Approved Thomas F. Walker
Date 4/6/90

MINUTES OF THE HOUSE COMMITTEE ON GOVERNMENTAL ORGANIZATION.

The meeting was called to order by Thomas F. Walker at
Chairperson

12:00 ~~xxx~~a.m./p.m. on Monday, April 2, 1990 in room 522-S of the Capitol.

All members were present except:

Committee staff present:

Avis Swartzman - Revisor
Carolyn Rampey - Legislative Research
Jackie Breymeyer - Committee Secretary

Conferees appearing before the committee:

Howard Schwartz - Judicial Administrator
Representative Mike O'Neal
Representative Joan Wagnon
Representative Gary Blumenthal

Chairman Walker called the noon meeting of the Governmental Organization to order and stated the first order of business was final action on HB 3105.

Representative Brown moved to amend HB 3105 by striking the penalty clause (b), lines 27 through 29. Representative Gjerstad seconded the motion.

Representative Brown was asked the effectiveness of this proposed amendment. She replied that it was making a policy statement.

The motion carried.

Representative Bowden moved to amend HB 3105 in lines 16 and 17 after the word "gender" add the words "and race". Representative Ramirez seconded the motion.

The Revisor had a question on how the wording on line 20 should be rephrased. It was decided that after the word 'possible'and the period, it would continue with words to the effect "for purposes of appointment on the basis of gender."

Representative Graeber moved to pass HB 3105 favorably as amended. Representative Brown seconded the motion. The motion carried.

HCR 5063 - amend section 2 of article 3 of the constitution of the State of Kansas relating to the supreme court.

Howard Schwartz, Judicial Administrator was first to appear on the bill and distributed a number of attachments. (Attachments 1 through 6)

Mr. Schwartz's testimony stated that the seniority system of selecting the Chief Justice has served Kansas well by providing stability and continuity in the judicial branch. The Kansas judicial branch is one of the best court systems in the country. The Society for the Improvement of Justice has recognized Kansas as having a model state court system. Seven states, including Kansas, use a seniority system. In seventeen states, chief justices are selected as proposed here. For ninety years, the Chief Justice has been the justice with the greatest seniority. During this time, Kansas has had good court, good law, and the respect of other states and of legal scholars. Neither current need nor future benefit arising from the passage of HCR 5063 has been shown. Mr. Schwartz ended his testimony by stating HCR 5063 should not be passed. (Attachment 1)

Mr. Schwartz answered questions regarding the makeup of the court. He re-emphasized the fact that there is 90 years of tradition and experience behind the current system. He can see nothing wrong and no problems which exist that would call for such a drastic change. The reason he is opposed to the bill is that it would politicize the court and introduce the possibility of decisiveness and factionalism. He also added that limiting the number of years on the court would limit productivity and programs - this would be absolutely counterproductive. It takes time to get settled in the office, to get started on projects. A justice may decline or resign from the office of chief justice without resigning from the court. 70 years is the retirement age.

Jerry Sloan, Judicial Administrator's office, stated that Massachusetts was the only state he knew that appointed the justice for life. Most elective justices are from the southern states.

Representative Mike O'Neal appeared on the bill and distributed an attachment. (Attachment 7) In 1977 Kansas was a leader in the country by putting together a Judicial Council composed of the judicial and the legislative branch. Input was received from the courts, private citizens and the legislature. He drew attention to 20-2203, duties of judicial council. He stated this is a serious issue that may have merit. Communication was better when the court was located in the capital building. When the court moved across the street, communication was not as good.

Several members questioned where HCR 5063 came from. The Chairman replied that Representative Blumenthal had a resolution and after some dialogue it was decided that it would be better served if introduced as a committee resolution.

Representative Wagnon appeared on the bill and distributed an attachment. (Attachment 8) She stated she had never been a fan of the seniority system. Seniority on the bench does not necessarily produce the most appropriate chief justice. Effective execution of duties would not necessarily be commensurate with the number of years a particular justice has spent on the Supreme Court. Self-selection by the Supreme Court is the predominant method of selection of the chief justice in the United States, with gubernatorial appointment following. Representative Wagnon ended her testimony with saying she supports the resolution.

Questions on who was next in line, the gender issue and how the resolution would affect appointments to the court. Also one of the members did not see the state of Minnesota on the list. Representative Wagnon said her intern had prepared the testimony. She is quite confident that competent, capable women will be seen on the court in the future.

Representative Blumenthal was last to speak to the bill. Copies of his testimony were distributed. (Attachment 9) He said this is not a figurehead position; only 6 of 48 states use this system. The Chief Justice is too important a position to be left to the whims of the seniority system. The seniority system cannot produce, with certainty, the best the state has to offer in leadership, creativity or new approaches to problems. Seniority has largely been abandoned in the nation's most efficient legislatures, corporations and unions. The justices would elect by a majority vote one of their number to serve as chief justice. The term of office would be two years. Representative Blumenthal ended his testimony with the hope that the committee would consider the matter of replacing the seniority-based system with the merit based selection.

