

Approved: CRW 9/8
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Chairperson Senator Wint Winter Jr. at
10:05 a.m. on March 16, 1992 in room 514-S of the Capitol.

All members were present except:
Senators Gaines, Kerr and Yost who were excused.

Committee staff present:
Mike Heim, Legislative Research Department
Jerry Donaldson, Legislative Research Department
Gordon Self, Office of Revisor of Statutes
Judy Crapser, Secretary to the Committee

Conferees appearing before the committee:
Representative Thomas Bishop
Representative Janice Pauls
James Clark, Kansas County and District Attorneys Association
Doug Roth, Sedgwick County District Attorney's Office
Helen Stephens, Kansas Police Officers Association
Sylvia Farmer Drew, Project Freedom Community Organizer
Rick Stone, City of Wichita Chief of Police
Paul Shelby, Office of Judicial Administration
William Burns, Jr., Wyandotte County District Court Administrator
Jay Scott Emler, Lindsborg

Chairman Winter called the meeting to order by opening the hearing for HB 2709. As background information to the Committee, the Chairman noted the Senate Committee of the Whole amended a "drive-by shooting" measure into SB 358, amendments to Kansas criminal code.

HB 2709 - discharging a firearm at a house or vehicle.

Representative Thomas Bishop presented testimony in support of HB 2709. (ATTACHMENT 1)

Representative Janice Pauls addressed the Committee in support of HB 2709. (ATTACHMENT 2) She responded to questions on the forfeiture provisions of the bill by stating that although it is an unusual provision, the Wichita District Attorney felt it was justified since the law is moving toward forfeiture provisions when creating new crimes. She further responded to questions on the different terms in subsection (a), "dwelling", and (b) "building, structure or vehicle" by stating it was a deliberate decision to cover churches and vehicles.

James Clark, Kansas County and District Attorneys Association, presented testimony in support of HB 2709. (ATTACHMENT 3) Mr. Clark responded to the forfeiture question by stating that although there is some concern over the practice in general, vehicle and firearm seizures may be more of a deterrent than the criminal charges.

Doug Roth, Sedgwick County District Attorney's Office, testified in support of HB 2709. He expressed their acceptance of the bill but requested additional changes. They request amending section 1 to provide for unoccupied buildings such as government buildings and churches. The amendment would help protect the homeless and aid in combating acts of terrorism. The second amendment they request is to change the classification of felonies. He stated that HB 2709 violations are class C felonies, while shooting of a law enforcement officer or aggravated battery is a class B felony.

Responding to questions from the Committee, Mr. Roth stated they would have no problem with amending language to cover unoccupied buildings but to exempt those buildings known to be vacant. That would allow for vacated buildings in hunting areas that inadvertently leap into the line of fire. Members of the Committee suggested amending another bill with the provisions being discussed so that HB 2709 could be addressed and presented to the Governor at the very earliest opportunity.

Helen Stephens, Kansas Police Officers Association, presented testimony in support of HB 2709. (ATTACHMENT 4)

Sylvia Farmer Drew, Project Freedom Community Organizer, testified in support of HB 2709. (ATTACHMENT 5)

Rick Stone, City of Wichita Chief of Police, testified in support of HB 2709. (ATTACHMENT 6)

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,
room 514-S, Statehouse, at 10:05 a.m. on March 16, 1992.

Written testimony in support of HB 2709 was submitted by Representative Jo Ann Pottorff (ATTACHMENT 7)

This concluded the hearing for HB 2709.

Senator Morris moved to recommend HB 2709 favorable for passage. Senator Feleciano seconded the motion. The motion carried.

The hearing was opened for HB 2832.

HB 2832 - creating a judicial branch education fund to educate judicial branch officers and employees.

Paul Shelby, Office of Judicial Administration, testified in support of HB 2832. (ATTACHMENT 8) He also presented the Committee with copies of letters in support of HB 2832 from Municipal Court Judge James E. Wells (ATTACHMENT 9) and Municipal Court Manager Kathryn Tisdale on behalf of the clerks. (ATTACHMENT 10)

William Burns, Jr., Wyandotte County District Court Administrator, testified in support of HB 2832. (ATTACHMENT 11)

Jay Scott Emler, Lindsborg, testified in support of HB 2832. (ATTACHMENT 12)

Testimony was submitted by Larry Rute, Kansas Legal Services, Inc., requesting amendments to HB 2832. (ATTACHMENTS 13 and 14)

Chairman Winter halted the hearing on HB 2832 and directed the Subcommittee on Civil Procedure to continue the hearing for the purpose of gaining the information necessary to determine a recommendation for the full Committee. He suggested the Subcommittee consider how much additional fee should be charged, if any fee should be charged and, if charged, where those additional funds should go. He continued with directing the Subcommittee to possibly project the amount of first year collection, who would do the training, who would receive the training, and how would the training be conducted.

The Committee turned to a topic previously discussed.

SB 18 - sexually violent offenders.

SB 20 - required supervision and treatment by mental health professional for sex offenders.

Senator Bond, having voted on the prevailing side, moved to reconsider the committee's actions on recommending SB 18 favorable for passage as amended. Senator Rock, having also voted on the prevailing side, seconded the motion. The motion to reconsider carried.

Senator Bond moved to amend SB 18 by incorporating SB 20 as amended by the Committee into it. Senator Rock seconded the motion. The motion to amend carried.

Senator Bond moved to recommend SB 18 favorable for passage as further amended. Senator Rock seconded the motion. The motion carried.

The meeting was adjourned at 11:10 a.m.

THOMAS A. BISHOP
"TOM"

REPRESENTATIVE, 91ST DISTRICT
SEDGWICK COUNTY
1500 W. 32ND N.
WICHITA, KANSAS 67204



TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS

MEMBER: ECONOMIC DEVELOPMENT
GOVERNMENTAL ORGANIZATION
PUBLIC HEALTH AND WELFARE
ADVISORY COUNCIL ON AGING

To: Senator Wint Winter, Chairperson
Senate Judiciary Committee Members

From: Rep. Tom Bishop

**RE: Testimony in support of HB 2709 to
increase penalties for discharge of a
firearm at a house or vehicle.**

Date: March 16, 1992

I am here today to testify in support of HB 2709, a bill to increase the penalties for discharge of a firearm at a house or vehicle. The bill creates categories of felonies, ranging from a D felony for shooting into an unoccupied dwelling to an B felony for an occupied home or vehicle where someone is injured.

