Approved: 4/10/98
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Tim Carmody at 3:30 p.m.. on March 24, 1998 in Room 313--S of the Capitol.

All members were present except: Representative Kline (excused)
Representative Mayans (excused)
Representative Powell (excused)
Representative Wilk (excused)

Committee staff present: Jerry Ann Donaldson, Legislative Research Department
Mike Heim, Legislative Research Department
Jill Wolters, Revisor of Statutes
Jan Brasher, Committee Secretary

Conferees appearing before the committee:

Franklin R. Theis, District Judge, Shawnee County
Joann Hamilton, District Attorney, Shawnee County
Attorney General Carla Stovall
Wendy McFarland, ACLU

Others attending: See attached list

The Chair called the meeting to order. The Chair noted that there was written testimony from Marion Bourell on **HB 3003** that will be placed into the minutes for March 19, 1998.

SB 577-Additional district magistrate judge positions of district courts

Kathy Porter, Executive Assistant to the Judicial Administrator, testified in support of **SB 577**. The conferee stated that this bill will provide a mechanism for creating new district magistrate judge positions. The conferee stated that the Judicial Branch budget for FY 1999 includes a request for nine new district magistrate positions. The conferee stated that the House Appropriations subcommittee and Appropriations Committee have approved all nine magistrate positions. The conferee stated that the Senate Ways and Means Committee approved all three district magistrate judges' positions that were included in the Governor's budget. The conferee requested an amendment which would provide that the new magistrate positions be filled in the manner provided by K.S.A. 20-2914 for filling vacancies in existing magistrate positions. The conferee stated that if less than nine positions are approved then the Supreme Court will determine which district or districts to place the new district magistrate judges. (Attachment 1)

The Committee members and conferee discussed whether an elected judge would be replaced by a magistrate judge. Conferee Porter stated that in the short term the Governor would appoint the magistrate judges, but subsequently in the districts where there are elections for those positions, magistrates will be elected. Conferee Porter stated in response to a question that currently there is no legislation that specifies how to create magistrate judge positions. Conferee Porter discussed with the Committee the caseload and caseload mix that will be used to determine in what district magistrate judges will be used. Conferee Porter stated that there has been a significant increase in the caseload and that those judge positions are needed now.

Judge Buchele testified in support of **SB 577.** Judge Buchele stated that this legislation was proposed as a result of a post-audit report. The conferee stated that it was probably a mistake to go to the single tier system and that the two tier system should be reconsidered. Judge Buchele stated that there are very few "sideway appeals" statewide. Judge Buchele stated that currently pro-tems are used in child support or domestic violence cases. The conferee stated that it would be a better use of resources to use magistrate judges.

Conferee Buchele discussed with the Committee members policy issues concerning the one or two tier system.

Judge Theis, District Judge, Third Judicial District, testified in opposition to **SB 577**. Judge Theis stated that this bill will establish the power of the Kansas Supreme Court to place magistrates in urban areas. The conferee stated that the legislature should preserve the right to establish magistrates on a case by case basis. The conferee stated that the Supreme Court's authority to appoint magistrate judges was eliminated in 1974 or 1976. The conferee discussed salary disparities when district judges and magistrate judges are working side by side. The conferee discussed potential problems with the appeals system if this bill were to pass. The

conferee discussed problems that could occur with caseload assignments. The conferee stated that the two tier system by design signals to people the significance of their case. The conferee stated that more funding needs to go to increase wages and positions for support staff. Judge Theis stated that the use of pro-tems is a matter of preference. The conferee suggested that the statistics be critically reviewed concerning the need for these magistrate positions. The conferee stated that someone should have the information on the number of cases and the caseload mix. Judge Theis referred to material included in his written testimony containing more detailed information. (Attachment 2)

During discussion with Committee members the conferee stated that this is a philosophical issue concerning the placement of power.

Joan M. Hamilton, District Attorney, Kansas Third Judicial District, testified in opposition to **SB 577**. The conferee stated that if this bill passes, victims will have to go through yet a longer process for justice. The conferee stated that the passage of this bill will mean a lot more work for the prosecution and a plea for more personnel at the county level for manpower. The conferee stated that she had experienced the two tier system and it did not work. The conferee stated that while this bill may be touted as a technical change, it is highly political and would provide inadequate justice for victims. The conferee stated that with this bill the judges do not have to be attorneys, yet, they make major decisions for the prosecution of crimes within the counties. District Attorney Hamilton stated that the current system of using retired district judges in traffic cases, domestic violence cases, preliminary hearings and with other hearings works well for Shawnee County. The conferee stated that she is not opposed to continuing with the practice of adding experienced and qualified retired district judges. (Attachment 3)

The Chair closed the hearing on **SB 577**.

SB 671-Civil commitment of sexually violent predators.

Carla Stovall, Kansas Attorney General, testified in support of **SB 671**. The Attorney General discussed current law and stated that the law needs to be improved to provide for the conditional release of sex predators. The conferee referred to a two page outline of **SB 671** attached to her written testimony. The conferee stated that the technical/procedural changes are very basic. The conferee stated that changes with legal significance are in accord with the United States Supreme Court decision finding this a civil commitment law and not criminal law. The Attorney General stated that substantive changes deal with the evaluation and release procedures. The conferee stated that this law mirrors the conditional release provisions in the traditional mental illness commitment statutes. The Attorney General stated that another change deals with the evaluation and release procedures and authorizes the Secretary of SRS to convene an Evaluation Panel to provide input into the assessments and recommendations required under the act. The conferee requested that this bill be named, "Stephanie's Law" after Stephanie Schmidt who was a rape and murder victim of a previously convicted sex offender. The conferee requested that her office maintain exclusive jurisdiction over these cases. (Attachment 4)

The Committee members and conferee discussed how this law might apply to juveniles. The conferee discussed with Committee members the current population of those convicted as sex predators. Discussion regarding the civil burden and placement safeguards followed.

Wendy McFarland, ACLU, testified in opposition to **SB 671**. The conferee stated that the ACLU opposes this bill because: it relaxes the burden of proof required to civilly commit a sex offender; changes the current requirement of an unanimous jury vote to commit; eliminates the requirement of a formal hearing in front of a judge and replaces it with an annual evaluation and review of the report by a judge; and adds a five year minimum time requirement to the commitment before release is possible. The conferee stated that the burden of proof should be beyond a reasonable doubt. The conferee stated that this bill will very vulnerable to challenge and will increase costs to the counties. The conferee stated that the ACLU objects to the inclusion of juveniles. The conferee noted that a number of cases were included in her written testimony. (Attachment 5)

The Committee members discussed with the conferee the current standard of proof and the safeguards for placement of those convicted as sex predators.

The Chair closed the hearing on **SB 671**.

Secretary Simmons agreed with the Chair to postpone the scheduled hearing on **SB 516** until the next meeting.

The Chair adjourned the meeting at 5:30 p.m.

HOUSE JUDICIARY COMMITTEE
GUEST LIST

DATE: 3-24-98

NAME	REPRESENTING
Jai Sookram	SRS- Mental Health/DD
	self
	Observer
GREG DEBACKER	National Congress For Fathers & Children
Kathy Ponto	OJA
Greg Hill	Federico Consulting
Lon Smith	KS Bar Assoc
Natalie Haag	Governors Office
Kelli Newton	AG
Nancy Lindberg	AG
	KCDAA
Cindy Lash	Post Audit
Mary Hellin	SRS - CFS
Rep. Douglas Johnston	HD 92
Joan R. Hamilton	Shawnee County DA
KEITH R LANDIS	CHRISTIAN SCIENCE COMM. ON PUBLICATION FOR KS
Ann Durkes	Div. of the Budget
Larry Kleeman	League of KS Municipalities

HOUSE JUDICIARY COMMITTEE
GUEST LIST

DATE: 3-24-98

NAME	REPRESENTING
MARGI CROW	41ST DIST REP

#1

Testimony to the House Judiciary Committee

March 24, 1998

Senate Bill 577

Kathy Porter
Office of Judicial Administration

I appreciate the opportunity to discuss and support SB 577, which would authorize creating new district magistrate judge positions. Although K.S.A. 20-355 specifies the manner in which new district judge positions are to be created, there currently is no statutory mechanism to create new district magistrate judge positions.