Representative Blumenthal was asked why two years. He replied that seemed to be what the other states were utilizing. He would see nothing wrong with 4 or 6 years. He does not see this as a popularity contest in that members have a certain level of dignity in their position and would have the respect and competence of their peers.

Representative Blumenthal was asked what qualities he meant in a justice. He replied competence, intelligence and the ability to be a good administrator and spokesman in his job.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON GOVERNMENTAL ORGANIZATION,

room 522-S, Statehouse, at 12:00 a.m./p.m. on Monday, April 2, 1990

The Chairman stated the hearing was closed on HCR 5036. He asked the committee if they would like to begin discussion now or wait until tomorrow. After several comments it was decided to meet at 8:00 a.m. in addition to the noon meeting on Tuesday, April 2.

The Chairman asked if there was any other business to come before the Committee. Representative Miller distributed an attachment entitled House Substitute for Senate Bill No. 762. He explained this will get the bill back in front of the Senate. (See attachment 10)

Representative D. Miller moved to substitute this language and pass out SB 762 favorably.. Representative Bowden seconded the motion. The motion carried.

The meeting adjourned at 1:19 p.m.

HCR 5063
House Governmental Organization Committee
April 2, 1990

Testimony of Howard Schwartz
Judicial Administrator

The Kansas Supreme Court and the Office of Judicial Administration oppose HCR 5063. We believe that the seniority system of selecting the Chief Justice has served Kansas well by providing stability and continuity in the judicial branch since its inception ninety years ago.

The administration of the judicial branch is entrusted to the Supreme Court under the direction of the Chief Justice. The Supreme Court works as a board of directors of the judicial branch, with the Chief Justice serving as the Chief Executive Officer. Policy decisions are made by the entire Court. Implementing policy and the daily administrative matters are the Chief Justice's responsibility.

The judicial branch is a complex organization made up of 105 district courts, two appellate courts, the OJA, and numerous commissions and boards, and its administration is not an art to be learned quickly. The Kansas seniority system ensures that a Chief Justice will be familiar with each component of the judicial branch. When a justice first is

Attachment 1
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appointed to the Court, he or she becomes responsible for one of the six geographical judicial departments of the state. The justice also becomes the liaison of the Court for one of its boards or commissions, such as the Kansas Judicial Council, Commission on Judicial Qualifications, the Board for the Discipline of Attorneys, the Board of Law Examiners, the Commission on Continuing Legal Education, the Board of Examiners of Court Reporters, and the Kansas Bar Association's Committee on Women in the Legal Profession. Each justice also supervises special projects for the Court, such as the Child Support Guidelines and the current drafting of rules for mediation and other alternative dispute resolution.

With the retirement of a justice and appointment of a new member of the Court, the liaison assignments change. During a Chief Justice's term, the justice with the next most seniority heads the Kansas Judicial Council and works closely with the Chief in his or her administrative duties, the best education the future Chief Justice could have. Thus, the seniority system will afford the Chief Justice in-depth experience in each area of judicial branch administration before the Chief must exert general administrative powers over the entire branch.

The Kansas judicial branch is one of the best court systems in the country. The Society for the Improvement of Justice has recognized Kansas as having a model state court system. Kansas was the first state to adopt delay reduction time standards, and now over half the states have followed our lead. We were the first state to adopt the American Bar Association's Jury Management Standards. Currently, the ABA is in Kansas, studying our probate system. Our courts often serve as the subjects of reports and studies because of their recognized excellence.

Twice each year, I meet with all the chief justices and judicial administrators from the other states in the nation. Seven states, including Kansas, use a seniority system. In seventeen states, chief justices are selected as proposed here. During the 12 years I have been the Kansas Judicial Administrator, the officials from these states have repeatedly told me that the reason the Kansas court system has been able to achieve so much and is recognized as a leading court system in the nation is because of its seniority system and the stability that system provides to our courts.

Compare our experience with that of Missouri, which selects its chief justices as proposed by this bill. Its court has suffered from divisiveness and factionalism, resulting in the so-called "Gang of Four" justices taking over the court in 1984 and 1985.

While I believe that the seniority system instills stability in our courts, I think a lot of the Kansas judicial branch's strengths arise from its reverence for tradition and history. This reverence for tradition comes naturally to the courts to whom precedent is a great concern. For ninety years, the Chief Justice has been the justice with the greatest seniority. During the tenure of this system, Kansas has had good courts, good law, and the respect of other states and of legal scholars. Suddenly, a proposal is made to alter this well-established practice. What problems exist that the legislature believes HCR 5063 will correct or what deficiency will it cure? To my knowledge, no studies have been made which suggest a need for this change. Recent experience has shown what havoc on the state even long-studied constitutional amendments can make.