I wish this bill weren't needed, in fact, I long for the day that this were so. The reality is the terror of these acts continues to spread across Kansas.

Random, or not; premeditated or not; with or without intent; the result of all these shootings is the same. The quality of life continues to deteriorate. The social fabric of community and neighborhoods is destroyed. Property values plummet. Businesses relocate.

In the House we heard testimony from those in law enforcement and from prosecutors citing statistics. We examined closely the dramatic increase of this criminal activity throughout the state. This is not a Wichita problem. This is not an urban problem. It is a Kansas problem. Let us join the other states that have made drive-by shootings a felony offence.

We've also heard from Kansas citizens that have been affected. Their pain is real. So is the pain of the thousands that wonder if their neighborhood, their kids, will be a target today.

Humankind is tremendously adaptable, able to face overwhelming adversity, and sometimes even to triumph through all types of calamities. But they should not do so if such affliction is avoidable.

We have the ability to begin to curb this unnecessary violence. Help us to make our communities safe again.

*Senate Judiciary Committee
March 16, 1992
Attachment 1*

JANICE L. PAULS
REPRESENTATIVE, DISTRICT 102

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TOPEKA

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JOINT SENATE AND HOUSE COMMITTEE ON
ADMINISTRATIVE RULES AND REGULATIONS

HB 2709

March 16, 1992

Testimony Before the
Senate Judiciary Committee

Thank you for the opportunity to make a short statement to your committee.

I am one of the co-sponsors of the House Bill 2709. Also I served on the Judiciary sub-committee that reviewed and revised the bill to its present form.

This bill fills some current gaps in the law. People should be safe in their homes at all times, without fear that a bullet will suddenly enter their house. The same feeling of security should exist when they are working in a building, or driving in their vehicle. Our committee also believed that our homes or dwellings should also be protected to the point that even shooting at a dwelling (even when the occupant was gone) should be a felony level offense.

Some believe that just creating a felony offense will not add to our safety. However, I have found as a former prosecutor, that often the person with a criminal bent knows the law just as well as does a defense attorney. These individuals with a prior record do not want to add a

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felony to their record. Additionally, witnesses are more apt to come forward to testify in a felony case in contrast to a misdemeanor.

Section One (a) protects an unoccupied dwelling, making discharge of a firearm at such a dwelling a class E felony. The term "dwelling" while broader than house (covering mobile homes, tents etc.) only covers structures in which some one actually is living.

Section One (b) makes a discharge of a firearm at an occupied building or occupied vehicle a Class D felony. When bodily harm occurs, a Class C felony is committed. This statute is under the felony murder rule if a death occurs, pursuant to KSA 21-3401. We also have a forfeiture provision in the statute, for property used in the commission of a felony.

Thank you for your attention and I would be glad to stand for questions.

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EXECUTIVE DIRECTOR, JAMES W. CLARK, CAE • CLE ADMINISTRATOR, DIANA C. STAFFORD

Testimony in Support of HOUSE BILL NO. 2709

The Kansas County and District Attorneys Association appears in Support of HB 2709, as amended. The bill specifically targets drive-by shootings, an activity that is increasing not only in urban areas, but in rural ones as well. Presently, a neighborhood may be terrorized by a drive-by shooting, and if no one is killed or injured, the only usual recourse is to charge a misdemeanor criminal damage to property, or unlawful discharge of a firearm. The felony crime of aggravated assault is not always available, since it requires an immediate apprehension of bodily harm. If the victims are inside the house or are asleep, this element is lacking. If someone is injured, the legal issue becomes one of "intent to injure", and if a jury decides in the negative, the defendant is only guilty of simple battery, a B misdemeanor, rather than aggravated battery. The appellate defender has already raised this issue in one drive-by shooting case. State v. Nichols (Court of Appeals unpublished, Nov. 27, 1991).

House Bill 2709 avoids these problems by making the shooting itself a felony: a class E if a dwelling is unoccupied; a class D if the building or vehicle is occupied; and a class C if bodily harm results. If a death results, the underlying crime of shooting into an occupied vehicle or building becomes the underlying felony for felony murder. Further, Sections 2 through 8 add current forfeiture law provisions from drug offenses to drive-by shooting offenses.

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Attachment 3

L RICE, *President*
Chief of Police
Arkansas City, Kansas 67005

ED PAVEY, *President-Elect*
Ks. Law Enforcement Training Cen.
Hutchinson, Kansas 67504

CLIFF HACKER, *Vice-President* ALVIN THIMMESCH, *Secretary*
Lyon County Sheriff
Emporia, Kansas 66801

Kansas Peace Officers' Assn.
Wichita, Kansas 67201

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Kansas Peace Officers' Association

INCORPORATED

TELEPHONE 316-722-7030

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March 16, 1992

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LARRY WELCH
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Hutchinson, KS 67504

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Riley County Police Dept.
Manhattan, KS 66502

RANDALL THOMAS
Lyon Co. Sheriff's Office
Emporia, KS 66801

DOUGLAS PECK
Kansas Highway Patrol
Emporia, KS 66801

SERGEANT-AT-ARMS
LARRY MAHAN
Kansas Highway Patrol
Wichita, KS 67212

SUBJECT: House Bill No. 2709

Mr. Chairman and Members of the Judiciary Committee:

My name is Helen Stephens, representing the 3,000 members of the Kansas Peace Officers Association.

KPOA supports House Bill No. 2709, as amended by the House Committee. Passage of this bill will place drive-by shootings in the felony category and give those involved the message -- use of firearms in this manner will no longer be considered a slap on the wrist.

Passage of this bill will give law enforcement and their communities a chance to get these people off the street.

We urge you to support HB 2709 in its present form, pass it on to the Senate floor, and get it to the Governor as soon as possible.