Since court unification, the Judicial Branch has not created any new district magistrate positions. However, the FY 1999 Judicial Branch budget includes a request for nine new district magistrate positions, including three for the Third Judicial District (Shawnee County), three for the Tenth Judicial District (Johnson County), two for the 25th Judicial District (Finney, Greeley, Hamilton, Kearny, Scott, and Wichita Counties), and one for the 29th Judicial District (Wyandotte County). Of the nine positions requested, the Governor recommended three, but did not specify the district or districts to which the magistrate judges would be assigned.

SB 577 would provide that, in districts that have not approved the nonpartisan method of selection, magistrate judges are selected in the same manner provided for selecting district judges found in K.S.A. 20-355. The new district magistrate judge would be elected at the next general election held in November of the year in which the position is determined to be necessary. However, any new positions created in 1998 for districts that have not approved the nonpartisan selection process would be filled in accordance with the provisions for filling a vacancy as set forth in K.S.A. 25-312a. That statute provides for the position to be filled by appointment by the Governor, with the successor to be elected at the next general election to serve the remainder of the term. This option is offered simply because it appears the timing requirements of the primary and possibly the general elections could not be met for the first year the new magistrate positions are created, given the fact that the 1998 appropriations bills authorizing and funding any new magistrate positions would not be signed by the Governor and enacted into law until mid-May. We do note, however, that this differs from the current language of K.S.A. 20-355.

House Judiciary
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Attachment 1

The bill currently provides that, in districts that have approved the nonpartisan selection method, the current method for creating a new division of the district court would be used to select the new magistrate. Briefly summarized, the District Judicial Nominating Commission would nominate not less than two nor more than three persons and submit those names to the Governor for selection (K.S.A. 20-2909 - 2911). However, a requested amendment (attached) would provide that the new magistrate positions be filled in the manner provided by K.S.A. 20-2914 for filling vacancies in existing magistrate positions. That method provides for the district magistrate judge to be selected by the district judicial nominating commission. The selection method included in the amendment is the method preferred by the Supreme Court.

Finally, the SB 577 would provide that the Supreme Court shall determine the county or judicial district in which the newly created division or position shall be placed. If less than the full number of magistrate judge positions and district judge positions requested are approved by the 1998 Legislature, the Supreme Court would be faced with the responsibility of deciding which districts will be assigned the new positions.

Again, thank you for your consideration of SB 577. I would be happy to stand for any questions.

Attachment

SENATE BILL No. 577

By Committee on Judiciary

2-3

AN ACT concerning district courts; relating to additional district magistrate positions; amending K.S.A. 20-355 and repealing the existing section.

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

Section 1. K.S.A. 20-355 is hereby amended to read as follows: 20-355. (a) On or before April 15 of every even-numbered year, the supreme court shall examine the need for more or less divisions *or district magistrate judge positions* of the district court in each judicial district which has not approved the proposition of nonpartisan selection of ~~district~~ judges *of the district court*, as provided in K.S.A. 20-2901, and amendments thereto~~, and~~. On or before May 15 of each year, the supreme court shall examine the need for more or less divisions *or positions* of the district court in judicial districts which have approved such proposition. Whenever the supreme court shall determine that in order to effectively expedite the business of the district court in any judicial district in this state, the need exists for an additional ~~district~~ judge *of the district court* and an additional division ~~of~~ *or position in* such court, the supreme court shall so certify to the secretary of state, and where the need for such additional ~~district~~ judge *of the district court* and division *or position* is in a judicial district in which such proposition of nonpartisan selection of ~~district court~~ judges *of the district court* has been approved, such certification also shall be made to the chairperson of the district judicial nominating commission of such judicial district. Any additional division *or position* so certified shall be designated as the next numbered division *or position* of such court.

(b) Upon certification of an additional ~~district~~ judge *of the district court* and an additional division *or position* of the district court in any judicial district which has not approved the proposition of nonpartisan selection of ~~district~~ judges *of the district court*, the first ~~district~~ judge *of the district court* of such new division *or position* shall be elected at the general election held in November of the year in which the division *or position* is determined to be necessary and such judge shall take office on the second Monday in January of the following year. No judge of any such new division shall be appointed pending the first election to fill such

office, *except that the judge for any division or position created in 1998 shall be selected in accordance with the provisions for filling a vacancy as set forth in K.S.A. 25-312a and amendments thereto.*

(c) Upon certification of an additional ~~district~~ judge *of the district court* and an additional division *or position* of the district court in any judicial district which has approved the proposition of nonpartisan selection of ~~district~~ judges *of the district court*, the additional division ~~*or position*~~ shall be created on July 15 of the year in which such certification is made, and the additional ~~district~~ judge ~~*of the district court*~~ shall be selected and take office in the manner prescribed by subsection (b) of K.S.A. 20-2913, and amendments thereto.

(d) *The supreme court shall determine the county or judicial district in which the newly created division or position shall be placed.*

(e) Any additional district judge *or district magistrate judge* position created by this section shall be considered a position created by the supreme court and not a civil appointment to a state office pursuant to K.S.A. 46-234, and amendments thereto.

Sec. 2. K.S.A. 20-355 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

district

The additional position shall be created on July 1 of the year in which the position is approved, and the additional district magistrate judge shall be selected and take office in the manner prescribed by K.S.A. 20-2914, and amendments thereto.

KANSAS DISTRICT COURT

Third Judicial District

Chambers of
FRANKLIN R. THEIS
District Judge

Shawnee County Courthouse
Division Seven, Suite 324
Topeka, Kansas 66603-3922
(913) 233-8200 Ext. 4385
Fax (913) 291-4908

Officers:
MARLENE PERCEFULL
Official Court Reporter
(913) 233-8200 Ext. 4421
LINDA CARRICK
Administrative Assistant

March 20, 1998

Representative Tim Carmody
Chairman, House Judiciary Committee
Room 115 -S
Statehouse
Topeka, KS. 66612

Re: 1998 SB 577

Dear Representative Carmody:

Please find enclosed a copy of a letter sent to members of the Shawnee County legislative delegation expressing my opposition to SB 577 and the funding for permanent magistrates in urban areas.

I apologize for its length, but it dealt , in part, with the foundation for the claim of a need for magistrates in Shawnee County. However, I think the same critical analysis is necessary and apropos to the request by the Kansas Supreme Court for authority to place magistrates in urban areas generally. Hopefully, you will act to preserve the right to establish magistrates exclusively with the legislature on a case by case basis as it now is (K.S.A. 20-338) by killing SB 577 or holding it over for further critical study in the interim.

I have asked your committee secretary to notify me of any hearings on SB 577. I look forward to testifying, if my schedule permits, concerning the ramifications of SB 577 on urban judicial districts.

If my schedule should not permit me to appear, I would request you consider this letter with enclosures as my basis for opposition to SB 577.

Thanking you and with every good wish, I remain

Franklin R. Theis

Not provided at taxpayer expense.

House Judiciary
3-24-98
Attachment 2

#2

To: Members of the House Judiciary Committee

3/24/98

1. I support the judicial budget but without urban magistrate funding.
2. I believe the issue of magistrates in urban areas violates a well-studied policy decision recommended by highly qualified interested citizens and adopted by the legislature over 20 years ago. Here it is before you without study supported by one Chief Justice whose position derives solely from tenure and three administrative judges appointed by her. I know in Shawnee County there was no formal discussion or vote or decision to ask for magistrates. Whether that is true elsewhere or in the Supreme Court, I do not know, ~~but my information is no or certainly not unanimous.~~ Just Although it is represented Wichita supports

magistrates, my information this is probably incorrect, ~~at least,~~ for as formal policy. Certainly no budget request exists for magistrates. This bill would effect 9 judicial districts by its breadth, and the Supreme Court could place them, with funding available in any one of them. What is their position.

3. While magistrates may fit in rural areas merely for reasons of practicality based on reduced caseloads and public convenience, urban area magistrates raise these problems:

   A. Caste system in the same building (associate/district tenure, exp.) (Not a judge on this floor, exp.)

   B. Appeals within the same family of judges raise questions of the appearance of justice.

   C. Restricts flexibility in assignment of cases - also inhibits spreading out of a difficult work load - unlikely district judges assist (caste system) (Schroeder letter, exp.) (salary disparity).

   D. Urban work load of magistrate cases is

significantly heavier - thus whereas in most rural areas slower pace would compensate for lack of legal skills and experience - urban areas would provide no such luxury.

E. Once begin segregation of judges by caseload, more opportunity for influence as to what judge hears and more opportunities for developing court "regulars" around the court = influence (pre-1977 magistrate, exp).