Neither current need nor future benefit arising from the passage of HCR 5063 has been shown. Unless the proponents of this resolution can offer evidence which contradicts the experience of nearly a century, HCR 5063 should not be passed.

# # #

# Supreme Court of Kansas

Kansas Judicial Center
Topeka, Kansas 66612

ROBERT H. MILLER
*Chief Justice*

(913) 296-5348

March 29, 1990

Hon. Tom Walker
Chairman House Governmental
Organization Committee
Statehouse
Topeka, Kansas 66612

Dear Representative Walker:

The members of the Kansas Supreme Court this afternoon received copies of House Concurrent Resolution No. 5062, and we are advised that a similar Resolution has been introduced by the Senate Judiciary Committee. The Justices have asked me to convey to you their thoughts in this regard.

The court is opposed to the change in the Constitution of Kansas, art. III, sec. 2, proposed in the Resolution. The present constitutional provision that the senior justice serve as Chief Justice has served the State and the court well since its adoption at the turn of the century.

The proposed change parallels that which has proven very divisive in other state supreme courts. Our present constitutional article provides continuity and stability in the court and is entirely non-political.

The court urges retention of our present constitutional provision in this regard.

Very truly yours,

Robert H. Miller

ROBERT H. MILLER
Chief Justice

RHM:ph

Attachment 2
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## Mo. bar wants answers on supreme court rift

Some Missouri state bar leaders and state Republican Party officials are saying, "Show me." They have called for a public airing of misconduct allegations against the chief justice of the state supreme court.

Missouri—the first of now 35 states to opt for merit selection of judges—has a supreme court mired in suspicion and personality conflicts.

Chief Justice Albert Rendlen is accused by some politicians and one of his brethren of wrongdoing. One allegation is that Rendlen and the state GOP packed the court in 1982 when there were several vacancies to fill. Rendlen is a former Republican Party state chairman. Allegations have been made by former state Republican Party chairman John Poell, who has indicated Rendlen backed out of a deal on selecting judges. C.K. "Chip" Castell, who was former Gov. Christopher Bond's legal counsel, said he was lobbied by Rendlen on judicial selection. And supreme court justices Robert Donnelly and Warren Welliver are not happy with Rendlen.

The Missouri Bar's Executive Committee called last spring for public disclosure of any investigation of Rendlen by the Missouri Commission on the Retirement, Removal and Discipline of Judges.

But the bar's Board of Governors took no further notice of the request. Follow-up was deemed useless, one official said.

Rumors circulated that an investigation of Rendlen was concluded. Rendlen and other officials refused to comment. If he was investigated and cleared, Rendlen has not gone public.

"There has been some speculation among members of The Missouri Bar that the commission may have, in fact, completed its review, but no public announcement, such as that which The Missouri Bar requested, has been made," said bar President John Fox Arnold of St. Louis.

The bar is studying merit selection in Missouri and elsewhere. Three areas of "most interest" are how to ensure vigorous recruitment of candidates, how to avoid bloc or preferential-weight voting in selecting judges and how to ensure impartial selection commissions, Arnold said. The state senate judiciary committee is also taking an in-depth look at the judicial selection process.

A year ago, Arnold and his predecessor offered their mediation services to the court, but were rebuffed, he said. At that time, bar officials blamed court squabbling on personalities, he said. But some have become more suspicious.

The state bar "is embarrassed" that the court is engaged "in what most lawyers believe to be unseemly" conduct, Arnold said.

"We don't have any discretion" in making any confidential investigation results public, said commission chairman Godfrey Padberg of St. Louis.

He said the public should make one of three conclusions: (1) An investigation has occurred and allegations were unfounded; (2) No investigation took place; or (3) An investigation concluded with no probable cause to proceed.

Justice Donnelly, whom Rendlen replaced as chief when they quarreled over procedures, suggested in a *Bar Leader* interview that impeachment proceedings against Rendlen could be initiated under the state Constitution. Lawmakers ignored this option, he said.

He said Rendlen "packed" the court and controls four of seven vot It's "about the most horrible exa ple, I guess, that you could possil find as to how a non-partisan co plan should not work," Donne said.

Rendlen and Welliver were r available for comment.