Thank you for the opportunity to lend our support to this measure.

Senate Judiciary Committee

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In Unity There Is Strength



PROJECT FREEDOM

A community-wide organization to fight drug abuse.

428 S. Broadway
Wichita, Kansas 67202
(316) 833-4630
FAX (316) 264-9343

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- Ann Tran**
Migrant Education, USD 259
- Marcia Wasinger**
18th Judicial District
Court Services Officer
- Ellie Williams**
NFDARTS, Inc
- Isaac Williams**
North High School Student

Project Freedom is supported by a coalition composed of more than 60 organizations, groups and individuals working in substance abuse prevention, education, intervention, treatment, aftercare and enforcement

Testimony in Support of House Bill #2709 an Act Related to Drive-by Shootings

Sylvia D. Farmer Drew
Community Organizer
Project Freedom

Mr. Chairman, members of the Senate Judiciary Committee, my name is Sylvia Farmer-Drew. I am the Community Organizer for Project Freedom, a Community-wide Organization developed to combat the use/abuse of illegal drugs and alcohol. Project Freedom is the facilitator of the Sedgwick County Inter-Agency Task Force on Gangs and Drug Related Violence. This Task Force was initiated by Nola Foulston, and has been meeting since October of 1990 for the purpose of planning an implementing community-wide strategies that balance programs in prevention, intervention and suppression.

Wichita/Sedgwick County is currently facing the rapid growth and development of street level crime and drug related violence associated with organized youth gangs. This phenomena, while relatively new to Wichita, is an experience being faced by many Midwestern cities. Youth gangs historically associated with Los Angeles and Chicago, are establishing themselves in Wichita and other Kansas communities. Our organization is assisting in the development of comprehensive strategies in communities as diverse as Kansas City, Kansas, Topeka, Salina and Garden City. Quite simply, youth gangs are finding in Kansas a favorable market for drug trafficking and other crimes associated with gang activity.

The Inter-Agency Task Force on Gangs and Drug Related Violence made up of 30 representatives from law enforcement, education, the SRS, community-based social service agencies, City of Wichita, Sedgwick County and many representatives from the 18th Judicial District, believe that our state needs a Drive-by Shooting statute that makes the punishment commensurate with the terror and fear evoked by the crime. As is and has been by other testimony this morning, Wichita in 1990 saw 24 drive-by shootings and in 1991, Wichita saw 70. In February of 1992, Wichita saw 29 Drive-by shootings. This dramatic increase reflects a complete disregard for individual and community rights to property and security. The 55 gang sets and over 1200 gang members in Sedgwick County view existing ordinances and laws, related to the consequences of drive-by shooting as a joke and a crime they can easily afford to commit without fear of appropriate punishment.

Law enforcement throughout our state must have the necessary tools to prosecute the full range of illegal activities associated with youth gangs. City and County government have given local agencies what tools they possess to prosecute perpetrators of drive-by shootings. But when all they can charge or impose is the crime or punishment of a misdemeanor, then we are sending a message to our gang element that we do not take your actions or crimes too seriously. To date, we have been limited in who and what we can prosecute. This situation is unacceptable when we have neighborhoods being terrorized by gang violence and the random shootings associated with drive-bys. The citizens of our state need and want to send a clear and direct message to individuals or groups discharging firearms for the purpose of intimidation and promoting violence. If and when you are caught - you will be appropriately punished.

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While we stated previously that we supported the original version of House Bill 2709, we do support the current version. At first reading of House Bill No. 2709, it would appear we are asking for powers that are unusual or extraordinary. Communities throughout the nation are having to embrace unusual and extraordinary remedies to address unusual and extraordinary behavior. To be sure, those states experiencing the growth and development of organized youth gang activity have already adopted appropriate measures to deal with the threat of drive-by shootings. Kansas is currently the exception. These are new issues for Kansans. Our community and the coalition I represent believe strongly that we need new and additional prosecutorial and enforcement tools to deal with our emerging gang problem. Paul Boyer in his work Urban Masses and Moral Order has written about communities such as Wichita, when he said, "village solutions cannot remedy urban problems. We need urban solutions to urban problems." House Bill 2709 and Senate Bill 537 or 135 will provide our community the tools we need to send a clear and direct message that we will not tolerate the violence and abuse emerging from organized criminal activity. This act, along with the many prevention and intervention strategies being developed by our Task Force, will send a message to neighborhoods directly effected by drive-by shootings. Support of this legislation says we care enough about your safety and security to enact legislation that will appropriately punish those who threaten that safety and security. Help us to get ahead of this problem before the problem becomes bigger than our resources.

We ask you to consider this act seriously and to give our communities the power we need to say to gangs coming to Kansas from other states and to gangs that are indigenous to Kansas that we will no longer tolerate your violence, nor will we tolerate those who encourage you, directly or indirectly.

Our community wants this act. It received the unanimous endorsement of our Inter-Agency Task Force and the full support of the Legislative Committee of Project Freedom. Neighborhoods severely effected by gang presence are seeking, if not begging, for immediate relief from drug dealing and drug related violence. They view this act and the need for tougher legislation related to organized criminal activity as necessary first steps in driving the gangs from their communities. Furthermore, we have approached this issue and the whole issue related to gang violence based on research conducted by the University of Chicago's National Youth Gang Intervention and Suppression Project. This project, based on the study of over 45 cities, endorses and supports this type of legislative initiative. We ask for your support of this important legislation. If you need or require any other information, we would be more than happy to provide you with additional support material.

Senate Judiciary Committee
Room 519-S
Testimony Regarding House Bill 2709
Monday, March 16, 1992

Mr. Chairman and members of the Senate Judiciary Committee, my name is Rick Stone and I have the honor to serve as Chief of Police for the City of Wichita. On behalf of the men and women of the Wichita Police Department and the City of Wichita, I want to thank you for the opportunity to appear before you today regarding House Bill 2709, which makes drive-by shootings a felony offense.

