and a ballot. Judge Benson indicated that that procedure might be extremely costly. The motion was amended to provide for mailing in there were sufficient funds available. Motion carried.

At this point, Fred, you had returned and I stopped taking minutes.

Hope this helps you.

Jay

N.J. 3/20/89
Att V

8

Arma Kansas
February 24-1986.

Jay Scott Elmer.
President.

Dear Sir:
I have been attending the Municipal Judges Meetings every Year.
I find that its is very enlighting to each one that attends. And I am in favor of Continuing Judicial Education for all Judges.

Respectfully Yours.
Municipal Judge
Leonard C Hume.
P.O Box 69
Arma Kansas. 66712.

H.J. 3/20/89
Att III

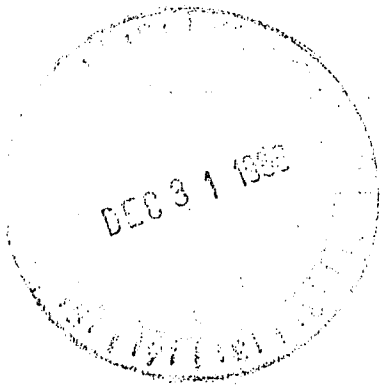
9

PAUL WRIGHT
Municipal Judge

P.O. Box 117
Clay Center, Kansas 67432

Ph. (913) 632-3312
Clay Center, Kansas 67432

29 December 1986



The Honorable Jay Scott Emler
Lindsborg Municipal Court
101 South Main
Lindsborg, Kansas 67456

Dear Judge Emler:

I would like to give you some of my thoughts concerning enhancing the professionalism of the Municipal Judges of Kansas. The Municipal Judges Association should endorse in some fashion a program for the manditory training of all non-attorney judges.

Municipal Judges are the only group in the criminal justice system of Kansas who are not required to have a mandatory basic training and continuing education in the administration of justice. If the association don't take a stand and promote the training, it will be a long time comming and I believe it will be by that time mandated.

I know that a strong resistance will occurr amoung judges who are part time. They will state that being part time they don't need it and they don't have the time. Without the training, how can a fair and impartial trail be conducted with proper considerations be given to both the defense and prosecution? The era is gone when a judge, no matter what the jurisdiction is, can operate in a haphazard manner.

Thank you for the consideration you have given this matter.

Sincerely;

Paul Wright

Paul Wright, Municipal Judge
Clay Center, Kansas

H.J. 3/20/89
Att III

10

League
of Kansas
Municipalities

Municipal
Legislative
Testimony

An Instrumentality of its Member Kansas Cities. 112 West Seventh Street, Topeka, Kansas 66603 Area 913-354-9565

TO: Chairman O'Neal and Members,
House Judiciary Committee

FROM: Jim Kaup, General Counsel

RE: SB 126 -- Municipal Judges Training

DATE: March 20, 1989

The League of Kansas Municipalities does support SB 126 despite our longstanding opposition to state mandates upon local governments that are not financed by the state.

We agree that the public interest would likely be benefitted by a mandatory certification, training and continuing education program for nonlawyer municipal judges. It is only on the method of financing the Municipal Judges Training Fund that the League differs with the Municipal Judges Association. In brief, our concern has been the extent to which the fees assessed in municipal courts in the larger cities, which do not have nonlawyer municipal judges, will subsidize the training costs for nonlawyer judges in other cities.

With the understanding that adequate moneys for the Training Fund probably cannot be obtained without some subsidization of training costs for "nonlawyer judge cities" by fees assessed from "lawyer judge cities," the League offers the following amendment with the intent of limiting the moneys which would be needed for the Fund and thereby the level of inter-city subsidization.

-- After Line 72, add the following:

"(c) No expenditures from the municipal judge training fund shall be made for travel or subsistence expenses of municipal judges attending certification, examination or continuing judicial education programs provided for in Section 1."

The League submits that it is not unreasonable to expect each city which chooses to establish a municipal court to pick up the travel and subsistence expenses of its own municipal judge.

The League also proposes three technical amendments intended to make SB 126 more workable:

-- Lines 52:53

Delete the phrase "or as provided by the Kansas Municipal Judges Association"

While we are not certain as to the purpose of this phrase, by our reading it is, at best, unnecessary and, at worst, a questionable delegation of authority to a voluntary association.

House Judiciary
3/20/1989
Attachment VI

-- Line 78

Substitute "quarterly" for "at least monthly."

Many, perhaps most, municipal courts hold session no more than once a month. As presently drafted, SB 126 would require the processing and submission of training fund fees to the state each month, regardless of how few cases the municipal court hears. Obviously a city's administrative expenses in remitting small amounts could exceed the training fund fees actually assessed. That problem will be lessened, although not totally eliminated, by going to a quarterly payment schedule.

-- After Line 87, add the following:

"In lieu of assessments made in cases before the municipal court, as provided under this section, any city may remit quarterly to the state treasurer an amount equal to such assessments paid from the city general fund."