*—Cheryl Fra*

*Arnold: How is merit selection working in Missouri and elsewher*

*Rendlen: Does he control four of seven votes on the court?*

*Donnelly: A "horrible example" of how plan shouldn't work.*

Attachment 3
C.O. 4/2/90

**SUPREME COURT JUSTICE**
**METHOD OF SELECTION**

| GOVERNOR APPOINTS | SENIORITY | JUSTICES SELECT | OTHER |
|---|---|---|---|
| California | Kansas | Alaska | Alabama |
| Delaware | Louisiana | Arizona | Arkansas |
| Hawaii | Mississippi | Colorado | Connecticut |
| Maine | Pennsylvania | Florida | Indiana |
| Maryland | Virginia | Georgia | Minnesota |
| Massachusetts | W. Virginia | Idaho | Montana |
| Nebraska | Wisconsin | Illinois | N. Carolina |
| New Hampshire | | Iowa | N. Dakota |
| New Jersey | | Kentucky | Ohio |
| New York | | Michigan | Rhode Island |
| Vermont | | Missouri | S. Carolina |
| | | New Mexico | Tennessee |
| | | Oklahoma | Texas |
| | | Oregon | Washington |
| | | S. Dakota | Nevada |
| | | Utah | |
| | | Wyoming | |

Attachment 4
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Miscellaneous assignments:

| | |
|---|---|
| Holmes | Judicial Council<br>(3d Judicial Department) |
| McFarland | Liaison to Court Reporters<br>Liaison to Admissions Board<br>(1st Judicial Department) |
| Herd | RULES<br>CLE<br>Joint Commission on Public Understanding of the Law<br>Bicentennial Commission<br>(6th Judicial Department) |
| Lockett | Municipal Judges training and exam<br>DMJ training and exam<br>New judges training seminar<br>(2d Judicial Department) |
| Allegrucci | Awards Committee<br>Liaison to Disciplinary Board<br>(4th Judicial Department) |
| Six | Liaison to Judicial Qualifications Commission<br>(5th Judicial Department) |

Attachment 5
G.O.
4/2/90

# Public Perceptions of Judicial Scandal: The Missouri Supreme Court 1982-88*

Greg Casey**

*A public scandal on the Missouri Supreme Court revealed its judges to be engaging in political intrigues over recruitment. Some judges showed injudicious behavior (such as public bickering, accusations, recriminations, or calls for impeachment). An opinion study at the height of the scandal shows two principal reactions: "cynical standpatters" see the court in a political light and nonetheless prefer the status quo, while the "disaffected" desire reform, but have little hope of achieving it. Analysis of these outlooks shows that the court faced only a partial crisis of legitimacy, which subsequent events suggest it has ridden out.*

## Introduction

Court scandals carry in their wake many problems, but one of the most serious is that judges' irresponsible or improper conduct might diminish public confidence in the judiciary (ABA Code of Judicial Conduct, 1972:9; Lubet, 1984:5-9). This loss of legitimacy and effectiveness will only occur when corruption and misbehavior are publicly visible. Thus, judicial misbehavior unknown to the public[1] would not lower confidence in the judiciary's integrity. But the ABA Code of Judicial Conduct foresees that any inappropriate action by judges has some likelihood of eventually becoming known, at which point public regard for courts could be put in jeopardy.

Unfortunately, little empirical proof has been mounted to demonstrate (or refute) the widespread assumption that courts' public standing suffers

* The author would like to thank Dennis Casey (for research assistance with several key points), Prof. Joy A. Chapper of the University of Maryland-Baltimore (for suggestions and help with several key points), and Dan Cook, Alan Ray, Carolus Taylor, Brad Zerkel, and especially, Tom McInnis of the Department of Political Science at Wells College (New York), former students enrolled in the judicial behavior seminar in fall 1985 (for assistance in gathering and selecting statements for the instrument used in this research, as well as in administering the instrument to respondents).

** Associate Professor of Political Science, University of Missouri-Columbia.

1. A distinction should be drawn between the general (or mass) public, and the more attentive public which follows courts and judges more closely and deals with them on a more frequent basis. The attentive public includes lawyers, court employees, and law enforcement personnel, with some tentacles penetrating into the political community. Word of judicial scandal could spread quite rapidly among the attentive public without the news media being alerted and without the general public becoming aware.





Attachment 6
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when judges misbehave. Many judicial scandals have taken place, but no study of public reaction to them can be found in the opinion literature. Public opinion studies of courts have taken a different tack, focusing primarily on attitudes toward courts untroubled by scandal and on opinions of major judicial decisions.

The Missouri Supreme Court scandal of 1984-85 presented an opportunity to bridge this research gap. During this period members of the state supreme court accused another justice of having engaged in political machinations to recruit new members for the court, made several abrupt departures from court traditions, and bickered openly among themselves. After a stage of quiescence from 1980-1984, some judges began bringing into the open their various complaints about one another. The resulting period of open fire from late 1984 through 1986 was followed by a restoration of calm from late 1986 to the present. Data on opinions of the court's constituency reported herein were gathered in late 1985 and early 1986, and took advantage of these changes to capture a snapshot of public opinion toward the judicial scandal.