F. A court system designed to tell people their cases are not as important as others is a bad public message. Then to insert lesser qualified judges as reflected by lower salary is reinforcement to this belief. This equals not only a lower quality of justice in fact but the perception of it. Appeal rights illusory because of costs and by perception individuals that appeals are discouraged or compromised already. Erodes concepts of judicial independence.

G. Two courts give those with money opportunity to wear out an opponent and those with little

money put at a disadvantage. At same time - public resources for prosecution and defense have increased, further squeezing principles of justice and its necessary components.

H. With powers of assignment of district judges over magistrates, magistrates judicial independence is compromised. Thus persons of influence by complaint can control judge who hears a case important to them, not by appeal, but by complaint, perhaps unjustified. Will courthouse space be available or will this require a new courthouse?

I. Appellate status of district judges would prohibit the valuable mentoring received, by example, by me from great jurists, like Michael Barbara and Wm. Carpenter and others in the 3rd judicial district since close association would breed questions of fairness and also lead to disqualifications, (would ask, did you talk with judge X about this case.)

4. Lastly, money better spent on staff as they are persons impacted by the case load cited. Upgrade

salary (Shirley, exp., Barb, Rosie, exp.) and numbers (clerks). Proponents should be ashamed to come in and ask for more judges when adequate staff and staff pay lacking. In fact, magistrates requested puts more stress on existing staff if assume remaining judges remain as productive.

Conclusion:

Proponents proposal is upside down. Staff upgrades first, then judges. The concept of magistrates in urban areas is equivalent of returning to feudal times, providing lords with serfs - this is a "powered wig" concept of court organization.

The public will be the one to suffer and the 80% of those who come to court will face off with magistrates and take their impressions with them - downgrading concepts of societal fairness and soundness of the judicial system as a fair dispute resolution system. Please don't allow contact with our urban district judges to become as unlikely as getting an audience with the Pope.

Thank you,

Franklin R. Theis

KANSAS DISTRICT COURT
Third Judicial District

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LINDA CARRICK
Administrative Assistant

March 20, 1998

Representative Annie Kuether
Statehouse
Topeka, Kansas 66612

Re: SB 577 and funding for magistrates in Shawnee County and judicial districts where magistrates now do not exist.

Dear Representative Kuether:

I am writing concerning the power sought to be accorded the Kansas Supreme Court to create magistrate positions in judicial districts where such positions do not now exist such as Shawnee County. The mechanism to transfer this power - a power that was retained by the Legislature to preserve a state policy issue from encroachment by the Court - is 1998 SB 577. (See, K.S.A. 20-353; K.S.A. 20-354; K.S.A. 20-354a; K.S.A. 20-338). Funding is also sought through the budget of the Kansas Supreme Court to implement this new power to create magistrate positions. Presently, the Supreme Court intends to place three magistrates in Shawnee County, three in Johnson County, and one in Wyandotte County, but the power SB 577 would give is unlimited.

Effective in 1977, a series of well-studied, citizen recommended steps were taken by the legislature to improve the efficiency of the judiciary. A detailed and well- considered report was made by the Kansas Judicial Study Advisory Committee in 1974 as a result of the passage of the new Judicial Article of the Kansas Constitution. It is reprinted in 13 Washburn Law Journal 271 (1974) (pages 305-306 attached). In 1976, HB 2729 (Chap. 146, L. 1976) was passed implementing recommended reforms in the trial courts of this state.

A principal step was to begin to eliminate the concept of second-tier courts, particularly within the larger judicial districts, thus creating flexibility and averting duplication of work. It would not have condoned "in-house" appeals within the same urban trial court absent exigent circumstances. The concept of two trials in the same case was discarded and appeals were correctly directed to a true appellate court - the new Kansas Court of Appeals - or the Kansas Supreme Court. The costs involved in going to court even once are significant, much less twice. The study expressed the concept that lawyer judges were to be preferred unless wholly impractical. Additionally, one intent in eliminating the separate limited jurisdiction of magistrates was to free the district court to use its personnel where the caseload warranted and not in accordance with some artificial pre-set jurisdictional limitations.

These changes in judicial districts, where implemented, particularly in the larger districts, promoted the efficiency of the district courts and created a mind-set that the whole of the business of the court was the business of all of the court. As with any change, there were a few who had to be pulled along. Shawnee County, after a four-year period of continuing organizationally as it had pre-1977, evolved into a system whereby everyone carried an "equal bucket" of work and a broad mix of cases. For those who thought the public deserved a full day from its judges, or at least an equal work load for each district judge, the system proved very satisfactory and efficient. The full acceptance of the concept of a group of equals doing all the work of the court probably explains why, regardless of traditionally high caseload statistics for Shawnee County, the judiciary in Shawnee County has not grown as fast, in terms of judicial personnel, as it has in some districts which formed into departments in order to conduct the court's business.

Departmentalization provides some judges a refuge from particular cases which a judge might not like or wish to have an affinity for or otherwise can be a perquisite of seniority. Without an exceptional expeditor capable of predicting the often unpredictable, an unfortunate consequence of such a sequestering of judicial resources can be inefficiency. By example, criminal cases are generally resolved by in-court proceedings. Thus, a judge in a criminal department who is not hearing

cases has nothing productive to fall back on when a criminal case pleads out. On the other hand, where case assignments are mixed, particularly civil and criminal, work can be done in processing civil cases which require opinions and research when the criminal case assignment falls through. Equally a judge who does only major Chapter 60 civil cases, if not superintended, has the power to decide wholly his work schedule, or even when to come to work, since there is generally an absence of mandatory settings in such civil cases. This is particularly true now with the advent of case management orders. In districts such as Shawnee County, this unfortunate route to inefficiency never got a broad foothold. Magistrates would impose an artificial and inefficient form of departmentalization by law.

Of late, however, in Shawnee County, the "equal bucket" system has somewhat eroded and for whatever reason, whether to select or limit their own case assignment or otherwise, there is now an attempt to retreat to the past back into the inflexible jurisdictional abyss of a two-tiered court system, which, coincidently, would leave only the choicer cases and a more leisurely lifestyle for some.

The cover for this radical change in judicial personnel and organization is a plea to just look at the statistics. Of course, statistics can be helpful only if carefully analyzed. A look at the Shawnee County's latest statistics from 1997 reveals the statistics used to advance this proposed radical change in court organization to be

impressive in the gross, but minimal in terms of application of judicial resources. Gross statistics only effect judicial staff, particularly clerks.

A good example of the misperception that can be created by the reliance on raw statistics rests in Shawnee County's statistics in regard to Chapter 61 or limited action cases where facially such cases have increased from 4,370 cases in 1978; to 5,323 in 1982; to 7,179 cases in 1988; to 17,258 cases in 1995; and now to 22,547 cases in 1997. However, the fact is the judicial time needed to process and resolve these limited action cases has actually decreased or, at the very worst, remained static. By example, what took one day in 1978 to dispose of all docket calls for limited action cases and to hear eviction trials still only takes one day in 1998. Total average time for trials in any remaining cases is the same or less and divided among nine judges. Thus, what appears by caseload statistics to be overbearing is not that in terms of the judicial time to process this limited action caseload in Shawnee County.

Further, the jurisdictional limitations for such limited action cases was released in 1990 for most unsecured claims which aided to increase the filings, but which correspondingly created a stabilization of Chapter 60 civil cases in the statistics for these cases since 1990. As shown by the Court's historical statistics (a portion of which is attached), these major civil cases represented 1,425 cases in

1978; 1,578 in 1982; 2,130 in 1988; then dropping to 1,385 cases in 1995, and then in 1997 up to 1,635 cases. The caseload is handled by nine district judges giving approximately 50% of their time or 164 cases per judge with Judge Bullock taking an extra 164 cases, but who does no criminal cases. Further, only 24 civil cases of any kind were tried to a jury in 1997. As any lawyer will tell you most civil cases settle or are disposed of on a summary judgment or other motion. Correctly, judicial effort is necessary to facilitate the latter form of disposition for many cases.

Cases classified under traffic in 1978 were 17,136; were 17,553 in 1982; were 9,207 in 1988; were 10,625 in 1995; and decreased to 9,173 in 1997. The judicial time allotted to resolve them completely has remained the same throughout. Senior Judge Allen handles this traffic docket, including trying traffic cases, one day per week and conducts a DUI docket one-half day twice a month. DUI cases, which historically average about 318 cases a year, if set for trial, are assigned to judges in the criminal rotation.