This amendment is intended to make SB 126 a more practical bill for those cities with municipal courts that handle few cases. For those cities it is likely that a direct payment from the general fund will involve less administrative cost than would be incurred by assessing or collecting a fee of $1 or less in each case filed.

Subject to the Committee's adoption of the above amendments, the League urges your favorable consideration of SB 126.

H. J. 3/20/89
Att VI

judge, unless such person subsequently meets all the qualifications prescribed by K.S.A. 12-4105 and amendments thereto.

(b) Any person who successfully completes the examination administered under this section or who meets all of the qualifications prescribed by K.S.A. 12-4105 and amendments thereto, shall be certified by the supreme court as being qualified to hold such office. In order to continue to hold such office, such judge must attend at least 10 hours of continuing judicial education as approved by the supreme court ~~or as provided by the Kansas municipal judges association~~ in each calendar year. A continuing judicial education program offering at least 10 hours of credit shall be provided at least once each year at no expense to either the municipal judge or the municipality.

(c) The supreme court shall administer the training, testing and continuing judicial education provided for in this section, which shall be funded by the municipal judge training fund as provided for in section 2 or may contract with another person or organization for that service.

New Sec. 2. (a) There is hereby created in the state treasury the municipal judge training fund. All moneys credited to the fund shall be used solely for the purpose of administering the training, testing and continuing judicial education of municipal judges as provided in section 1 ***and for continuing judicial education of all other municipal judges who have been admitted to practice law in Kansas*** by the supreme court.

(b) All expenditures from the municipal judge training fund shall be made upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the chief justice of the supreme court or by a person or persons designated by the chief justice.

(c) No expenditures from the municipal judge training fund shall be made for travel or subsistence expenses of municipal judges attending certification, examination or continuing judicial education programs provided for in section 1.

New Sec. 3. In each case filed in municipal court where there is a finding of guilty or a plea of guilty, a plea of no contest, forfeiture of bond, or a diversion, a sum in an amount not to exceed $1 shall be assessed for the training, testing and continuing judicial education of municipal judges as provided in section 1. The judge or clerk of the municipal court shall ~~remit at least monthly~~ quarterly all assessments received pursuant to this section to the state treasurer for deposit in the state treasury to the credit of the municipal judge training

fund. The specific amount of the assessment shall be fixed by order of the supreme court and shall apply uniformly to all cities. For the purpose of determining the amount to be assessed according to this section, if more than one complaint is filed against one individual arising out of the same incident, all such complaints shall be considered as one case. For the purpose of this section, parking violations shall not be considered as cases.

In lieu of assessments made in cases before the municipal court, as provided under this section, any city may remit quarterly to the state treasurer an amount equal to such assessments paid from the city general fund.

Sec. 4. K.S.A. 12-4105 is hereby amended to read as follows: 12-4105. The municipal court shall be presided over by a municipal judge. The judge shall be selected in the manner provided by statute. The person ~~so~~ *who is* selected shall be*:*

(a) A citizen of the United States ~~and at least eighteen (18) years of age. In~~*;*

(b) a graduate of a high school or secondary school or the equivalent thereof; and

(c) (1) in cities other than cities of the first class, an attorney regularly admitted to practice law in the state of Kansas or certified by the supreme court in the manner prescribed by section 1, as qualified to serve as a municipal judge; or

(2) in cities of the first class~~,~~ ~~the person selected shall be~~ an attorney *regularly* admitted to ~~the~~ practice ~~of~~ law in the state of Kansas.

The municipal judge shall receive a monthly or annual salary set by ordinance of the city in which ~~he or she~~ *such municipal judge* presides, except where otherwise provided by law.

Sec. 5. K.S.A. 12-4112 is hereby amended to read as follows: 12-4112. No person shall be assessed costs for the administration of justice in any municipal court case, except for witness fees and mileage as set forth in K.S.A. 12-4411 *and amendments thereto and for the assessment required by section 3 for the training, testing and continuing judicial education of municipal judges.*

Sec. 6. K.S.A. 12-4105 and 12-4112 are hereby repealed.

Sec. 7. This act shall take effect and be in force from and after its publication in the statute book.

HB 2770 3/12/19

THE CITY OF WICHITA

ROBERT A. THIESSEN, Judge Div. I
THOMAS A. BUSH, Judge Div. II
HAROLD E. FLAIGLE, Judge Div. III
MAURICE MOWREY, Clerk of the Court
JOHN J. EISENBART, Chief Probation Officer

MUNICIPAL COURT
CITY HALL — THIRD FLOOR
455 NORTH MAIN STREET
WICHITA, KANSAS 67202
COURT CLERK
(316) 268-4431
JUDGES CHAMBERS
(316) 268-4629
CHIEF PROBATION OFFICER
(316) 268-4582

March 17, 1989

Rep. Michael R. O'Neal, Chairperson
House Judiciary Committee
State Capital Building
Topeka, Kansas 66612

Re: Senate Bill 126 -- Municipal Judge Training Fund

Ladies and Gentlemen:

While the City of Wichita considers training important to all judges, it is opposed to the funding proposal contained in SB 126. This would place up to a $1 fee on every case filed in municipal court to fund continuing judicial education. Such a funding mechanism places an unfair burden upon the residents of this City and all larger cities. The disparity in the number of cases filed between the various cities of Kansas is tremendous. The effect is a subsidization by a few cities of the training of judges from all the other cities.