This article will first consider the literature on judicial scandal and then will review the literature on public opinion regarding courts. Results of the study of opinions of the Missouri Supreme Court's constituency are then described, implications of the results are discussed, and finally, conclusions on the public response to judicial scandal are drawn.

## Forms and Variations of Judicial Scandal

Judicial misconduct takes many forms. The variables this report will consider are: the gravity of the indiscretion, the type of court system (i.e., federal, state, local), and the court level (trial vs. appellate) at which the indiscretion takes place.

*Gravity of the judicial offense.* Degrees of seriousness are universally recognized. As with a crime, planned and intentional corruption would be the most serious, unintentionally corrupt decision making less so, on-bench eccentricity, misbehavior, and maladministration still less so, and undignified conduct off the bench probably least serious.

A reluctance to distinguish degrees of gravity is evident in the literature: the ABA Code of Judicial Conduct does not rank indiscretions but lists them separately, and other commentators on judicial indiscretion suggest that no scale can be applied to such offenses by judges, because any deviation by a judge from the "most rigid honesty and impartiality" betrays the righteousness of all law so that the "size of the bribe or scope of corruption cannot be the scale for measuring a judge's dishonor" (Borkin, 1962:16). This theoretical approach to judicial ethics usually ends up yielding to more utilitarian

Justice John Todd was charged with having cheated on a multi-state bar examination, and in Rhode Island in 1986, Chief Justice Joseph Bevilacqua was charged with having brought his office into disrepute by his friendships with alleged mobsters (Kadzis, 1985; Kiernan, 1986). The impeachment and conviction in 1986 of Federal District Judge Harry Claiborne of Nevada was based on his conviction for income tax evasion, an off-bench, personal lapse which no one seriously charged affected his decisions, but which was nonetheless deemed damaging to the integrity of the federal bench (Stumpf, 1988:226-7). Inappropriate judicial behavior includes quarreling with brethren. One instance of this on the United States Supreme Court was the tension between Justices Hugo Black and Robert Jackson that erupted in 1946 (Dunne, 1975:466-67, 479, 482-84).

Scandals on the Ohio and Texas Supreme Court are examples of *hybrids*, in which judicial policy making in the areas of tort, labor, and business law[4] combined with injudicious behavior on the Ohio court (Baum, 1987:362-63; Tarr and Porter, 1988:124-183) and with corruption on the Texas high court (Champagne, 1988).

*Summary: Scandal and Judicial Misbehavior*. In general, the literature on judicial misbehavior is anecdotal rather than rigorously analytic. Glick undertook the only systematic study of this phenomenon, looking for patterns in judicial misconduct by searching through all news articles on judicial misconduct in the *New York Times* for a three year period to see whether a state's type of judicial recruitment related to misbehavior on the part of its judges. The system of judicial selection had no apparent impact on the frequency of misconduct (Glick, 1978:530-31)[5]. We can hope that the spotty attention given this problem reflects its infrequency. If judicial misbehavior were the rule rather than the exception, social science understanding of the phenomenon might be far more systematic, but our judicial system would then be in far worse straits!

## The Case of the Missouri Supreme Court

The Missouri Supreme Court's injudicious behavior[6] blends two types of alleged misconduct – political manipulation and inappropriate personal behavior. In 1982, three vacancies on the seven-judge court opened up in five months' time, and one sitting judge (Rendlen) purportedly manipulated the merit plan to handpick three new members of the court (Billings, Blackmar, and Gunn).[7] After taking office, the three new judges allied with Rendlen to form a majority bloc of four out of the seven seats and began to run the court without always consulting the three minority judges. These dominant four judges became known as the "Gang of Four," and their actions provoked two members of the minority (Donnelly and Welliver) into public accusations against Rendlen and the majority for their misdeeds. One judge (Donnelly) even called for Rendlen's impeachment. To prevent Welliver from becoming chief justice, the majority of the court abandoned its institutional tradition of choosing as chief justice the seniormost judge who had not yet served in that capacity. Welliver complained publicly about his shabby treatment.[8] Newspapers in the state carried many reports of the dispute.[9] As press coverage swelled to a crescendo in spring 1985, Gunn – one of the three judges recruited in 1982 – resigned the court for an appointment to the U. S. District Court bench in St. Louis, allegedly relieved to escape the poisoned atmosphere on the state supreme court.

With Gunn's resignation, the merit nominating process began anew. The appellate judicial commission provided Governor Ashcroft a list (the "panel") of three nominees which included two sitting appellate judges with considerable experience. The other nominee was a thirty-three-year-old gubernatorial aide (Robertson) who had no judicial experience, having worked for the governor for most of his eight-year legal career. After a short interval, the governor passed over the experienced judges and appointed Robertson,

4. In this overview we do not consider activist judicial policy making to be scandalous, although some observers may see it as such. Thus, the concerns about the Ohio and Texas courts' policy directions represent a separate dimension which both muddies and dilutes the scandals.