Domestic cases were 1,717 in 1978, were 1,592 in 1982, were 1,888 in 1988, were 3,109 in 1995, and 3,079 in 1997, however, whereas the 1978-1982 statistics were divorce and paternity cases principally, the statistics after 1987 include protection from abuse cases totaling from 380 in 1988 to 881 cases in 1997 which are generally summarily disposed of as part of a weekly docket now funded by a

grant and conducted by a pro tem judge paid by the grant. The combined time in these dockets is no more than one day per week or .2 of a judicial position. Thus, true domestic cases were only 1,508 cases in 1988, and 2,353 in 1995, and down to 2,198 cases in 1997. The balance of the domestic case assignment is now handled by two district judges for an average caseload of 1,099 cases each.

Probate cases have gone from 1,078 in 1978, to 1,099 in 1982, to 1,451 in 1988 down to 1,184 in 1995, and in 1997 were 1,039, the latter decrease largely due to the demise of the Topeka State Hospital in our district and other mental health measures. One district judge handles this caseload.

Juvenile cases were 1,402 in 1978, 1,166 in 1982, 1,483 in 1988, 1,492 in 1995, and 1,786 in 1997, plus 449 juvenile tobacco cases that are otherwise handled as part of the traffic docket in the overwhelming majority of cases. One district judge handles this caseload with some assistance from the judge assigned to probate.

In Shawnee County criminal cases filed in 1978 totaled 1,893, were 2,610 in 1982, were 2,740 in 1988, were 4,511 in 1995, and in 1997 decreased to 3,903. Further, an estimated one-half of the average 318 DUI cases are set for trial or 159 cases. During the past approximately three years, eight district judges devote approximately 50% of their time to handle the criminal caseload completely and one

judge gives full time, partly administrative. The judges assigned to juvenile, probate, and domestic cases, and also Judge Bullock do not participate in the criminal assignment. This is a criminal caseload, including DUI cases, of 450 cases per judge in 1997. Prior to 1994, this caseload was handled by ten judges including then administrative judge William Carpenter. Since 1994 two senior judges have contributed .3 of a judicial position to assist with preliminary hearings. Additionally, just coincidently with the pending request for permanent magistrates, beginning January 1, 1998, at the request of the administrative judge, temporary magistrates have been assigned "to assist" in handling preliminary hearings and misdemeanors here.

If Shawnee County misdemeanor cases are shifted to the City of Topeka, as has been requested and/or if pending 1998 HB 2976 were passed, the criminal caseload in this district would drop by approximately one-half impacting workload significantly and leaving magistrates, if permitted under SB 577, a substantial void in the principal workload they could statutorily do as well.

Lastly, the total caseload of this district was 30,231 cases in 1978, 32,383 in 1982, 27,995 in 1988, 41,693 in 1995, and 45,141 in 1997, a 33% increase over two decades during which three additional district judge positions were created. However, the entire statistical increase in overall caseload over the last decade (1988-1997) of 17,146 cases

can be substantially equated to the limited action case increase during the same period of 15,368 cases, as noted above, of which the judicial time to dispose of them, as noted, has not increased since 1978. In 1978 we had eleven judges, beginning in 1982 we had twelve judges until 1988 when we increased to thirteen judges until 1995 when we had fourteen judges. Thus, over the last decade (1988-1997) we have had two additional district judges to pick up a caseload increase of 1,778 cases exclusive of the limited action cases noted.

Thus, analyzing the true work load for 1997 one fairly has to remove 22,547 limited action cases handled by Senior Judge Vickers who contributes .2 of a judicial position (1 day a week) to handle these cases and one has to remove 9,173 traffic cases handled by Senior Judge Allen who contributes .2 of a judicial position (1 day a week) on a traffic docket and one-half day twice a month on a DUI docket (.1 of a judicial position) to handle these cases and remove 881 protection from abuse cases handled by a judge pro-tem paid by grant (.2 of a judicial position) to arrive at the true existing caseload of the regular fourteen judicial positions in Shawnee County. To be fair, one can add 5% of limited action cases that would probably be actually <u>set</u> for trial, or 1,127 cases. (22,547 x 5%) and 159 DUI cases set for trial. Thus, now in 1997, fourteen judges actually handle, at best, only 13,717 remaining cases or an average of only 979 cases per judge while the two

senior judges and one judge on a grant, totaling overall one additional district judge judicial position, handle the remaining 31,315 cases of our 1997 total of 45,141 cases.

If we treat 1988 statistics as we did 1997 statistics, that is, remove limited action cases for that year (7,179) except for 5% that might be set for trial (358), further remove traffic cases (9,207) except for approximately 159 DUI cases set for trial, and remove 380 protection from abuse domestic cases and assume all these cases were assigned to one outside judicial position, this would leave thirteen judges that were then available to hear the balance of 11,746 cases (27,995 - 16,249) in 1988. Accordingly, this would yield a caseload per judge in 1988 of 903 cases and a caseload of 16,249 for the assumed outside judge. Thus compared, the actual caseload per judge figured on the basis of work load has risen by 76 cases per judge (903 vs. 979) since 1988. If, in 1997, we did not have the senior judges and grant judge for the total of the one extra position, we would have to assign one of our fourteen judges, thus leaving thirteen for comparison purposes. If this is done, then the caseload comparison per judge would be 1,055 cases per judge and its 1988 equivalent would be 979 cases per judge, similarly figured.

Thus, while certainly it is impressive to state, on a gross statistical basis, that cases have increased from 27,995 cases in 1988 to 45,141 cases in 1997 and thus

increased on a gross statistical basis per judge from 2,153 in 1988 to 3,225 in 1997, or a purported 1,072 cases per judge (a 50% increase), the actual work load increase of 76 cases per judge (an 8% increase) belies the gross statistics. Further, this caseload/work load increase of 76 cases per judge ignores the assistance we received (and continue to receive) from the senior judge program and grant monies which totally absorbed this statistical caseload increase and made the real work load completely static from 1988 to 1998 at 979 cases per judge, given we had no outside help in 1988 which then required one judge amongst us to do the work which was done by our senior judges and a grant judge in 1997. (1997: 13,717 ÷ 14 = 979 vs. 1988: 11,746 ÷ 12 = 979).

As any lawyer will tell you only a small percentage of cases actually go to trial whether civil or criminal. In fact in 1997, Shawnee County only had 42 criminal jury trials handled by the nine different district judges. The criminal trials to the court would reflect a similar percentage. While it is correct a judicial system has to have a sufficient contingency of judicial personnel and time available to make the threat of the actual necessity of going to trial credible, it must be considered an absurd concept, as shown by the number of civil and criminal cases actually tried to a jury, to base such a threat organizationally on a one-to-one basis (average caseload per judge based on raw statistics) as a loyalty to statistics might suggest.

One of the great concepts of the 70's court reform was its recognition that obviously some judicial districts might be busier than others and, hence, the Kansas Supreme Court was provided with the authority to shift judicial resources from over-served areas, or in periods of slack, to districts that might be experiencing a temporary overload without the necessity of adding permanent personnel, particularly, without first establishing some consistent certainty or standard of need in a judicial district. At several points in the past, Shawnee County was a beneficiary of this court reform policy with distinguished, yet not fully calendared, jurists, both district court and magistrate judges, from other areas of the state, aiding us by temporary assignment providing, as needed, a continuing assistance for temporary case overloads. However, for some reason this policy was abandoned, to the chagrin of all, by the Kansas Supreme Court until just recently. Now additionally the legislature has provided a salutary and inexpensive senior judge program whereby retired judges may continue to work for 25% of the pay in return for 40% of their time per year.

I have a genuine and great fear, based on experience, that if permanent magistrates are introduced into Shawnee County, an overwhelming portion of our caseload will shift down to them. Judge Bullock now asks for three magistrates, but he has been quoted publicly as eventually "needing" as many as six. In 1978, out of

30,231 cases, the then six district judges handled almost all of the Chapter 60 civil cases (1,425), perhaps 5% or 50 felony cases out of a total of 1,893 criminal cases - felony and misdemeanor - and 75% of the total domestic cases of 1,717 or 1,288 cases. (Two associate district judges did domestic cases as well.) This was a total caseload of 2,763 for six district judges or an average caseload of 461 cases per judge. All other cases out of the 30,231 were handled by five associate district judges of which I was one. This represented 90% of the caseload of the district. We had an average caseload of 5,493 cases (30,231 - 2,763 = 27,468 ÷ 5). However, since the associate district judge doing probate cases only did probate cases which consisted of 1,078 cases and the associate district judge doing juvenile cases only did juvenile cases consisting of 1,402 cases, this meant three of us - Associate District Judges Dowd, Hope, and myself - had a raw statistical caseload of 24,988 cases or 8,329 cases each. This policy existed from 1977 - 1980 when our system finally begin to change in recognition of this unfair distribution of cases and work load.