According to the information available to me, this legislation would cost residents of the City of Wichita $105,000 annually. This does not include the extra cost of collecting and processing the fee. To enact SB 126 in its present form without considering the actual cost of the proposed training would indicate a lack of concern for the expense involved and the impact on citizens of certain cities.

If the municipal judges need this type of training, the municipality that hires the judge should be expected to bear the expense of that judge's training.

Very truly yours,

Robert A. Thiessen
Administrative Judge

RT/jal

House Judiciary
3/20/89
Attachment VII

KANSAS BUREAU OF INVESTIGATION

DIVISION OF THE OFFICE OF ATTORNEY GENERAL
STATE OF KANSAS
1620 TYLER
TOPEKA, KANSAS 66612-1837
(913) 232-6000

DAVID E. JOHNSON
DIRECTOR

ROBERT T. STEPHAN
ATTORNEY GENERAL

TESTIMONY OF DAVID E. JOHNSON, DIRECTOR
KANSAS BUREAU OF INVESTIGATION
ON SENATE BILL 151
BEFORE THE
HOUSE JUDICIARY COMMITTEE

On behalf of the Attorney General's Task Force on Drugs, I am asking that you consider making it a crime for a person to arrange for illegal drug sales or purchases by use of a communication facility, i.e. by use of a telephone, wire, radio, computer, computer network, beeper, pager and all other means of communication.

It has been my experience coordinating court-authorized wiretaps, to find communication facilities to be a common means by which illegal drug deals are transacted. These facilities are utilized by both the sellers and users of illegal drugs.

In creating a new law making it a crime to conduct illegal drug transactions by use of a communication facility, law enforcement will have the means by which to attack the drug problem on both the supply side and the demand side.

Regarding the supply side of this issue, it is well known and documented that illicit drug organizations cannot operate efficiently without using some type of communication facility, whether the facility be a telephone or a computer network. By enacting a law making it illegal to use a communication facility in conducting illicit drug business, law enforcement would have yet another tool in combating suppliers of illegal

House Judiciary
3/20/89
Attachment VIII

drugs inside and outside the State. A tool particularly effective against the better organized and insulated organizations of today.

Regarding the demand side of this issue, it is common place for a drug user to pick up the telephone, for example, and place a call for a personal supply of illegal drugs from his supplier. By enacting the proposed law, charges could be filed against not only the supplier, but the user, too. Narcotics enforcement shouldn't focus solely on the suppliers of illegal drugs, for if there wasn't a demand for illegal drugs, there would be no suppliers.

Federal statutes have contained a law of this type for quite some time. The federal penalty for the unlawful use of a communication facility is imprisonment of up to 4 years and a fine of up to $30,000. Second-time offenders face double the prison sentence and double the fine.

I, with the Task Force, am asking you to pass Senate Bill 151 which would establish the crime of Arranging Drug Sales or Purchases by use of a Communication Facility as a Class D felony.

H. Dietz 3/20/89 VIII

ATTORNEY GENERAL BOB STEPHAN'S TASK FORCE ON DRUGS

Becky Ridgway
Task Force Chair
School Team Training Administrator
Wichita Public Schools
217 N. Water
Wichita, Kansas 67202
Office: 316/833-4485 Home: 316/684-9653

Jackie Anderson
Rainbow Mental Health Unit
2205 West 36th
Kansas City, Kansas 66103
Office: 913/384-1880 Home: 913/342-0318

Bruce Beale
Executive Director
DCCCA Counseling & Resource Center
2200 West 25th
Lawrence, Kansas 66044
Office: 913/841-2880 Home: 913/887-6348

Ben Burgess
U.S. Attorney
306 U. S. Courthouse
401 North Market
Wichita, Kansas 67202
Office: 316/269-6481 Home: 316/681-9974

Jim Clark
Executive Director
Kansas County & District Attorneys Association
827 S.W. Topeka
Topeka, Kansas 66612
Office: 913/357-6351 Home: 913/842-7986

Margie Dugan Ecklund
Office of Traffic Safety
Kansas Department of Transportation
8th Floor, Docking State Office Building
Topeka, Kansas 66612
Office: 913/296-3756

Dale Finger
Narcotics Division
Kansas Bureau of Investigation
1620 S.W. Tyler
Topeka, Kansas 66612
Office: 913/232-6000 Home: 913/267-0573

-over-

H.J. 3/22/89
Att VIII

3

Jim Flory
Douglas County District Attorney
Law Enforcement Center
111 East 11th Street
Lawrence, Kansas 66044
Office: 913/841-0211 Home: 913/843-5778