I will not bore you with dry statistics of which you are no doubt already aware. Statistics do not show the pain and horror of these acts. Suffice it to say that this phenomena of drive-by shootings has become a horrifying, monstrous "fad" that has swept our country from coast-to-coast. It has now swept into our state and my city where such senseless shootings are a weekly, if not daily, occurrence spurred by gangs and drugs.

We must kill this monster that is gang and drug related violence and we must kill it now. For if we do not destroy the disease now, while it is still vulnerable, then it will infect every part of our society.

It will infect our everyday life just as sure as I am standing here. Drive-by shootings by gangs will soon become only a very small percentage of all drive-by attacks. Those other people in our world who are easily manipulated or impressed by the power and terror of this senseless violence, seemingly without penalty or probability of governmental retribution, will begin to copy the terrible "fad" that the gangs have started.

Let me paint a terrifying picture for you that is not a prediction... it is a certainty. Without strong action the drive-by phenomenon will become the "status symbol" method of venting your frustration and anger on any subject. A worker who doesn't like his performance evaluation... no problem, he'll do a drive-by on his supervisor's house... lover's quarrels will become deadly exchanges of gunfire ...a student who doesn't like his chemistry grade knows how to find his teacher's house, with a gun that is all too easy to have and carry without penalty. Does it sound too far fetched? Does it sound crazy? Surely, not here in Kansas, you say? We will have very little consolation in saying "remember, when we told you so?"

There will be some who will be critical and suspicious of your resolve to bring these terrorists to justice. Right now, in our own community, we have a few that are saying that we are "harassing" these gangsters, drug dealers, and criminals who are literally killing us. That's absolutely right. Because most of the laws we have are just harassment to these thugs... like so

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many mosquito bites. If it takes a thousand mosquito bites to kill this monster of violence, then so be it. If it's the only tool we have, we in law enforcement are going to "sting'em" and "sting'em" and "sting'em" until we have "harassed" these deadly carriers of disease from our midst.

If you doubt our resolve, you must only imagine our worry and my concern each day and night when I must send brave young men and women out to do battle with a monster, now armed with only weak tools to "harass" the evil. And make no mistake, this is a battle. A battle to the death. We had better have the resolve to wage this war ruthlessly. Our political and community resolve must be as steel.

If there are those who waver in providing the sledgehammer necessary to really slay this monster before it grows, if the community resolve is not there to support law enforcement's attack, if the other parts of the criminal justice team are not given the resources necessary to support our battle... then the cause will be lost.

Law enforcement must know where our support really lies... are you really behind us? I think you are and I strongly urge you to have the foresight, the courage and the resolve to not follow the mistakes of inaction of other states and other cities when first confronted by this monster. Let us show the country that we in Kansas intend to defend our values to the utmost.

Thank you.

STATE OF KANSAS

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TOPEKA

HOUSE OF
REPRESENTATIVES

March 16, 1992

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EDUCATION CONSOLIDATION AND
IMPROVEMENT ACT (ECIA) ADVISORY
COMMITTEE

Mr. Chairman and Members of the Committee,

The recent increase of crimes associated with drugs and gang violence has contributed to the increase in the number of drive-by shootings. In 1990, Wichita experienced twenty-four drive-by shootings. In 1992, Wichita experienced seventy drive-by shootings. In January, 1992, Wichita experienced five drive-by shootings.

The crime rate will, although unfortunately, continue to escalate and with it so will the number of drive-by shooting occurrences. Within each residential area that a drive-by shooting occurs, men, women and children are reluctant to leave the shelter of their homes for fear of their lives.

Traditionally people have viewed death as a gradual process, coming with the maturation of age or a terminal illness, or occasionally as an accidental death. Presently, people fear that death could greet them at any moment.

I don't see the probability that drive-by shootings will cease but I do see the possibility of hampering the problem. We need to develop effective laws to deal with street terrorism. We need to impose strong and harsh punishments to make such offenders suffer.

The tougher provisions proposed in HB 2709 will help to control the drive-by shooting occurrences. By making drive-by shootings a felony offense, it will help to prosecute offenders in a justifiable manner.

I want the children of today to be allowed the same freedom we had as youngsters. Let's do everything we can to make our streets safe again. If anything, let's do it for the children.

Jo Ann Pottorff
State Representative
Eighty-Third District

*Senate Judiciary Committee
March 16, 1992
Attachment 7*

House Bill No. 2832
Senate Judiciary Committee
March 16, 1992

Testimony of Paul Shelby
Assistant Judicial Administrator
Office of Judicial Administration

Mr. Chairman and members of the committee:

I appreciate the opportunity to appear today on House Bill No. 2832 which creates a judicial branch education fund in the State Treasury. This fund would be expended for purposes associated with the improvement of education for all judicial branch employees and including municipal court judges and their court staff. This proposal will also comply with statutory directives. For example, training, testing, and education of district magistrate judges (K.S.A. 20-337) is mandated as well as the required training of municipal judges (K.S.A. 12-4114).

This new fund would incorporate the present municipal judge education fund, pick up assessments made by municipal courts and raise district court traffic, fish and game docket fees and appearance bond amounts by \$2 to finance the fund.

The Supreme Court remains strongly committed to insuring that the citizens of Kansas are well served by the employees of the Judicial Branch by providing training and educational opportunities to all employees. However, over the past few years we have received inadequate funding to fully operate an efficient and effective educational program. This inadequate funding has resulted in the cancellation of some very important training programs such as regional training for clerks of the district court, court administrators, court services officers, and district magistrate judges.

The court also eliminated orientation training for clerks, official court reporters, court administrators, and court services officers. Quarterly management meetings with court administrators, chief and urban clerks, court trustees, and chief court service officers were also reduced. Productivity Reviews of the trial court operations and advisory groups were placed on hold. Two years ago the supreme court cancelled the mandated fall judicial conference due to lack of education funds. Because of the restricted education budget we are unable to fully fund new judge training at the National Judicial College which is a priority of the court.

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Attachment 8

It is important to note that not only has our reduced education budget resulted in the elimination of some of our established education and training programs, but it has prohibited the court from offering new training programs that are necessary to maintain and advance the professional competency of not only judges, but of all nonjudicial employees.