5. The universe of cases was, however, quite small, and judicial scandals in New York and New Jersey were eliminated from consideration because they counted as local coverage in the *Times*. The time period was 1974-76.

6. Further information about the circumstances of this scandal and personnel involved is available in Bunch and Casey (forthcoming).

7. It must be acknowledged that the code of judicial conduct is not entirely clear on whether this form of recruitment activity by a sitting judge is inappropriate or not. The code states that no judge appointed under the merit plan should "take part in any political campaign," but lining up new judges for the supreme court is not a political campaign, at least not in the conventional sense. [Detailed explanations of the key features of the Missouri Plan of judicial selection are available in Flango and Ducat (1979), Glick (1978), Glick and Emmert (1987), and Hall and Aspin (1987).] Moreover, the code prohibits a judge from engaging in any other political activity except on behalf of "measures to improve the law, the legal system, or the administration of justice." These words could be construed narrowly to permit only activity on behalf of court and law reform, or broadly to include activity to recruit new judges whose contributions to the bench would improve the law.

8. The court instead chose Judge Higgins, its only member utterly uninvolved in the scandal, for the chief justice.

9. *The National Law Journal* carried an article on the scandal on May 27, 1985 (Wenske, 1985b), but a search of the indices of six other out-of-state newspapers revealed no articles whatsoever on the problems of the Missouri Supreme Court in the years 1984-85. Particularly insightful articles carried in in-state newspapers include Garey (1985), Hood (1985), and Wenske (1985a). The out-of-state papers were the *New York Times*, the *Los Angeles Times*, the *Chicago Tribune*, *USA Today*, the *Washington Post*, and the *San Francisco Chronicle*.

CASE ANNOTATIONS

1. Various constitutional objections considered and act held valid. Powers v. Thorn, 155 K. 758, 773, 129 P.2d 254.

**20-2120.**
History: L. 1927, ch. 180, § 20; Repealed, L. 1953, ch. 177, § 2; June 30.

**20-2121 to 20-2124.**
History: L. 1927, ch. 180, §§ 21 to 24; Repealed, L. 1969, ch. 169, § 31; Jan. 1, 1970.

**20-2125.**
History: L. 1943, ch. 166, § 13; L. 1945, ch. 208, § 13; L. 1947, ch. 255, § 12; L. 1949, ch. 267, § 16; Repealed, L. 1953, ch. 214, § 17; April 14.

## Article 22.—JUDICIAL COUNCIL

**20-2201. Judicial council; members; number; appointment; term.** A judicial council is hereby established and created which shall be composed of one justice of the supreme court, one judge of the court of appeals, two district judges of different judicial districts, four resident lawyers, the chairperson of the judiciary committee of the house of representatives, and the chairperson of the judiciary committee of the senate. All members except the chairpersons of the senate and house judiciary committees shall be appointed by the chief justice of the supreme court for a term of four years and until a successor shall have been appointed and qualified.

The terms of the chairpersons of the senate and house judiciary committees, and all other members, shall terminate upon such member ceasing to belong to the class from which such member was appointed. All vacancies except those of chairpersons of the senate and house judiciary committees shall be filled by appointment by the chief justice for the unexpired term. Upon vacancy, the places of the chairpersons of the senate and house judiciary committees shall be filled by their successors as such chairpersons.

History: L. 1927, ch. 187, § 1; L. 1977, ch. 111, § 1; July 1.

Research and Practice Aids:

Courts ⇐ 41.
C.J.S. Courts § 120 et seq.

CASE ANNOTATIONS

1. Kansas Turnpike Authority Act (68-2001 to 68-2020) valid. State, ex rel., v. Kansas Turnpike Authority, 176 K. 683, 694, 273 P.2d 198.
2. Cited in dissenting opinion in case upholding validity of state finance council. State, ex rel., v. Fadely, 180 K. 652, 687, 689, 308 P.2d 537.

**20-2202. Chairman; meetings.** The judicial council shall select one of its members as chairman for such period as it may choose, and shall meet semiannually and more frequently, if necessary, upon call of the chairman.

History: L. 1927, ch. 187, § 2; June 1.

**20-2203. Duties of judicial council.** It shall be the continuous duty of the judicial council to survey and study the judicial department of the state, the volume and condition of business in the courts, whether of record or not, the methods and rules of procedure therein, the time elapsing between the initiation of litigation and the conclusion thereof, and the condition of dockets as to finished business at the closing of terms; to receive and consider suggestions from judges, members of the bar, public officials and citizens concerning faults in the administration of justice, and remedial rules and practice; to recommend methods of simplifying civil and criminal procedure, expediting the transaction of judicial business and eliminating unnecessary delays therein and correcting faults in the administration of justice; to submit from time to time to the courts or judges thereof suggestions as to change in rules and methods of civil and criminal procedure as may be deemed by the council to be beneficial.