Now unfortunately only then District Judge, now Chief Justice, Kay McFarland, Judge Bullock, Judge Macnish, Judge Dowd, and myself remain as still active judges who know why this circumstance was permitted to exist. For whatever reason this inbalance was permitted to exist, notwithstanding, it should

never be permitted to reoccur.

While the reluctance of the Legislature to be too introspective of court requests is understood as a component of the doctrine of separation of powers, it is another thing altogether to bury, without major and broad thought and discussion, an adopted policy of court reform in effect for over twenty years which the Legislature purposefully retained for itself based on the report of the Judicial Study Advisory Committee report of 1974. Ask yourselves, should you allow an efficient court system to be made inefficient merely because the court system as a whole is not as efficient as it should be statewide or in other areas of the state by virtue of the practicalities there existing. Certainly, the Shawnee County court system is a model of efficiency and its ability to handle its work load is one to which other judicial districts should aspire. While certainly it is unfair that in the judicial system as a whole equal pay does not equate to equal work, that itself is not a reason to sanction that we should work less or that in order to be able to work less our local judicial system must become saddled with the inefficiency limited jurisdiction magistrates bring to a fully integrated urban judicial district. Such a decision would be, as a practical matter, permanent and irrevocable once instituted. To put judicial positions in place without corresponding staff itself is a tacit recognition that current individual judicial work load is merely being substituted for and in a most inefficient

way since all judicial positions need staff to be fully effective. Thus, the proposal can be seen as it is, one to substitute others to do the current work of some or otherwise, in part, to shield some from a distasteful caseload mix. Ask, if the existing judges are to remain busy, what overburdened staff will assist these new judges. Particularly, ask others below the level of judge who are familiar with our court whether it is necessary to establish some new jurisdictionally limited court entity to benefit our local court system. I believe uniformly they would tell you that if money is limited, then staff upgrades, both by number and salary, are the things that would enhance the efficiency of the court and then and only then, would an additional district judge position be warranted, not added judicial personnel in the form of limited jurisdiction magistrates which would stunt, rather than benefit, our local court system. It is simply an Alice-in-Wonderland proposition to believe that lesser skilled judges improve a court system. Neither do Shawnee County citizens deserve to have such a cheaper is as good, less is equal, philosophy irrevocably imposed on their quality of justice.

A friend of the court has provided me a copy of a letter sent by Judge Bullock which asserts that thirteen of fourteen district judges in our district believe magistrates, and the number requested, should be approved. However, I assure you that were you to conduct an individual poll (with a traditional democratic guarantee

of anonymity), that while the answer might support a feeling that Shawnee County may be ready for a new district judge to guard against a contingency the senior judge program or grant moneys might not always be available, many would express great concern in altering fundamentally our excellent court system by the introduction of permanent magistrates and express doubt that permanent magistrates would ever be in the best interest of Shawnee County citizens or the future continued excellence of the Shawnee County court.

The request for magistrates from Shawnee County was not the product of a democratic process here in Shawnee County nor was there opportunity for debate or any statistical analysis provided prior to the request being made. No plan, short or long term, exists to address the use of magistrates or their effect on the remaining case assignment of the fourteen district judges. Are magistrates going to supplant our current judge assigned to juvenile cases who has thirteen years experience and is a recognized expert in juvenile matters? Is a magistrate going to be assigned to assist current judges assigned to the same cases, working side-by-side with their disparate judicial salaries? Could a district judge mentor a magistrate knowing the district judge could be called upon to hear an appeal? Would any appeal be perceived as independently considered given the practicalities of association in a single courthouse? Would a magistrate who had "too many" appeals to the district

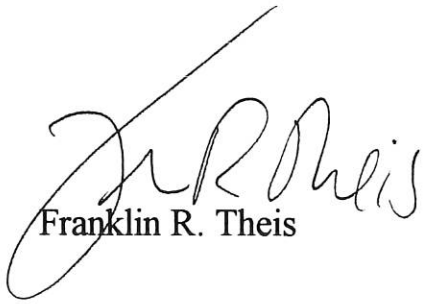
judges be reassigned, thus threatening judicial independence? These and many other questions, going even beyond assignments, linger unresolved, e.g., what will the Kansas Judicial Initiative recommend in its report due in 1999?; what effect would the acceptance by the City of Topeka of our misdemeanor cases have on the Court, particularly were permanent magistrates in place?

Unfortunately this present forum is the only one left in which to speak out on this fundamental policy change that should really receive a broader and more formal public debate. All I can ask is that you inform yourselves fully about the long term consequence of installing permanent magistrate positions in Shawnee County and further ask yourselves whether the Shawnee County District Court caseload increase over the last decade has "tripled" or "doubled" the actual work load of the Shawnee County District Court judges. Being so informed, I believe you will agree that permanent magistrates are neither in the best interest of Shawnee County nor are such positions a reasonable or justifiable present or future solution to the needs of Shawnee County on the record presented.

In any manner, I thank you for taking the time to read this letter and review the enclosed materials. My intent is to be a positive force in the debate. I have great respect for each member of our Court, but yet, I have a greater respect for the quality of justice now existing overall in Shawnee County. I deeply regret the

debate has otherwise been restricted by the private manner of the discussions entered into regarding this important public issue which is being pushed as a technical amendment to court statutes (SB577) and a genuine rescue, both of which it is not.

With every good wish, I remain,



Franklin R. Theis

cc: Chief Justice
Shawnee County District Judges

H. Administration of Nonjudicial Personnel

16. All clerical functions of the unified district court should be under the supervision of the administrative judge of the district under guidelines established by the district and supreme courts.

17. As provided by statute or under guidelines set by the supreme court and the district court, nonjudicial personnel of the district court should be authorized to perform specified quasi-judicial functions.

A principal advantage of the merger of the trial courts of Kansas will be the consolidation of the clerical and support staffs of heretofore separate court units. No longer will actions be filed in different clerical offices of different courts all in the same county. And no longer will judges of separate courts have to rely only on the support personnel allowed their courts. Instead, each district of the unified district court will have a centrally administered support staff serving all the judges of the unified court. It will doubtless be necessary to maintain a district court clerk in each county but there will be no need for a separate probate or juvenile clerk; to the degree that specialized clerical divisions are needed, they will be arms of the unified clerical staff. This consolidation of support personnel should result in savings in court expenditures. As noted above, a partial consolidation of court services, namely probation and social work services, has already been accomplished in Shawnee County (Topeka) and in western Kansas through the Wheatlands Community Services project.

Some aspects of routine traffic cases, such as parking violations and other minor matters, ought to be handled administratively by the courts' clerical offices, as is the case now in the larger cities such as Wichita. The clerical staff ought to be able to accept pleas of guilty and receive fines by mail; the fines would be determined and published in a fixed schedule. The supreme court should determine what aspects of which kind of case might be handled by clerks.

Should a magistrate be temporarily absent from his county, it would be necessary to provide, among other things, for prompt arraignments and the dispatch of temporary commitment orders in juvenile and care and treatment matters. These matters could be attended to by the resident district clerk. This could be properly accomplished by stricter qualification requirements for district clerks and the mandate that the clerk review all requests for orders by telephone with a judge of the district court.

I. Elimination of Certain District Magistrate Judgeships

18. If upon the death, resignation, retirement or removal of a district magistrate judge the supreme court determines that the position justifies the services of a full-time lawyer judge, that position should be filled by an associate district judge.

19. As district magistrate judges in counties with more than one district magistrate judge die, resign, retire or are removed from office, their judgeships should be abolished if the supreme court determines that the

2-25

remaining magistrate or magistrates in the county can absorb the departing magistrate's workload. If the workload of the remaining magistrate deserves the attention of a full-time lawyer judge, this magistrate, if qualified, should become an associate district judge.

The thrust of these proposals is to replace nonlawyer and part-time lawyer magistrates whenever possible within the judicial system, at the same time guaranteeing a resident judge in each county.

In the future, certain counties of Kansas may be served by district magistrates even though the caseload and time needed to perform judicial duties might justify the employment of associate district judges. The magistrate positions in these counties should eventually be replaced by associate district judgeships. Should the district in which these magistrate positions exist adopt a plan for merit selection of judges, such as is discussed in Chapter V, the magistrate positions could be replaced by associate district judgeships as the incumbent magistrates retire, die or are removed from office. In districts where election remains the mode of selection, the magistrate judgeships could be replaced after fixed terms of years corresponding to the incumbents' retirement ages or upon the death, retirement or removal of the incumbents.