On Page 2, New Section 2 of the bill, allots a percentage of clerks fee collections to the fund. This is similar to other funds that are based on a percentage of clerks fees collections. We have found it to be a more efficient method to have the State Treasurer separate these funds than in 110 clerks locations.

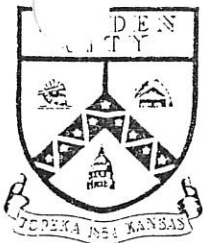
If this bill had been in effect in FY1991 with municipal court assessments set at \$.50 as they now are, there would have been about \$144,812 collected from that source.

Assuming that a full years collections had been made from the additional \$2 docket and appearance bond amounts in the district courts, about \$494,804 additional would have been forwarded to the State Treasurer.

The original bill reflected an allocation of 4.85% of clerks fees which would have resulted in a transfer of \$555,776 to the judicial branch education fund. When our fiscal department estimated the revenue, they made a drafting error. On Page 2, New Section 2, line 9, we requested an amendment, which was approved in the House, to reduce the percentage from 4.85% to 4.31%. The 4.31% will transfer \$493,896 to the judicial branch education fund, a difference of about \$61,880. The drafting error was caused by using FY91 collections and FY90 cases and the percentage came out too high.

An increase in docket fees will only bring in 11 months of a full years revenue in the first year of operation. This is because there is a time lag on one month before collections are forwarded to the state treasurer.

We urge the committee to favorably consider this proposal.



CITY OF TOPEKA

Municipal Court
214 E. 8th Street
Topeka, Kansas 66603
Phone 913-354-1781

2/17/92

Honorable Representative John Solback
Chairman House Judiciary Committee
State of Kansas
Topeka, Kansas

Dear Mr. Representative:

I am in support of House Bill No. 2832 as it applies to the training, testing, and continuing judicial education of Municipal Judges.

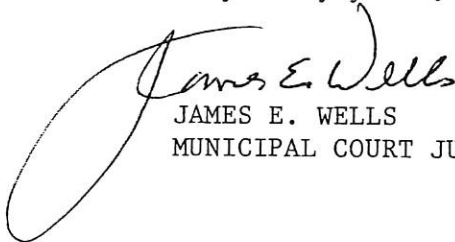
I am in further support of the transfer of money now deposited in the Municipal Judge's Training Fund to the proposed new account of the Judicial Education Fund.

My support is qualified only to the extent the money be designated for affairs of the Municipal Courts of Kansas, and that the assessment be terminated at such time as the fund has accumulated sufficient funds to provide for the legislative intent.

Due to a previous out-of-state appointment, I could not personally appear.

Thank you for your consideration.

Very truly yours,



JAMES E. WELLS
MUNICIPAL COURT JUDGE

JW:ksr

*Senate Judiciary Committee
March 16, 1992
Attachment 9*



Arkansas City Municipal Court
Box 778
Arkansas City, Ks. 67005
1-316-442-0280

February 17, 1992

House Judiciary Committee
Kansas State House Building
Topeka, Kansas. 66612

Dear Representative John Solbach:

I understand that House Bill # 2832 dealing with financing education for municipal court clerks and managers is scheduled for hearing on February 18, 1992. I am extremely interested in this bill and wanted to relate to you and to the House my concerns for the municipal court personnel and for my support of the bill.

I have been the Municipal Court Manager for the Arkansas City Municipal Court for 11 years. I am also the Municipal Judge for two very small courts, Geuda Springs and Cedar Vale. I have been active in the statewide organization of Kansas Association for Court Management since its formation in 1986, and I have held most offices in that organization. Yearly since 1987 I have trained court members on materials pertaining to forms and other court related matters. During these conference and training sessions, I have had extensive contact with clerks from all classes of cities and from over the entire state of Kansas.

Municipal court is often known as "The People's Court" because that is the court where most people appear and see the judicial branch at work. The court clerk is the person with whom most of our citizens have contact. For the clerk to represent the judicial system professionally, he/she must be able to handle varied situations involving the public, as well as attorneys, judges and state personnel. In addition, the clerk generates all paperwork to the Judicial Administration, the Motor Vehicle Division, and the Kansas Bureau of Investigation. The clerk also maintains all records of court proceedings and court matters. The Municipal Court Clerk is therefore a valuable asset to the court he/she serves and to the judicial system.

I assure you that the most urgent of concerns for clerks is that of continuing education. Often the clerk is not advised of changes in the law, updated with materials or new forms, instructed as to what is legal and illegal to handle, and how

Senate Judiciary Committee
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to best handle the many irate defendants seen on a regular basis. Clerks are often frustrated and unsure of their actions. Continuing education is needed and after training sessions, I have seen many relieved and more competent clerks.

Unfortunately, very small towns with part-time clerks or part-time judge/clerks can not afford to send their court personnel to these training sessions. Therefore, paperwork is often improperly completed, or not completed at all. Violations are often not reported to either the Motor Vehicle Department or the Kansas Bureau of Investigation, because of a lack of knowledge.

I have found that the clerks truly want to do their job correctly and professionally, but some do not have the knowledge due to a lack of proper training. The majority of clerks are eager and willing to learn their proper role in the court system. They want to administer the laws that the State Legislators adopt, but a great concern for many is causing problems because they fear they and/or their court are doing something incorrectly. They also fear not being fair to the defendant in the paperwork, because they do not know the proper procedures to follow. They would like to help the citizens they serve, but do not know how, or where, to refer the defendants.

One dangerous problem is that often clerks are not knowledgeable about the laws and correct procedures. Clerks often express frustration that the judge and prosecutor do not relay information from their training conferences. Later they find that incorrect procedures have been used simply because of lack of knowledge. I realize that many judges and prosecutors are conscientious and advise their clerks of new or updated laws, but what of those clerks who are not so fortunate?