Frank Gaines
State Senator, 16th District
P. O. Box 219
Augusta, Kansas 67010
Office: 316/755-2182 Home: 316/775-3120

Cynthia Galyardt
325 Homestead
Lawrence, Kansas 66044
Home: 913/842-3497

Ramon Gonzalez
Warrants Officer
Finney County Sheriff's Office
304 North 9th
Garden City, Kansas 67849
Office: 316/275-3260 Home: 316/275-5583

Tom Hanna
Director, Alcoholic Beverage Control
2nd Floor, 700 Jackson
Topeka, Kansas 66603
Office: 913/296-3946 Home 913-272-8961

Glendia Henley
Education Specialist
Kansas Department of Education
120 East 10th
Topeka, Kansas 66612
Office: 913/296-6714 Home: 913/273-0228

Richard Johnson
Det. Sgt.
Topeka Police Department
500 Van Buren
Topeka, Kansas 66603
Office: 913/354-9497 Home: 913/272-4243

Melissa Masoner
Executive Director
Topeka Youth Project
1100 Gage Blvd.
Topeka, Kansas 66604
Office: 913/273-4141 Home: 913/272-4844

Andrew O'Donovan
Commissioner, Alcohol & Drug Abuse Division
Department of Social & Rehabilitation Services
2700 West 6th, Biddle Building
Topeka, Kansas 66606
Office: 913/296-3925 Home: 913/272-4844

Tom Pensabene
1735 Lynda
Colby, Kansas 67701
Home: 913/462-6201

Jo Ann Pottorff
Representative, 83rd District
144 North Oliver
Wichita, Kansas 67208
Office: 316/682-5581 Home: 316/684-3780

Oakley Ralph
Chief of Police
705 First Avenue
Dodge City, Kansas 67801
Office: 316/225-4101 Home: 316/227-6735

Cathy Roberts
School Board Member
484 Upper Mill Heights Drive
Salina, Kansas 67401
913/827-1612

Herbert Rohleder
District Court Judge
Barton County Courthouse
Great Bend, Kansas 67530

Nicki Soice
Drug/Alcohol Abuse Prevention Center
420 Clay
Valley Center, KS 67147
Home: 316/755-1741

Scott Teeselink
Special Agent
Kansas Bureau of Investigation
1620 S.W. Tyler
Topeka, Kansas 66612
Office: 913/232-6000

-over-

H. J. 3/20/89
Att VIII

Donna Whiteman
Representative, 102nd District
401 West 1st
P. O. Box 566
Hutchinson, Kansas 67504
Office: 316/669-0467 Home: 316/669-0252

Robert Wunsch
P. O. Box 473
Kingman, Kansas 67068
Office 316/532-3113

STAFF

Ed Van Petten
Deputy Attorney General
Office of the Attorney General
Kansas Judicial Center, 2nd Floor
Topeka, Kansas 66612
Office: 913/296-2215 Home: 913/354-1225

Nancy Lindberg
Assistant to the Attorney General
Office of the Attorney General
Kansas Judicial Center, 2nd Floor
Topeka, Kansas 66612
Office: 913/296-2215 Home: 913/271-5527

GOVERNOR'S LIAISON

Galen Davis
Coordinator, Drug Abuse Programs
Office of Administration - Room 263-E
State Capitol Building
Topeka, Kansas 66612-1572
Office: 913/296-3011

January, 1989

Kansas County & District Attorneys Association
827 S. Topeka Ave., 2nd Floor • Topeka, Kansas 66612 • (913) 357-6351
EXECUTIVE DIRECTOR • JAMES W. CLARK, CAE

Testimony in Support of

SENATE BILL 263

The Kansas County and District Attorneys Association requested this bill from the Senate Judiciary Committee, and the bill was introduced by that committee and passed the Senate, with amendments as suggested by Dean Spring in his letter, which is attached to this testimony.

It first should be pointed out what the bill does **not** do--it does **not** make substantive changes to the concept, philosophy or policy of the insanity defense. Instead, it simply expands the provisions of K.S.A. 22-3219 (which presently requires a defendant to give notice of his/her intent to rely on the defense of insanity, to be available for examination by the state's experts, and to make available a copy of his/her own expert's reports) to include other forms of mental disease or defect.

The statute is adequate on the insanity defense itself, however, since 1970, when the statute was written, the Kansas Supreme Court has recognized a number of other defenses involving mental conditions, these include: unconsciousness by reason of seizure, State v. Massey, 242 Kan. 252 (1987); battered woman syndrome, State v. Hundley, 236 Kan. 461 (1985); and diminished capacity, State v. Maas, 242 Kan. 44 (1987). There will no doubt be others over time. Since criminal statutes are strictly construed against the State, and since the present statute only mentions insanity, trial courts have declined to require notice of intent to rely on other forms of mental disease or defect; and more importantly, have not allowed the state's experts to examine the defendant and have not required disclosure of the defense expert's reports.