After unification, certain counties (Atchison, Neosho, Cowley, Crawford, Leavenworth and Montgomery) will have more than one judgeship below the level of the district judgeship. For example, Leavenworth will have a district magistrate and an associate district judge and Neosho will have two district magistrates. The supreme court should study the workload of the unified district court in these counties to determine whether some of these judgeships may be phased out or, when there is more than one magistrate judgeship, be replaced by associate district judgeship.

Total Case Filings

	Total	LA	P/J	Clerk
1984	25,448	17,613	2,102	5,733
1985	26,053	17,094	2,346	6,613
1986	26,789	17,434	2,659	6,696
1987	28,205	17,388	34,898	7,328
1988	27,995	17,903	2,934	7,158
1989	31,944	21,372	2,848	7,774
1990	36,054	25,147	2,951	7,956
1991	36,444	25,724	2,831	7,889
1992	35,058	23,972	2,786	8,300
1993	38,378	26,389	2,816	9,173
1994	41,267	29,019	2,848	9,400
1995	41,693	28,871	2,676	10,146
1996	42,776	30,708	3,175	8,893
1997	45,141	32,745	3,270	9,126

Clerk - Criminal, Municipal Court Appeals, Inquisitions, Domestic, Chapter 60 C.V., Unassigned, Screening Panel

LA - Chapter 61, Small Claims, Traffic, DUI, F/I, Fish + Game

Case Filings

	1988	1989	1990	1991	1992	1993	1994
CV	2,130	2,273	2,427	1,872	1,644	1,542	1,470
D	1,805	1,798	1,957	2,404	2,277	2,648	2,743
U	332	673	638	501	974	1,224	692
R	83	72	113	123	202	180	237
LA	7,179	9,685	11,758	11,851	11,541	14,500	16,218
SC	1,047	1,059	1,134	1,031	957	820	755
TR	9,207	10,083	11,628	12,231	11,007	10,626	11,506
DUI	306	359	360	373	244	227	295
HV	114	133	215	190	115	179	193
F&G	50	53	52	48	108	37	52
FEL	1,292	1,232	1,001	1,061	1,143	1,604	1,861
MISD	1,474	1,687	1,773	1,891	1,950	1,937	2,345
PROB	1,451	1,363	1,319	1,198	1,212	1,284	1,287
JV	1,483	1,485	1,632	1,633	1,574	1,532	1,561

	1995	1996	1997
CV	1,385	1,518	1,635
D	2,885	2,659	2,967
U	1,102	462	471
R	224	202	112
LA	17,258	20,199	22,547
SC	711	717	681
TR	10,625	9,418	9,173
DUI	242	358	313
HV	0	0	0
F&G	35	16	31
FEL	2,201	2,309	2,165
MISD	2,295	1,691	1,728
PROB	1,184	1,176	1,039
JV	1,492	1,999	2,231

*1994 last year for HV cases in Traffic

Civil Caseload

	CV	LA	U	SC	SP
1985	1860	6499	632	896	10
1986	1911	5928	509	941	16
1987	2248	6219	466	1091	6
1988	2130	7179	332	1047	15
1989	2273	9685	673	1059	8
1990	2427	11758	639	1134	3
1991	1872	11851	501	1031	6
1992	1644	11541	974	957	12
1993	1542	14500	1224	820	8
1994	1470	16218	692	755	8
1995	1385	17258	1102	711	7
1996	1518	20199	462	717	10
1997	1635	22547	471	681	10

Chapter 60 Documents

	Total	Gam	Wmts	Summons	Subpoena
1985	2007	2007			
1986	1567	1567			
1987	1512	1512			
1988	9390	1997	347	5238	1808
1989	9098	1795	324	5175	1804
1990	9902	1674	361	5617	2250
1991	7068	874	12	3590	1075 *
1992	7442	862	8	3304	1121
1993	8426	910	80	2681	1439
1994	6865	622	62	2541	1286
1995	4891	668	10	2478	1222
1996	5140	661	6	2667	1168
1997	5370	674	3	2904	1037

* 1982-1990 - Civil & Domestic documents combined.
Effective 1991 Domestic statistics separate from Civil.

Chapter 61 Documents

	Total	Gam	Wmts	Summons	Aids	Citations
1985	15292	7260	928		4887	2217
1986	18760	8567	892		6671	2630
1987	20198	9382	1063		6879	2874
1988	28685	11691	798	6514	7000	2682
1989	42873	13497	767	16538	7756	4315
1990	51633	14978	1064	16473	10463	8655
1991	56183	14568	1323	16361	11367	12564
1992	56155	13257	1827	15491	11285	14295
1993	66404	15194	1886	18782	14043	16499
1994	90178	18619	2885	20826	15377	20223
1995	96235	20108	4993	21036	15714	24255
1996	113479	24640	2917	24870	17901	31119
1997	117964	25277	2780	26889	22911	35486

Criminal Caseload

	Criminal	Felony	Misdemeanor	MC	Inquisition
1985	2425	1110	1315	71	3
1986	2597	960	1637	77	3
1987	2861	1210	1651	48	2
1988	2740	1292	1448	26	1
1989	2919	1232	1687	27	4
1990	2774	1001	1773	27	2
1991	2952	1061	1891	24	7
1992	3103	1143	1950	38	10
1993	3547	1604	1937	18	6
1994	4215	1861	2345	30	5
1995	4511	2201	2295	21	11
1996	4011	2309	1691	23	8
1997	3903	2165	1728	21	7

Criminal Documents

	Totals	Warrants	Commitment	Summons	Subpoena *
1985	3749	2839	102	412	396
1986	4142	2823	126	554	639
1987	4003	2451	156	792	604
1988	4739	3107	147	679	806
1989	4974	3109	177	896	792
1990	4833	3167	156	634	876
1991	5330	3501	181	662	986
1992	5601	3786	169	575	1071
1993	6614	4520	154	859	1081
1994	8197	5647	171	1158	1221
1995	9042	5901	235	1629	1277
1996	9062	5108	228	1822	1904
1997	8329	5183	194	1820	1132

* Does not include plaintiff's subpoenas

Total Case Filings

	Total	LA	Prob/Juv	Clerk
1978	30,231	22,156	2,480	5,595
1979	31,746	23,260	2,528	5,958
1980	31,461	22,829	2,278	6,354
1981	30,376	21,909	2,153	6,314
1982	32,383	23,831	2,270	6,282
1983	28,336	20,791	2,071	5,484
1984	25,448	17,613	2,102	5,733
1985	26,053	17,094	2,346	6,613
1986	26,789	17,434	2,659	6,696
1987	28,205	17,388	3,489	7,328
1988	27,995	17,903	2,934	7,158
1989	31,944	21,372	2,848	7,774
1990	36,054	25,147	2,951	7,956
1991	36,444	25,724	2,831	7,889
1992	35,058	23,972	2,786	8,300
1993	38,378	26,389	2,816	9,173

Civil Caseload

	CV	LA	U	SC	SP
1978	1425	4370	481	650	
1979	1586	5469	449	891	6
1980	1538	5369	572	945	3
1981	1638	5286	541	975	3
1982	1578	5323	440	955	5
1983	1499	4419	449	862	2
1984	1617	4739	553	872	3
1985	1860	6499	632	896	10
1986	1911	5928	509	941	16
1987	2248	6219	466	1091	6
1988	2130	7179	332	1047	15
1989	2273	9685	673	1059	8
1990	2427	11758	638	1134	3
1991	1872	11851	501	1031	6
1992	1644	11541	974	957	12
1993	1542	14500	1224	820	8

Criminal Caseload

	Crim	Fel	Misd	Mc	Inq
1978	1893			79	0
1979	2010			112	6
1980	2352			154	2
1981	2436			90	2
1982	2610			52	3
1983	2067			50	7
1984	1916	999	917	32	4
1985	2425	1110	1315	71	3
1986	2597	960	1637	77	3
1987	2861	1210	1651	48	2
1988	2740	1292	1448	26	1
1989	2919	1232	1687	27	4
1990	2774	1001	1773	27	2
1991	2952	1061	1891	24	7
1992	3103	1143	1950	38	10
1993	3547	1604	1937	18	6

Criminal Documents

	Totals	Wrnt	Commit	Summon	Subp*
1984	3323	2433	55	243	592
1985	3749	2839	102	412	396
1986	4142	2823	126	554	639
1987	4003	2451	156	792	604
1988	4739	3107	147	679	806
1989	4974	3109	177	896	792
1990	4833	3167	156	634	876
1991	5330	3501	181	662	986
1992	5601	3786	169	575	1071
1993	6614	4520	154	859	1081

* Does not include plaintiff's subpoenas.