Fear and frustration are common feelings for a clerk, especially in the smaller courts. I can personally relate an illustration explaining the panic often felt by clerks and clerk/judges in small towns. In January, when I took over the judgeship in Cedar Vale, I faced frantic clerk and Chief of Police. The former judge had not filled out a form mandated by law, which was required to be filed with the Judicial Administration. The city had received a letter advising them to complete the form and return it or action could be taken. These two people, as well as the prosecutor, had no idea what to do; or where to gain the information needed to complete the form. They only knew that their City failed to comply with the law. Continued education and training could have prevented this situation and I am certain that other small communities and towns have the same problems and concerns.

The Kansas Association for Court Management has made giant strides in the education of clerks and clerk/judges, but due to the lack of funding by the cities, there are many that we can not reach. I am proud of the organization and of the success in training we have had to date, but am painfully aware of those we have not been able to reach.

Within the judicial system, I think it would be hard to find a more dedicated and serving profession. Clerks are sincerely interested in furthering their education and this is needed to continue to serve our cities and our state. Clerks deserve to get the training needed to perform their duty. I strongly urge the adoption of House Bill # 2832.

On behalf of the clerks of the municipal courts in Kansas I thank you for your consideration.

Sincerely,



Kathryn I. Tisdale
Municipal Court Manager

March 16, 1992

**TESTIMONY BEFORE THE SENATE JUDICIARY COMMITTEE
REGARDING HB NO. 2832 - JUDICIAL BRANCH EDUCATION FUND**

Thank you for the opportunity to appear before you today concerning HB No. 2832 and the importance of the judicial branch education fund.

No one can deny the benefits continuing education has for our judicial branch. Regardless of educational background or years of experience in the system, one should always be open to learning more.

This should also hold true for non-judicial employees as well. These employees make the system work efficiently or hinder the process.

Budget reductions the last three years have stalled the continuing education of our 13 trial court administrators, 105 district court clerks and their support staffs. Regional clerk conferences held quarterly in three different locations statewide have temporarily been cancelled because of lack of funding.

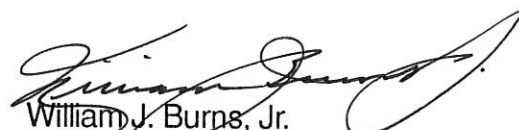
Since 1990 approximately 20 or more district court clerks have retired or resigned. It is not fair to their successors to blindly assume these important positions without proper training and education.

Many new laws have been created recently to meet the needs of the people when they turn to the courts for resolution. If our non-judicial employees are not aware of changing legislation or not adequately trained to carry out their duties, the judicial system fails those we are hired to serve.

I am confident the Supreme Court, with the able assistance of the Office of Judicial Administration, would provide equitable and competent training for the non-judicial employees through passage of this bill.

Judges and lawyers are now required to obtain continuing legal education annually. With proper funding the non-judicial employees of this state would serve the people in a more capable manner. The people who depend on the courts deserve no less.

Thank you for your kind consideration.


William J. Burns, Jr.
Court Administrator
29th Judicial District

Senate Judiciary Committee
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TESTIMONY OF JAY SCOTT EMLER

March 16, 1992

May it please the Committee, my name is Jay Scott Emler. I am currently General Counsel for Kansas Independent Networks, Inc. in Salina, Kansas. Prior to joining that corporation, however, I was a solo practitioner in Lindsborg, Kansas for approximately thirteen years and a municipal judge for over twelve years.

In addition to my job as General Counsel, I hold an appointment on the Supreme Court Municipal Judges Testing and Education Committee. It is the function of that committee to provide training, certification and continuing education to the municipal judges of the state of Kansas pursuant to Kansas Statutes and the rules of the Kansas Supreme Court.

I was chosen to serve on the Testing and Education Committee because of my commitment to the Kansas Municipal Judges Association and my commitment to providing a better trained judiciary at all levels of the Kansas judicial system. I served in various offices of the Association, including two terms as President.

In June 1988, at the annual meeting of the Kansas Municipal Judges Association, a proposal was presented to provide for the education and certification of all municipal judges in the state. I was pleased to be appointed to the committee that assisted the legislature in preparing and passing the legislation that is now the cornerstone for the service which the Supreme Court, through the Testing and Education Committee, provides to all municipal judges in the state of Kansas.

It is my personal opinion that the municipal judiciary of this state is much better qualified to act since the passage, during the 1989 session, of the legislation which required all municipal judges to be certified. I also believe that it would serve the state of Kansas, its municipalities and its people well if the act were expanded to permit the Supreme Court to provide education for the personnel who assist the municipal judges of Kansas.

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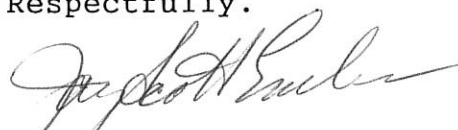
Testimony of Jay Scott Emler
March 16, 1992
Page Two

The basic concept for funding the original legislation was to permit those individuals who utilized the court system to pay for the training of those judges who would be hearing the matters presented by those individuals. To that end, the legislation provided for an assessment of up to one dollar per case filed which would be put in a training fund. The Supreme Court was given control over the fund and, I believe, has managed it frugally while providing an appropriate and effective program for training, certification and continuing education. I believe that a similar program could be effectively instituted for the District and Appellate Court judges of the state.

I will be pleased to answer any questions the Committee may wish to pose.

Thanking you for the opportunity to address this Committee, I submit this testimony

Respectfully.



Jay Scott Emler

TESTIMONY OF LARRY R. RUTE
KANSAS LEGAL SERVICES, INC.
(913) 233-2068

SENATE JUCICIARY SUBCOMMITTEE
ON CIVIL PROCEDURE

Richard Rock, Chairpersön
Thursday, March 19, 1992

I would like to thank the Chairperson and members of the committee for the opportunity to appear before you today to discuss House Bill No. 2832.

I am the Litigation Director and Deputy Director for Kansas Legal Services, Inc. (KLS). As you are probably aware KLS is a private, non-profit corporation dedicated to providing free or low-cost legal services to low and moderate income Kansans throughout the state.