The proposed change to the statute merely recognizes the advances in scientific evidence, and enhances the adversary proceeding of a criminal trial by making both sides privy to the scientific evidence being presented.

The Kansas County and District Attorneys Association respectfully urges the House Judiciary Committee to report this bill favorably for passage.

House Judiciary
3/20/89
Attachment IX

WASHBURN UNIVERSITY OF TOPEKA
Vice President for Academic Affairs
Topeka, Kansas 66621
Phone 913-295-6648

February 24, 1989

Jim Clark
Kansas County and District
Attorneys Association
827 South Topeka Avenue
Topeka, Kansas 66612

Re: SB 263

Dear Jim:

I've reviewed Senate Bill 263 and fully support the objective of the amendment to K.S.A. 22-3219 contained therein. When expert testimony is to be utilized to establish a defense based on the presence of mental disorder, it makes no logical difference whether that defense is called insanity, diminished capacity, or any of the other names applied to the various uses of evidence which seek to demonstrate the complete potential absence of mens rea. The rationale which supports the requirement of notice when the defense of insanity is to be relied upon is equally applicable to the other cases, and the defendant's privilege is no more breached in such cases.

I would prefer slightly different language. I believe a clearer amendment would read, beginning at line 23:

> "written notice of such defendant's intention to rely upon a defense involving the presence of mental disease or defect."

The same change, of course, at lines 28 and 29. The reason I prefer this language is simply because, as written, it reads as though "insanity" is a mental disease or defect. It isn't. It's a legal status based on the existence of certain facts, one of which is the presence of mental disease or defect.

I'm sorry my schedule won't permit my appearance on the bill at this time. I can't think of reasons why there should be controversy over this one, however.

Very truly yours,

Raymond L. Spring
Distinguished Professor of Law and
Vice President for Academic Affairs

RLS/dc

H. J. 3/20/89
Att IX

OFFICE OF COWLEY COUNTY ATTORNEY

COUNTY ATTORNEY
Jim Pringle
ASSISTANT COUNTY ATTORNEY
James R. Spring

☐ WINFIELD OFFICE
311 East 9th
Winfield, Kansas 67156
(316) 221-4066

☒ ARKANSAS CITY OFFICE
119 South Summit
Arkansas City, Kansas 67005
(316) 442-0156

February 24, 1989

TO: Senate Subcomittee
FROM Jim Pringle, Cowley County Attorney
RE: Senate Bill 263 amending K.S.A. 22-3219 concerning pleas of insanity and other mental diseases or defects.

Dear Subcommittee Members:

In the fall of 1987, as County Attorney of Cowley County, Kansas, I represented the State of Kansas in the case of State vs. Patricia Minnie. Mrs. Minnie was charged with the first degree murder of her husband, Jimmie Minnie. I suspected from the beginning that the defendant may use as her defense the so-called "battered woman syndrome" which is a form of post traumatic stress disorder. Since there was no statutory requirement that I be given notice of the defendant's intention to rely upon this defense, all I had to go by were my suspicions.

In order to prepare for trial and the anticipated use by the defense of the "battered woman syndrome" (which had been used quite successfully in other cases in the state) I filed a motion with the Court to obtain a copy of the report concerning any mental examinations of the defendant that were performed by the defense attorney's "hand-picked" expert. I also filed a motion to have a court appointed psychologist or psychiatrist conduct a mental evaluation of the defendant. Both of my requests were denied because there was no specific statutory authority requiring that these things be done. K.S.A. 22-3219 provided no help because it only applied to the defense of insanity. As a result of all this I went to trial not even knowing the name of the defendant' expert, let alone what he or she may be testifying to. The lack of notice and inability to have an independent psychologist or psychiatrist examine the defendant greatly impaired the State's chances of being afforded a fair trial.

When K.S.A. 22-3219 was first enacted into law, I'm sure the legislature had no idea the extent to which defenses based upon mental diseases or defects would come to be accepted by the courts as legitimate defenses. It is time to expand K.S.A. 22-3219 to include all mental diseases or defects to keep up with this ever changing area of the law.

The citizens of the State of Kansas don't want to deprive any defendant of any legitimate defense he or she may have, they simply want to have fair warning as to what that defense will be if it

T.J. 3/20/89
Att IX

involves a mental disease or defect, and have the opportunity to have an independent professional examine the defendant to determine if the mental disease or defect is legitimate. If the defenses of insanity or alibi are such that the legislature feels the state should get notice of their intended use, then I see no reason why the state should not also get notice of any other defense based upon mental disease or defect.

I urge you to pass Senate Bill 263 because it is the sensible and right thing to do.

Sincerely yours,

Jim Pringle

Jim Pringle
Cowley County Attorney

JP/kro

RAY TAYLOR, Petitioner

v

ILLINOIS

484 US —, 98 L Ed 2d 798, 108 S Ct —

[No. 86-5963]

Argued October 7, 1987. Decided January 25, 1988.