#3

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Director of Victim Services
Suzanne H. James

Investigators
Donald M. Murphy
Ken Hendrix
Mick Meyer
Bob Burke

TO: Honorable Members of the House Judiciary Committee

FROM: Joan M. Hamilton, District Attorney

Date: March 24, 1998

RE: OPPOSITION TO SB 577

I am writing as the District Attorney of Shawnee County, Kansas, as well as a former legislative member (51st Representative, 1991-92) who is opposed to this bill. I am strongly opposed to this bill for TWO main reasons:

1) Victims will have to go through yet a longer process for justice. If a defendant loses his/her case before a Magistrate, it can be appealed to a District Court. Our county has a long history of many appeals. My office appeals has increased over 300% in the past three years.

On the otherhand, if the State loses our case (for the victim) before a less trained or less experienced judge, we have no alternative but to refile the case, i.e. starting over. I know that it has been indicated that these magistrates, if used in our county, will not be used for serious cases, but once again, the practice has been to have them hear preliminary hearings (felony cases). In addition, many of our misdemeanors are VERY serious cases, particularly to the victims. Some of those cases are assaults, batteries, sexual battery, assault of a law enforcement officer, unlawful restraint, disorderly conduct, lewd and lascivious behavior and more.

2) It means a lot more work for the PROSECUTION and a plea for more personnel to the county level for manpower. When you increase the ability of the courts to expand personnel for "hearing cases", it means expansion for "doing the cases". Additionally, because of the appeal ability of the suspect/defendant, we will need to respond for the VICTIMS.

From a Prosecutor's point of view, this is a nightmare. The salary of these magistrates are lower if you are wanting to "save budgets". However, in exchange, we get inexperienced persons. From a Victim's point of view, it is extremely unjust and cruel to have to redo their tragedy over and over.

Justice for All

House Judiciary
3-24-98
Attachment 3

We do NOT need more judges in Shawnee County nor do we need the powers of the supreme court to authorize the use of **magistrate judges**. This would put us BACK in time over 20 years. I have been involved in the criminal system since 1974. We had magistrates then, and we did major reform in 1976. Under the magistrate statute, these judges do not have to be attorneys and they can't arraign a defendant, yet they make **major, major** decisions for the prosecution of crimes within our county.

Currently, Shawnee County has a RETIRED District Judge doing all the traffic cases (Adrian Allen); a RETIRED Municipal Judge doing the domestic violence accelerated dockets (James Wells); a RETIRED District Judge assisting with preliminary hearings (E. Newton Vickers); an attorney who does the small claims (Bruce Harrington), and numerous pro-tems who come in to assist with hearings.

You, as Legislators, gave the powers to the court to add retired DISTRICT judges to each jurisdiction. IF we are to add more judges, I am not opposed to continuing with the practice of adding **experienced and qualified retired DISTRICT JUDGES**. That would eliminate the powers of appeal for the suspect/defendant, and enable the **VICTIMS TO HAVE THE JUSTICE THEY DESERVE ALSO.**

Thank you. If there are any questions, please feel free to call me at (785) 233-8200, Ext. 4140 (voice mail) or 4398 (Nida, legal assistant).

JoAn Hamilton
District Attorney

#4

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TESTIMONY OF ATTORNEY GENERAL CARLA STOVALL
SENATE BILL 671
AMENDMENTS TO SEXUALLY VIOLENT PREDATOR LAW (KSA 59-29a01 *et seq.*)
HOUSE JUDICIARY
MARCH 24, 1998

This legislature took the courageous step in 1994 to enact a controversial, but innovative, approach to dealing with repeat sex offenders when it passed the Sexually Violent Predator law. As we expected, the law was challenged. As perhaps we did not expect, the Kansas Supreme Court struck it down, but as you know, the United States Supreme Court upheld it on June 23, 1997. The High Court's decision affected not just Kansas but the entire country, as it gave the "go ahead" for other states to enact similar legislation. Since the decision, Illinois and North Dakota have passed commitment laws and at least eight states of which I am aware have bills currently pending in their legislatures.

The United States Supreme Court decision established the parameters in which a law like this can exist constitutionally. Our current law clearly falls within those parameters, but it is time to revise our law within the framework provided by the Court to make the law more workable and more effective. During the last couple of years, I have "lived" this law, and have identified changes that are desirable. In addition, my attorneys who handle these cases, as well as adopted laws in other states, have provided additional considerations. By combining all that we have learned, we have the chance to have a "new and improved" commitment law and to continue the national leadership role that we have been thrust into by virtue of the *Kansas v Hendricks* case. As such, I proposed revisions and additions to the current law in Senate Bill 671. In addition, this is the perfect time to make these revisions because no person committed under the law has been recommended for release from the program yet. That may not be the case by next year's legislative session. Changing the law at that point in time would be troubling from both a constitutional and practical perspective.

First, I would like to address those portions of the bill passed by the Senate and then I would like to address some additional changes I believe are important for you to consider as well.

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The handout I have prepared titled "Outline of Senate Bill 671" will simplify the explanation of the provisions of this bill and I have grouped the changes in three categories: Technical/Procedural Changes, Changes with Legal Significance and Substantive Changes.

The Technical/ Procedural changes are very basic and I won't comment on each of them. Let me just establish that "D" is purely a policy decision for you to make. Current law is silent on this point and I think we need to clarify who bears the financial responsibility for the defense of the person. I have no stake in whether the county or state pays and would only request the legislature clarify which entity shall be responsible for the costs of appointed counsel and any expert performing an evaluation on behalf of the respondent.

Changes with Legal Significance are next. All of these changes are in accord with the United States Supreme Court decision finding this a civil commitment law and not a criminal law. As with the traditional mental illness commitment proceedings, a judge - not a jury - determines when someone should be released from the commitment. And, because at least one judge has allowed someone against whom a commitment action had been filed to be placed under house arrest - in violation of the intent of the law, in my opinion - we specifically prohibit such a practice. This, too, is consistent with the High Court's finding that this law is civil and not criminal.

Substantive changes deal with the evaluation and release procedures. We basically establish four phases to the commitment program. First, the initial commitment when the person is at the Unit and undergoes treatment. Second, placement by order of the court in transitional release (e.g., halfway houses, work release centers). Currently, we have no such mechanism and the concern is with an offender who has been in a Kansas prison 10 years and in Larned for 3 years, who is, all of a sudden, released to the community at large with no transition or adjustment. That is not reasonable for the offender or for the public. The third phase is conditional release which occurs when the court finds the person's mental abnormality or personality disorder has so changed as to make the person safe to be at large. The court orders the release of the person subject to his compliance with a treatment plan. The fourth and final phase is final discharge and is after the person has successfully completed five years of conditional release.

We have mirrored as much as possible the conditional release provisions in the traditional mental illness commitment statutes in developing these phases so as to continue to ensure we deal with these persons in the context of civil commitment and not implicate the criminal justice system.

Another change within the evaluation and release procedures authorizes the Secretary of SRS to convene an Evaluation Panel to provide input into the assessments and recommendations required under the act. The treatment staff at the unit supports these changes.

Included in the outline are those issues that were not supported by the Senate but are worthy of your consideration. This commitment law exists in Kansas because of the advocacy of Stephanie Schmidt's parents four years ago. You responded to the compelling and poignant message of their daughter's rape and murder at the hands of a previously convicted sex offender by passing this law. The law has informally been referred to as "Stephanie's Law," and even 60 Minutes, the television magazine show, called it that during its recent broadcast. I ask you to officially name this law "Stephanie's Law," to allow the legacy of the 19 year old to be formally recognized. While we have not generally given names to laws in Kansas, it is most appropriate. Eight year old Megan Kanka's legacy is the registration and notification laws that the federal government and all 50 states adopted. These laws swept the country after we learned Megan's story. Just as Megan's Law exists to prevent another child from losing her life at the hands of a previously convicted sex offender - so does "Stephanie's Law" serve an important preventive function.