PROPOSAL TO CREATE AN ACCESS TO JUSTICE FUND

I am here to ask you to consider an amendment to House Bill No. 2832 that would add an additional \$5.00 to civil filing fees to create an Access to Justice Fund. I propose that the funds generated and placed in the Access to Justice Fund be disbursed equally to the Office of Judicial Administration and to legal services organizations that provide services to low income Kansans. I have provided you with a "balloon" version of the bill with some suggested language for this amendment.

Kansas would not be the first state to fund civil legal services with filing fee revenue. Oregon, North Dakota, Massachusetts, Florida, and Nevada all utilize filing fees to supplement the budgets of legal services organizations in their states. In 1989, the Oregon Legislative Assembly (Oregon Revised Statutes 21.480 and 21.485) increased filing fees paid into the circuit and district courts for the use of non-profit legal aid programs. In the case of Oregon, fees were increased in circuit courts from \$8 to \$22 and in district courts from \$3.50 to \$8.50. In Oregon all of the increased revenues from filing fees were devoted to defraying the operating costs of legal aid programs.

North Dakota has a \$10 filing fee surcharge in all civil cases filed in district and county courts. All of this revenue is credited to an indigent civil legal services fund in the state treasury. Each state has a somewhat different method of collecting and distributing filing fees to legal services organizations. I have provided you with a copy of the bill passed in Oregon and copies of pertinent statutes from each of the other states.

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There were 131,441 civil cases filed in Kansas during 1991. Current filing fees in Kansas are \$60 for all Chapter 60 cases and in Chapter 61 cases where the contested amount is greater than \$5,000. Chapter 61 cases involving \$500 to \$5,000 are \$35. Filing fees for Chapter 61 cases involving less than \$500 are \$15. A \$5 across the board increase in filing fees would generate approximately \$657,000 per year, if filings remained at the level experienced during 1991. It might be desirable to exempt certain types of domestic cases (eg. child support collections) from the filing fee increase. If only 100,000 cases were subject to the \$5 increase, \$500,000 of revenue would be generated annually. Naturally, a \$10 increase in the civil filing fee would generate approximately 1 million dollars annually.

I would like to suggest that one-half of the filing fee increase could be used to fund and enhance an "access to justice-poverty prevention program" within Kansas Legal Services. The remaining one-half of the filing fee increase could perhaps go to OJA to assist in funding the proposed pilot family court system, attorney dispute resolutions systems (eg. mediation and arbitration) and even enhance judicial salaries.

With \$250,000 in revenue from a \$5 filing fee increase, Kansas Legal Services, Inc. would be in a position to expand its representation in domestic violence, post-divorce custody motions and contested divorce matters where children are involved by 6,250 hours. This would represent a 26% increase in domestic relations legal services to low-income Kansans. It would allow service delivery to be provided to approximately 2,000 additional low income persons per year.

Another possible approach would be to utilize a portion of the revenue to allow KLS to assist the court system in those domestic relations situations where a significant number of pro se actions have been filed. I understand this is a particular problem in those judicial districts where large numbers of pro se protection orders are being filed. Similarly it might be possible to make attorneys available to the Court in those custody situations requiring the appointment of a guardian ad litem.

UNMET CIVIL LEGAL NEEDS OF LOW INCOME KANSANS

In 1988, under the supervision of the Kansas Bar Association's Legal Aid and Referral Committee, a survey regarding civil legal services for low income persons in Kansas was conducted. Four components of the legal profession were surveyed, including: a random sample of Kansas Bar Association (KBA) members, district court judges, local Bar presidents, and Kansas Legal Services staff attorneys.

The result of that survey indicated that a large majority of all groups surveyed perceived a need for additional civil legal services for low income Kansans. The areas of need most often

cited by the legal professionals were, in order of priority:

1. Post Divorce Motions
2. Domestic Violence
3. Contested Divorces

The attorneys and judges surveyed in 1988 also indicated a belief that many low income individuals do not know how to obtain legal assistance. Adding attorney staff to Kansas Legal Services offices was the legal professionals' preferred method of meeting the unmet legal needs of low income Kansans. (A copy of the executive summary of the Bar study is attached).

The demand for services among low income residents of Kansas has continually increased. In 1991, Kansas Legal Services attorneys provided advice/representation to approximately 20,000 low income Kansans in a wide variety of matters. We have experienced a 28% case load increase since 1986. As case loads increase each year, the incidence of divorce and domestic violence increase also. This increase in demand, particularly in the area of domestic law, has made it necessary to provide limited services to some individuals and to reject services entirely to thousands of individuals each year.

Kansas Legal Services provided advice and representation in domestic matters to 7,806 persons in 1991. Domestic cases average over three hours per case and a total of 23,650 hours of legal advice and representation was provided. Despite this extensive service, Kansas Legal Services is unable to meet the demand in the areas identified in the 1988 KBA survey as areas of excessive unmet need.

POVERTY PREVENTION

Traumatic events such as divorce and domestic violence create severe periods of economic and social instability for persons of all ages and all classes. These events often precipitate a transition from a socially stable, financially secure lifestyle to one of poverty or near poverty. For example, a recent study by the Census Bureau found that four months after a divorce, the average monthly income in households with custody of children drops \$900. This "fall" into poverty can often be attributed to a lack of coordinated support and assistance in identifying and utilizing economic and social resources available to persons undergoing a traumatic event.

Comprehensive legal advocacy regarding issues surrounding divorce, domestic violence and attempts to modify divorce decrees, can be a critical component of preventing long term poverty and dependency. Legal advocacy should be particularly focused on recently divorced women with children because of their high risk of prolonged poverty. Kansas Legal Services' long range goal is to provide comprehensive advocacy services to our clients who are at risk of becoming permanently poverty stricken.

These examples are provided to sensitize you to some of the areas of outstanding and serious legal needs among low income persons in Kansas. We at Kansas Legal Services, Inc. are very willing to work with you in designing a program to utilize filing fee funds to the best advantage of low income persons needing legal assistance in Kansas.

Thank you for your consideration.