Decision: Trial court held not to violate accused's rights under Sixth Amendment's compulsory process clause by ordering preclusion of defense witness' testimony as sanction for defense counsel's discovery rule violation.

SUMMARY

A man who took part in a street fight was accused of attempted murder and was tried in the Circuit Court of Cook County, Illinois. Well in advance of trial, the prosecutor filed a discovery motion requesting a list of defense witnesses. On the first day of trial, defense counsel was allowed to amend his "answer to discovery" by adding the names of two eyewitnesses, neither of whom was called to testify. On the second day of trial, after the prosecution's principal witnesses had completed their testimony, defense counsel made an oral motion to amend his answer to discovery to include two additional witnesses. In support of the motion, counsel represented that he had just been informed about these witnesses and that they had probably seen the entire incident in question. In response to the court's inquiry, counsel acknowledged that the accused had previously told him about the two additional witnesses, but said that the accused had not been able to locate the second one. On the next day, the second witness appeared in court with defense counsel, who was permitted to make an offer of proof in the form of the second witness' testimony outside the presence of the jury. It developed that this witness (1) had not seen the incident itself, (2) had first met the accused more than 2 years after the incident, and (3) had been visited by defense counsel at his home during the week before the trial began. The trial judge, finding that the discovery rules had been violated and that the witness' veracity was doubtful, precluded the witness' testimony as a sanction for the discovery violation. The accused was convicted,

Z. J. 3/20/89
Att IX

4

and the Illinois Appellate Court, First District, affirmed, holding that the trial court had been within its discretion in refusing to allow the witness to testify (141 Ill App 3d 839, 96 Ill Dec 189, 491 NE2d 3). Upon filing a petition for rehearing in the Appellate Court, the accused for the first time specifically articulated his claim as based on the right of a criminal defendant, under the Federal Constitution's Sixth Amendment, to have compulsory process for obtaining witnesses in his or her favor. The Illinois Supreme Court denied leave to appeal.

On certiorari, the United States Supreme Court affirmed. In an opinion by STEVENS, J., joined by REHNQUIST, Ch. J., and WHITE, O'CONNOR, and SCALIA, JJ., it was held that (1) the accused's claim under the Sixth Amendment's compulsory process clause was sufficiently well presented to the state's courts to support the jurisdiction of the United States Supreme Court over the claim, (2) the compulsory process clause, which grants a criminal defendant the right to present evidence in his or her favor, does not bar a court from ever ordering the preclusion of defense evidence as a sanction for violating a discovery rule, (3) under the circumstances, the preclusion sanction was not unnecessarily harsh, because there was a sufficiently strong inference of willful misconduct on the part of defense counsel to justify such a severe sanction, and (4) it was not unfair to hold the accused responsible for defense counsel's misconduct.

BRENNAN, J., joined by MARSHALL and BLACKMUN, JJ., dissented, expressing the view that (1) the accused waived his federal constitutional claims at trial as a matter of Illinois law, but that waiver did not bar review in the Supreme Court as a matter of federal law, (2) absent evidence of an accused's personal involvement in a discovery violation, the compulsory process clause per se bars discovery sanctions that exclude criminal defense evidence, and (3) courts should not be permitted to punish a client for an attorney's misconduct.

BLACKMUN, J., dissented, expressing the view that in cases involving sanctions for noncompliance with rules designed for specific kinds of evidence, rather than general reciprocal-discovery rules, the state's legitimate interests might well occasion a result different from that which should have obtained in the present case.

N. J. 3/20/89
Att IX

Petitioner does not question the legitimacy of a rule requiring pretrial disclosure of defense witnesses, but he argues that the sanction of preclusion of the testimony of a previously undisclosed witness is so drastic that it should never be imposed. He argues, correctly, that a less drastic sanction is always available. Prejudice to the prosecution could be minimized by granting a continuance or a mistrial to provide time for further investigation; moreover, further violations can be deterred by disciplinary sanctions against the defendant or defense counsel.

It may well be true that alternative sanctions are adequate and appropriate in most cases, but it is equally clear that they would be less effective than the preclusion sanction and that there are instances in which they would perpetuate rather than limit the prejudice to the State and the harm to the adversary process. One of the purposes of the discovery rule itself is to minimize the risk that fabricated testimony will be believed. Defendants who are willing to fabricate a defense may also be willing to fabricate excuses for failing to comply with a discovery requirement. The risk of a contempt violation may seem trivial to a defendant facing the threat of imprisonment for a term of years. A dishonest client can mislead an honest attorney, and there are occasions when an attorney assumes that the duty of loyalty to the client outweighs elementary obligations to the court.

[12] We presume that evidence that is not discovered until after the trial is over would not have affected the outcome.[18] It is equally reasonable to presume that there is something suspect about a defense witness who is not identified until after the eleventh hour has passed. If a pattern of discovery violations is explicable only on the assumption that the violations were designed to conceal a plan to present fabricated testimony, it would be entirely appropriate to exclude the tainted evidence regardless of whether other sanctions would also be merited.