History: L. 1927, ch. 187, § 3; June 1.

**20-2204. Report of council; publication and distribution.** The council shall report on the work of the council, the facts ascertained, the conditions of business in the courts, conditions found to be defeating or deferring the administration of justice, with recommendations concerning needed changes in the organization of the judicial department, in rules and methods in civil and criminal procedure and pertinent legislation. Such reports shall be printed by the director of printing. Copies shall be distributed by the council to the legislature pursuant to K.S.A. 46-1212c; justices of the supreme court; judges of the district courts, court of appeals and municipal courts; clerks of the district courts; and attorneys registered pursuant to supreme court rule 209. Copies may be distributed to other persons or agencies that demonstrate a need therefor.

History: L. 1927, ch. 187, § 4; L. 1943, ch. 269, § 9; L. 1976, ch. 146, § 7; L. 1978, ch. 115, § 1; July 1.



Attachment 7
S.O.
4/2/90

STATE OF KANSAS

**JOAN WAGNON**
REPRESENTATIVE, FIFTY-FIFTH DISTRICT
1606 BOSWELL
TOPEKA, KANSAS 66604
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TOPEKA

HOUSE OF
REPRESENTATIVES

DEMOCRAT AGENDA CHAIR
COMMITTEE ASSIGNMENTS
RANKING MINORITY MEMBER TAXATION
MEMBER: FEDERAL AND STATE AFFAIRS

Governmental Organization Committee 4-2-90

HCR 5063

I. Status Quo

Currently, Article 3, Section 2 of the Kansas Constitution requires that "the justice who is senior in continuous term of service shall be the chief justice". HCR 5063 would amend that section to allow for the self election of the chief justice.

II. Seniority on the bench does not necessarily produce the most appropriate chief justice.

The duties of the chief justice are set out in K.S.A. 20-101. It states:

> "the Chief Justice shall be the spokesman for the supreme court and shall exercise the court's general administrative authority over all courts of the state. The Chief Justice shall have the responsibility for executing and implementing the administrative rules and policies of the supreme court, including supervision of the personnel and financial affairs of the court system, and delegate such of this responsibility and authority to personnel in the state judicial department as may be necessary for the effective and efficient administration of the court system."

Because the effective execution of these duties would not necessarily be commensurate with the number of years a particular justice has spent on the Supreme Court, there is no reason why the chief justice is determined by seniority.

Further, according to K.S.A. 20-105, each justice on the Supreme Court must be regularly admitted to practice law in Kansas. They must have practiced law as a lawyer, judge of a court of record, full-time teacher of law in an accredited law school or any combination thereof for at least ten years prior to the date of their appointment as a justice. These qualifications insure that every justice meets the minimum standard for the court.

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III. If self-election of the chief justice were to be implemented, there would be no danger of political pressure invading the process.

According to K.S.A. 20-321, the chief justice of the supreme court shall adopt such rules and regulations as they may deem necessary to carry out the provisions of the laws of the State of Kansas. For those situations involving the conduct of members of the judiciary, the Supreme Court has adopted the Code of Judiciary Conduct.

Supreme Court Rule 601 states that compliance with that Code is required.

Supreme Court Rule 602 sets up the Commission on Judicial Qualifications as the enforcement agency for the Code of Judicial Conduct.

The following Canons which are set out in the Code of Judicial Conduct would insure that political pressure would not be a factor in the determination of the chief justice:

Canon 1

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining and enforcing and should himself observe, high standards of conduct so that integrity and independence of the judiciary may be preserved.

Canon 2

A judge should respect and comply with the law and should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

A judge should not allow his family, social or other relationships to influence his judicial conduct or judgment.

Canon 3(B)

A judge should not make unnecessary appointments. He should exercise his power of appointment only on the basis of merit, avoiding nepotism and favoritism.

These rules and canons, which the judiciary is required by law to abide by, would allow the justices of the court to select their own chief justice without being prejudiced by any political, social or other factors.

IV. Self-election by the Supreme Court is the predominant method of selection of the chief justice in the United States.

The following states determine the chief justice by self-election:

| | | |
|---|---|---|
| Alaska | Illinois | North Dakota |
| Arizona | Iowa | Oklahoma |
| Colorado | Kentucky | South Dakota |
| Florida | Michigan | Tennessee |
| Georgia | Missouri | Wyoming |

Total: 15

The following states determine the chief justice by gubernatorial appointment:

Connecticut
Delaware
Hawaii
New Jersey
New York
Vermont

Total: 6

The following states determine the chief justice by seniority:
Kansas
Louisiana
Mississippi
Nevada
Virginia
Wisconsin

Total: 6

The following states determine the chief justice by which justice has the shortest amount of time to serve in his term:

Idaho
New Mexico
Oregon
Utah
Washington

Total: 5

The following states determine the chief justice by election:

Alabama
Arkansas
California
Montana
North Carolina
Ohio
South Carolina
West Virginia

Total: 8

The following states determine the chief justice by committee appointment:

Indiana
Rhode Island

Total: 2

The chief justice of the District of Columbia is appointed by the President of the United States.