I would also urge you to allow my office to maintain exclusive jurisdiction over these cases. Initially, the responsibility for commitment of sexually violent predators fell to the county and district attorneys under the 1994 version of the law. In 1995, upon its own initiative and with no request from my office, the legislature placed the exclusive responsibility for the commitment actions with the attorney general's office. An important benefit to this change is to ensure consistency and uniformity in filing decisions. One office determines who should be subject to commitment - not 106. In addition, this has allowed my office to develop expertise in the litigation of these cases, as well as establish a centralized pool of information regarding potential sexually violent predators. I am unclear why the Senate made this change.

I have been formulating these changes drafted originally in Senate Bill 671 since the decision in *State v Hendricks* came down in June. The concepts of substance affecting the program were approved by the Program Director and Clinical Director at the Sex Predator Unit at Larned. I have also worked closely with Professor Steve McAllister of KU's Law School. As you know, he has been a tremendous resource to this Legislature on many occasions and his help on the *Hendricks* case was more than valuable.

I think all Kansans should be very proud of the leadership we have provided the country as we wrestle with effective ways to deal with repeat sex offenders. Public policy makers, lawyers, psychiatrists and others must combine our knowledge and experience to create viable and constitutional options. I believe the changes to our current law that I have proposed are essential to making our commitment law effective and workable and strongly urge your favorable consideration. Failure to do so will let pass this window of opportunity to perfect our statute.

I am happy to answer any questions you may have and would be pleased to do so at this time.

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OUTLINE OF SENATE BILL 671
(The vehicle for Attorney General's changes to Kansas Sexually Violent Predator Law, K.S.A. 59-29a01 *et seq.)*

PROVISIONS PASSED BY THE SENATE

I. TECHNICAL/PROCEDURAL CHANGES.

A. Amend the preamble to clarify the reason a separate commitment proceeding is established. (Sec. 1, page 1, lines 25-43; page 2, lines 1-20).

B. Add "Incest" and "Aggravated Incest" as sexually violent crimes and remove the definition of "predatory." (Sec. 2, page 2, lines 32-34; page 3, lines 15-17).

C. Establish venue for these actions, the number of jurors and peremptory challenges available to each side. (Sec. 4, page 6, lines 10-18; Sec. 6, page 8, lines 7-12; New Sec. 8, page 9, lines 39-41).

D. Establish that the county bears the financial burden of the defense of the offender. (Sec. 6, page 7, lines 39-41).

E. Eliminate the filing requirement within 75 days of the attorney general receiving written notice by the agency with jurisdiction. (Sec. 4, page 6, lines 12-16).

II. CHANGES WITH LEGAL SIGNIFICANCE.

A. Allow a jury only at the initial commitment hearing. (Sec. 6, page 7, lines 42-43; page 8, lines1-2).

B. Clarify that no bail, bond, O.R. bond, house arrest, or other is permitted. (New Sec. 9, page 9, lines 42-43; page 10, lines 1-3).

C. Provide that the treatment staff is authorized to submit a report to the court annually ". . . or at any other time deemed appropriate by the treatment staff . . ." (Sec. 11, page 13, line 23-28).

III. SUBSTANTIVE CHANGES.

A. Authorize the Secretary of SRS to convene an Evaluation Panel to assist the treatment staff with evaluations. (Sec. 10, page 11, lines 17-24).

B. Authorize the Secretary of SRS to contract for transitional release facilities (e.g., work release, halfway houses). (Sec. 10, page 12, lines 19-20).

C. Require a court to order a person be placed in transitional release and allow the placement to be ended if necessary. (Sec. 10, page 12, lines 11-14; page 12, lines 24-43; page 13, lines 1-7).

D. Allow the court to order a treatment plan, upon the conditional release of the person and to return him to the program in the event of failure to comply with the treatment plan. (New Sec. 12, page 15, lines 3-6; page 16, lines 33-43; page 17, lines 1-16).

E. Allow final discharge from the treatment plan after a minimum of five years. (Sec. 12, page 15, lines 16-37).

ADDITIONAL PROVISIONS IN SENATE BILL 671 RECOMMENDED BY THE ATTORNEY GENERAL

I. TECHNICAL/ PROCEDURAL CHANGES.

A. Rename "Stephanie's Law." (New Sec. 1, page 1, lines 21-24).

B. Remove the Prosecutor Review Committee. (Sec. 3, page 5, lines 12-13).

C. Eliminate the Senate's additional language which references "prosecuting attorney" throughout the text of the bill. If not eliminate, at least replace with "county or district attorney."

II. CHANGES WITH LEGAL SIGNIFICANCE

A. Change the burden of "beyond a reasonable doubt" to "clear and convincing." (Sec. 7, page 8, lines 15-16).

B. Eliminate the requirement for a unanimous jury. (Sec. 7, page 8, line 19-20).

III. SUBSTANTIVE CHANGES

Eliminate the Senate's language which re-establishes concurrent jurisdiction between the Attorney General and the prosecuting attorney. (Sec. 4, page 6, lines 6-20).

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American Civil Liberties Union

Of Kansas and Western Missouri

Wendy McFarland/Lobbyist (785) 233-9054

Opposition to Parts of SB 671
Concerning the Kansas Sexual Predator Law

The ACLU appears before you today to oppose certain changes in the Kansas Sexual Predator Law being proposed by the Attorney General.

Specifically we oppose:

1) Relaxing the burden of proof required to civilly commit a sex offender.

2) Changing the current requirement of a unanimous jury vote to commit.

3) Eliminating the requirement of a formal hearing in front of a judge and replacing it with promise of an annual evaluation and review of the report by a judge.

4) Adding a 5 year minimum time requirement to the commitment before release is possible.

We are also concerned about the cost of the commitments being placed on the counties realizing most will easily go over the $100,000 mark. The cost alone may very well cause commitments of offenders to be rare in certain smaller counties that can ill afford the exorbitant cost and instead see an inordinate number of commitments taking place only in counties which can afford them.

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Here are some cases holding that "beyond a reasonable doubt" is the required standard in sex offender commitment cases:

Man whose commitment to state hospital for indeterminate period was based largely on widely conflicting opinion testimony of three psychiatrists who drew different conclusions as to his diagnosis and prognosis was entitled to "beyond a reasonable doubt" burden of proof standard which is required by both California and US constitutions, since due process clauses of both constitutions require that standard of proof beyond reasonable doubt be applied in proceedings under mentally disordered sex offenders law at any stage of proceedings in which involved person is committed or recommitted.

People v Burnick, 14 Cal 3d 306, 121 Cal Rptr 488, 535 P2d 352.

Defendant was entitled to new hearing on allegation of being mentally disordered sex offender who is dangerous to other persons but who will not benefit from further hospital care and treatment, where record on appeal failed to reflect application of "beyond a reasonable doubt" standard.

People v Jetter, 15 Cal 3d 407, 124 Cal Rptr 633, 540 P2d 1217.
See People v Austin, 24 Ill App 3d 233, 321 NE2d 106, infra @ 11[a].

In proceeding under Sexually Dangerous Persons Act, state was required to prove its case beyond reasonable doubt and defendant was denied due process where he was committed upon proof by a preponderance of the evidence as required in civil cases.

People v Pembrock, 23 Ill App 3d 991, 320 NE2d 470, affd (Ill) 342 NE2d 28.

Proof beyond reasonable doubt standard was applicable to petition seeking order adjudicating covicted murderer a "sexually dangerous person." Contention by state, that once convict was sentenced to life imprisonment for murder, commitment order for treatment as sexually dangerous person should be considered no different from administrative transfer, was without merit.

Commonwealth v Walsh (1978) 376 Mass 53, 378 NE2d 378.

Petition for release from center for treatment of sexually dangerous persons to satisfy itself that no person is kept at such center unless state offers competent evidence from which rational trier of fact would be warranted in concluding beyond reasonable doubt that person continues to be sexually dangerous person.

Petition of Davis (1979) 8 Mass App 732, 397 NE2d 331.

Other cases holding the constitutional standard and statutory burden of proof must be "beyond a reasonable doubt.

Minn. Stat. §253B.18, subd. 1. Appellant takes the position that the constitutional standard for a case such as this is "beyond a reasonable doubt." See Lausche v. Commissioner of Public Welfare, 302 Minn. 65, 225 N.W.2d 366, 369 (1974).

Contra, In re Martenies, 350 N.W.2d 470, 472 (Minn. Court. App. 1984);
State v Rinaldo, 98 Wash 2d 419, 426, 655 P2d 1141, 1145 (1982);
United States ex rel. Stachulak v Coughlin, 520 F.2d 931, 937 (7th Cir. 1973);