[1e] In order to reject petitioner's argument that preclusion is *never* a permissible sanction for a discovery violation it is neither necessary nor appropriate for us to attempt to draft a comprehensive set of standards to guide the exercise of discretion in every possible case. It is elementary, of course, that a trial court may not ignore the fundamental character of the defendant's right to offer the testimony of witnesses in his favor. But the mere invocation of that right cannot automatically and invariably outweigh countervailing public interests. The integrity of the adversary process, which depends both on the presentation of reliable evidence and the rejection of unreliable evidence; the interest in the fair and efficient administration of justice; and the potential prejudice to the truth-determining function of the trial process must also weigh in the balance.[19]

[13, 14a] A trial judge may certainly insist on an explanation for a party's failure to comply with a request to identify his or her witnesses in advance of trial. If that explanation reveals that the omission was willful and motivated by a desire to obtain a tactical advantage that would minimize the effectiveness of cross-examination and the ability to adduce rebuttal evidence, it would be entirely consistent with the purposes of the Confrontation Clause simply to exclude the witness' testimony.[20] Cf. United States v Nobles, 422 US 225, 45 L Ed 2d 141, 95 S Ct 2160 (1975).

[9c] The simplicity of compliance with the discovery rule is also relevant. As we have noted, the Compulsory Process Clause cannot be invoked without the prior planning and affirmative conduct of the defendant. Lawyers are accustomed to meeting deadlines. Routine preparation involves location and interrogation of potential witnesses and the serving of subpoenas on those whose testimony will be offered at trial. The burden of identifying them in advance of trial adds little to these routine demands of trial preparation.[21]

[1f] It would demean the high purpose of the Compulsory Process Clause to construe it as encompassing an absolute right to an automatic continuance or mistrial to allow presumptively perjured testimony to be presented to a jury. We reject petitioner's argument that a preclusion sanction is never appropriate no matter how serious the defendant's discovery violation may be.

T. J. 3/20/89
Att IX

[9a] There is a significant difference between the Compulsory Process Clause weapon and other rights that are protected by the Sixth Amendment—its availability is dependent entirely on the defendant's initiative. Most other Sixth Amendment rights arise automatically on the initiation of the adversarial process and no action by the defendant is necessary to make them active in his or her case.[14] While those rights shield the defendant from potential prosecutorial abuses, the right to compel the presence and present the testimony of witnesses provides the defendant with a sword that may be employed to rebut the prosecution's case. The decision whether to employ it in a particular case rests solely with the defendant. The very nature of the right requires that its effective use be preceded by deliberate planning and affirmative conduct.

[10a] The principle that undergirds the defendant's right to present exculpatory evidence is also the source of essential limitations on the right. The adversary process could not function effectively without adherence to rules of procedure that govern the orderly presentation of facts and arguments to provide each party with a fair opportunity to assemble and submit evidence to contradict or explain the opponent's case. The trial process would be a shambles if either party had an absolute right to control the time and content of his witnesses' testimony. Neither may insist on the right to interrupt the opposing party's case and obviously there is no absolute right to interrupt the deliberations of the jury to present newly discovered evidence. The State's interest in the orderly conduct of a criminal trial is sufficient to justify the imposition and enforcement of firm, though not always inflexible, rules relating to the identification and presentation of evidence.[15]

[11] The defendant's right to compulsory process is itself designed to vindicate the principle that the "ends of criminal justice would be defeated if judgments were to be founded on a partial or speculative presentation of the facts." United States v Nixon, 418 US, at 709, 41 L Ed 2d 1039, 94 S Ct 3090. Rules that provide for pretrial discovery of an opponent's witnesses serve the same high purpose.[16] Discovery, like cross-examination, minimizes the risk that a judgment will be predicated on incomplete, misleading, or even deliberately fabricated testimony. The "State's interest in protecting itself against an eleventh hour defense"[17] is merely one component of the broader public interest in a full and truthful disclosure of critical facts.

T.J. 3/20/89
Att IX

[422 US 225]

UNITED STATES, Petitioner,

v

ROBERT LEE NOBLES

422 US 225, 45 L Ed 2d 141, 95 S Ct 2160

[No. 74–634]

Argued April 23, 1975. Decided June 23, 1975.

SUMMARY

The defendant was convicted in the United States District Court for the Central District of California on charges arising from an armed robbery of a federally insured bank. At the trial defense counsel sought to impeach the credibility of the two key prosecution witnesses by testimony of a defense investigator regarding statements previously obtained from the witnesses. When the defendant called the investigator as a defense witness, but failed to comply with the District Court's ruling that a copy of the relevant portions of the investigator's report should be produced for the prosecution's use in cross-examining him, the District Court refused to allow the investigator to testify about his interviews with the witnesses. The Court of Appeals for the Ninth Circuit reversed (501 F2d 146).