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TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
MEMBER: EDUCATION
ELECTIONS
FEDERAL AND STATE AFFAIRS
LEGISLATIVE, JUDICIAL AND CONGRESSIONAL APPORTIONMENT

TESTIMONY TO THE HOUSE COMMITTEE ON GOVERNMENTAL ORGANIZATION
IN SUPPORT OF HOUSE CONCURRENT RESOLUTION 5063

Representative Gary Blumenthal
April 2, 1990

I urge the committee to adopt HCR 5063, the proposal to amend section 2, article 3 of the Kansas Constitution, which would change the method by which the Chief Justice of the Kansas Supreme Court is selected.

Our constitution currently provides that the most senior justice shall serve as chief justice. Why do we do it that way? Because that's the way it has been done since adopted by the voters in 1900. There is no other apparent reason, nor any apparent public purpose for this method. This process is, I believe, a policy which history alone has perpetuated.

The Chief Justice of the Kansas Supreme Court is too important a position to be left to the whims of the seniority system. We should remember that the position is not an honorary figurehead's position, it is an important post. Consider the statutory responsibilities of the Chief Justice:

*Spokesperson for the court
*Administrative authority over all the state's courts
*Executor of court rules and policies
*Supervisor of the personnel of the court
*Supervisor of the court's financial affairs

For so much authority to be vested in one person and that person's designees, we have an obligation to give the citizens a chance to effectuate a more rational, justifiable system.

The seniority system cannot produce, with certainty, the best this state has to offer in the way of leadership, creativity or new approaches to lingering problems. The judiciary, like any other institution, must be adaptable to the times and flexible enough to change when change is needed. The seniority system cannot meet that challenge.

In many institutions, the seniority system has shown itself to be a block against change, an impediment to the opportunity for a man or a woman to prove their merits and rise into positions of leadership. That is why seniority, as a determiner of rank, has been largely abandoned in the nation's most efficient legislatures, corporations and unions. Show me an

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institution locked into the seniority system, and I'll show you an institution that, more often than not, is also mired in inefficiency.

The Kansas judiciary has been an exception to the rule. We have been lucky enough to have been led by such exceptional Chief Justices as Robert Miller, David Prager and Harold Fatzer. In fact, I have no reason to believe that we would suffer from the seniority system under any of our current justices. But that alone is not a good enough reason to keep the current system in place.

Just because we haven't run our court system aground is no reason to continue to navigate with our eyes closed.

Most of the state's voters and the state legislature are on line in choosing the merit system for the selection of judges. It is now time to open our eyes and make merit selection the process by which we select the state's top judge, the Chief Justice of the Supreme Court.

The committee's proposal introduces the idea that the court should select, by a majority vote, its Chief Justice for a term of two years. There is no limitation on terms and there are no additional requirements placed on who shall be eligible for the position. In other words, the Justices are allowed to make their selection without regard to the vagaries of politics, without legislative or executive interference, without the dictates of a nineteenth century seniority rule. Under this proposal, the justices can base their decision solely on the merits of their colleagues under consideration.

This proposal is similar to that which 15 states now utilize. Of the 48 states surveyed, only 6 still use the system that we employ in Kansas.

If, in the committee's review of this matter, you find another better and rational way to allow the Court to make a merit based selection to replace the current seniority-based selection, I will defer to the committee's recommendations. In any event, I urge you to move ahead on the issue.

Thank you for your consideration of this important matter.

HOUSE SUBSTITUTE FOR SENATE BILL NO. 762

By Committee on Governmental Organization

AN ACT concerning the Kansas sunset law; making certain agencies and offices subject to abolition thereunder.

Be it enacted by the Legislature of the State of Kansas:

Section 1. (a) Except as provided in K.S.A. 74-7246, and amendments thereto, the Kansas lottery and the office of executive director of the Kansas lottery, established by K.S.A. 1989 Supp. 74-8703, and amendments thereto, and the Kansas lottery commission, created by K.S.A. 1989 Supp. 74-8709, and amendments thereto, shall be and hereby are abolished on July 1, 1992.

(b) This section shall be part of and supplemental to the Kansas sunset law.

Sec. 2. This act shall take effect and be in force from and after its publication in the statute book.

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