HOUSE BILL No. 2832

By Committee on Judiciary

1-31

9 AN ACT concerning the judicial branch; relating to the education
10 of judicial officers and employees; increasing docket fees; creating
11 the judicial branch education fund; amending K.S.A. 8-2107, 12-
12 4112, 12-4114 and 12-4116 and K.S.A. 1991 Supp. 20-362, 28-
13 172a and 32-1050 and repealing the existing sections; also re-
14 pealing K.S.A. 12-4115.

creating the access to justice fund; relating to the provision of free legal assistance to low-income Kansans.

15
16 *Be it enacted by the Legislature of the State of Kansas:*

17 New Section 1. (a) There is hereby created in the state treasury
18 a judicial branch education fund.

19 (b) All money credited to the fund shall be used for the purpose
20 of educating and training judicial branch officers and employees; for
21 administering the training, testing and education of municipal judges
22 as provided in K.S.A. 12-4114, and amendments thereto; and for
23 educating and training municipal judges and municipal court support
24 staff. Expenditures from the judicial branch education fund shall be
25 made in accordance with appropriation acts upon warrants of the
26 director of accounts and reports issued pursuant to vouchers ap-
27 proved by the chief justice of the supreme court or by a person or
28 persons designated by the chief justice.

29 (c) The chief justice may apply for, receive and accept money
30 from any source for the purposes for which money in the judicial
31 branch education fund may be expended. Upon receiving any such
32 money, the chief justice shall remit the entire amount at least
33 monthly to the state treasurer who shall deposit such money in the
34 state treasury and credit such money to the judicial branch education
35 fund.

36 (d) Upon the effective date of this act, the director of accounts
37 and reports is directed to transfer all moneys in the municipal judge
38 training fund to the judicial branch education fund. Upon the ef-
39 fective date of this act, all liabilities of the municipal judge training
40 fund existing prior to such date are hereby imposed on the judicial
41 branch education fund. Whenever the municipal judge training fund,
42 or words of like effect, is referred to or designated by any statute,
43 contract, or other document, such reference or designation shall be

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1 Sec. 7. K.S.A. 1991 Supp. 20-362 is hereby amended to read as
 2 follows: 20-362. The clerk of the district court shall remit at least
 3 monthly all revenues received from docket fees as follows:

4 (a) To the county treasurer, for deposit in the county treasury
 5 and credit to the county general fund:

6 (1) A sum equal to \$10 for each docket fee paid pursuant to
 7 K.S.A. 60-2001, and amendments thereto, during the preceding cal-
 8 endar month;

9 (2) a sum equal to \$10 for each \$35 or \$60 docket fee paid
 10 pursuant to K.S.A. 61-2501, and amendments thereto; and

11 (3) a sum equal to \$5 for each \$15 docket fee paid pursuant to
 12 K.S.A. 61-2501 or 61-2704, and amendments thereto, during the
 13 preceding calendar month.

14 (b) To the board of trustees of the county law library fund, for
 15 deposit in the fund, a sum equal to the library fees paid during the
 16 preceding calendar month for cases filed in the county.

17 (c) To the county treasurer, for deposit in the county treasury
 18 and credit to the prosecuting attorneys' training fund, a sum equal
 19 to \$1 for each docket fee paid pursuant to K.S.A. 28-172a, and
 20 amendments thereto, during the preceding calendar month for cases
 21 filed in the county and for each fee paid pursuant to subsection (c)
 22 of K.S.A. 28-170, and amendments thereto, during the preceding
 23 calendar month for cases filed in the county.

24 (d) To the state treasurer, for deposit in the state treasury and
 25 credit to the indigents' defense services fund, a sum equal to \$.50
 26 for each docket fee paid pursuant to K.S.A. 28-172a and subsection
 27 (d) of K.S.A. 28-170, and amendments thereto, during the preceding
 28 calendar month.

29 (e) To the state treasurer, for deposit in the state treasury and
 30 credit to the law enforcement training center fund, a sum equal to
 31 \$5 for each docket fee paid pursuant to K.S.A. 28-172a, and amend-
 32 ments thereto, during the preceding calendar month.

33 ~~(f) To the state treasurer, for deposit in the state treasury~~
 34 ~~and credit to the juvenile detention facilities fund, a sum equal~~
 35 ~~to 5.85% of the remittances of docket fees paid during the~~
 36 ~~preceding calendar month.~~

37 (g) ~~(f)~~ To the state treasurer, for deposit in the state treasury
 38 and credit to the state general fund distribution according to
 39 section 2, a sum equal to the balance which remains from all docket
 40 fees paid during the preceding calendar month after deduction of
 41 the amounts specified in subsections (a), (b), (c), (d), ~~and~~ (e), ~~and~~
 42 ~~(f)~~, and (f).

43 Sec. 8. K.S.A. 1991 Supp. 28-172a is hereby amended to read

(f) To the state treasurer, for deposit in the state treasury and credit to the access to justice fund, a sum equal to \$5.00 for each docket fee paid pursuant to K.S.A. 61-2501.

1 costs a docket fee.

2 Sec. 1012 K.S.A. 8-2107, 12-4112, 12-4114, 12-4115 and 12-4116
3 and K.S.A. 1991 Supp. 20-362, 28-172a and 32-1050 are hereby
4 repealed.

5 Sec. 1113 This act shall take effect and be in force from and after
6 its publication in the statute book.

New Section 10. (a) There is hereby created in the state treasury an access to justice fund.

New Section 11. (a) In all counties wherein legal representation is provided without fee by a nonprofit legal aid program organized under the auspices of the Legal Services Corporation (Public Law 93-355 or successor legislation), there shall be collected by the clerk of the district court from the plaintiff or other moving party in each civil suit, action or proceeding in the district court, whether Chapter 60 or 61, at the time of filing the first paper therein, in addition to all other fees collected and in the same manner, the sum of \$5.00 to be deposited in the access to justice fund.

(b) Fifty percent of the funds collected shall be distributed to qualified legal services programs that have demonstrated an ability to provide legal services to persons unable to afford private counsel with funds provided by the federal Legal Services Corporation. All funds distributed pursuant to this clause shall be used for the provision of legal services in civil matters to eligible clients.

(c) Fifty percent of the funds collected shall be distributed to the Office of Judicial Administration for administration and program purposes.