On certiorari, the United States Supreme Court reversed the judgment of the Court of Appeals. In an opinion by POWELL, J., expressing the views of all the participating members of the court, it was held that (1) the Fifth Amendment provision against self-incrimination did not prohibit the disclosure condition imposed by the District Court; (2) Federal Criminal Procedure Rule 16, while framed exclusively in terms of pretrial discovery, did not preclude prosecutorial discovery at the trial; and (3) the District Court properly exercised its discretion, and its preclusion sanction was a proper method of assuring compliance with its disclosure order. Expressing the views of six members of the court, the court's opinion also held that defendant, by electing to present the investigator as a witness, waived the work products privilege with respect to matters covered in the investigator's testimony.

WHITE, J., joined by REHNQUIST, J., concurred in the judgment and in the

Briefs of Counsel, p 760, infra.

T.J. 3/20/89
Att 18

II

[3] The dual aim of our criminal justice system is "that guilt shall not escape or innocence suffer," Berger v United States, 295 US 78, 88, 79 L Ed 1314, 55 S Ct 629 (1935). To this end, we have placed our confidence in the adversary system, entrusting to it the primary responsibility for developing relevant facts on which a determination of guilt or innocence can be made. See United States v Nixon, 418 US 683, 709, 41 L Ed 2d 1039, 94 S Ct 3090 (1974); Williams v Florida, 399 US 78, 82, 26 L Ed 2d 446, 90 S Ct 1893 (1970); Elkins v United States, 364 US 206, 234, 4 L Ed 2d 1669, 80 S Ct 1437 (1960) (Frankfurter, J., dissenting).

[4, 5] While the adversary system depends primarily on the parties for the presentation and exploration of relevant facts, the judiciary is not limited to the role of a referee or supervisor. Its compulsory processes stand available to require the presentation of evidence in court or before a grand jury. United States v Nixon, supra; Kastigar v United States, 406 US 441, 443–444, 32 L Ed 2d 212, 92 S Ct 1653 (1972); Murphy v Waterfront Comm'n, 378 US 52, 93–94, 12 L Ed 2d 678, 84 S Ct 1594 (1964) (White, J., concurring). As we recently observed in United States v Nixon, supra, at 709, 41 L Ed 2d 1039, 94 S Ct 3090:

> "We have elected to employ an adversary system of criminal justice in which the parties contest all issues before a court of law. The need to develop all relevant facts in the adversary system is both fundamental and comprehensive. The ends of criminal justice would be defeated if judgments were to be founded on a partial or speculative presentation of the facts. The very integrity of the judicial system and public confidence in the system depend on full disclosure of all the facts, within the framework of the rules of evidence. To ensure that justice is done, it is imperative to the function of courts that compulsory process be available for the production of evidence needed either by the prosecution or by the defense." Decisions of this Court repeatedly have recognized the federal judiciary's inherent power to require the prosecution to produce the previously recorded statements of its witnesses so that the defense may get the full benefit of cross-examination and the truth-finding process may be enhanced. See, e.g., Jencks v United States, 353 US 657, 1 L Ed 2d 1103, 77 S Ct 1007 (1957);[5] Gordon v United States, 344 US 414, 97 L Ed 447, 73 S Ct 369 (1953); Goldman v United States, 316 US 129, 86 L Ed 1322, 62 S Ct 993 (1942); Palermo v United States, 360 US 343, 361, 3 L Ed 2d 1287, 79 S Ct 1217 (1959) (Brennan, J., concurring in result). At issue here is whether, in a proper case, the prosecution can call upon that same power for production of witness statements that facilitate "full disclosure of all the [relevant] facts." United States v Nixon, supra, at 709, 41 L Ed 2d 1039, 94 S Ct 3090.

H.J. 3/20/89
att IX

[15, 16a] The court's preclusion sanction was an entirely proper method of assuring compliance with its order. Respondent's argument that this ruling deprived him of the Sixth Amendment rights to compulsory process and cross-examination misconceives the issue. The District Court did not bar the investigator's testimony. Cf. Washington v Texas, 388 US 14, 19, 18 L Ed 2d 1019, 87 S Ct 1920 (1967). It merely prevented respondent from presenting to the jury a partial view of the credibility issue by adducing the investigator's testimony and thereafter refusing to disclose the contemporaneous report that might offer further critical insights. The Sixth Amendment does not confer the right to present testimony free from the legitimate demands of the adversarial system; one cannot invoke the Sixth Amendment as a justification for presenting what might have been a half-truth. Deciding, as we do, that it was within the court's discretion to assure that the jury would hear the full testimony of the investigator rather than a truncated portion favorable to respondent, we think it would be artificial indeed to deprive the court of the power to effectuate that judgment. Nor do we find constitutional significance in the fact that the court in this instance was able to exclude the testimony in advance rather than receive it in evidence and thereafter charge the jury to disregard it when respondent's counsel refused, as he said he would, to produce the report.[16]

H.J. 3/20/89
Att IX