Approved March 22, 2000
Date

MINUTES OF THE SENATE JUDICIARY COMMITTEE.

A joint hearing of the Senate Judiciary Committee and the House Judiciary Committee was called to order by Chairperson Emert at 12:40 p.m. on March 20, 2000 in Room 313-S of the Capitol.

All members were present except: Senator Feleciano (excused)
Senator Harrington (excused)
Senator Donovan (excused)
Senator Pugh (excused)
Senator Petty (excused)
Senator Bond (excused)
Senator Gilstrap (excused)

Committee staff present:
Gordon Self, Revisor
Jerry Donaldson, Research
Mary Blair, Secretary

Conferees appearing before the committee:
Former Governor Robert Bennett
Jill Docking
John Bremer, District Magistrate Judge, Decatur County
John Todd, Attorney, Wichita
William Davitt, Attorney, Wichita

Others attending: see attached list

**SCR 1642–proposition to amend section 6 of article 3 of the constitution of the State of Kansas; regarding qualifications and eligibility of members of the legislature**

Conferee Bennett, testifying as a proponent of **SCR 1642**, reviewed the structure and function of the Kansas Justice Commission (KJC), presented an overview of it's report on the selection and evaluation of district court judges in Kansas and discussed it's recommendation to adopt a constitutional amendment to provide for a uniform method of non-partisan selection of district court judges statewide. He further discussed several language changes he felt should be made in the proposed amendment. (attachment 1) On inquiry by the Committee, the conferee detailed the mechanics of the proposed evaluation in the amendment.

Conferee Docking testified in support of **SCR 1642.** She stated that she has served, along with Conferee Bennett, as Co- Chairperson of the Kansas Citizens Justice Initiative. She discussed her initial preference for Partisan selection of judges because she felt elections promoted accountability but, through personal experience, has learned the value of non-partisan evaluative selection. (no attachment)

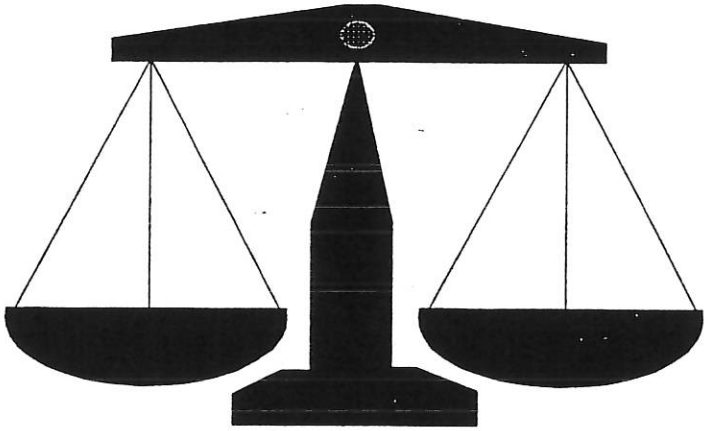
Conferee Bremer presented the Kansas District Magistrate Judges Association's (KDMJA) views on **SCR 1642.** He stated that members of KDMJA are split on this issue. He discussed several matters of concern and offered language changes in the amendment. (attachment 2)

Conferee Davitt testified as an opponent of **SCR 1642.** He discussed the negative aspects of election of judges and appointment of judges. He alluded to a better way of selecting judges and ceded the podium to Conferee Todd to explain. (no attachment)

Conferee Todd testified as an opponent of **SCR 1642** as well as an opponent of the current Kansas Constitution regarding election of judges. He discussed suggestions made by Gerry Spence in several of his publications regarding selection of judges and made reference to two newspaper articles attached to his previous testimony before the Senate Judiciary Sub-Committee which call for municipal court reform. (see Wichita Eagle, August 6, 1999 and September 5, 1999) (attachment 3)

The meeting adjourned at 1:23 p.m. The next scheduled regular Senate Judiciary meeting is today upon adjournment of the Senate in Room 234-N.

# KANSAS CITIZENS JUSTICE INITIATIVE



# FINAL REPORT OF THE KANSAS JUSTICE COMMISSION

Approved June 11, 1999

## III. Rationale

**Recommendation 1: <u>Methods of Selecting and Evaluating District Court Judges.</u>**

**(a) Kansas should adopt by a constitutional amendment a uniform method of non-partisan selection of district court judges statewide.**

<u>Rationale</u>

In the American democracy, violence and governmental crises are averted through submission of disputes to courts for resolution. This works based upon a simple principle that is not found in many other places in the world: there is a shared attitude of acceptance among the public of the results of court proceedings, which itself is based upon respect for the *integrity* of the judicial process. We believe that partisan elections have become so expensive that they necessarily erode public faith in the integrity of the judicial system; that the election system can erode the independence of the judiciary, as judges are supposed to defend and uphold our constitutional rights regardless of public opinion; and that promoting oneself based on popular sentiments is contrary to the judge's job description. We also believe that Kansas should complete the transition it began in the 1970's to a single, unified court system by adopting a uniform method of judicial selection – merit selection.

All appellate judges in Kansas are appointed through non-partisan selection and are subject to periodic retention votes. Kansas is one of twelve states that has a bifurcated system in which local districts choose between electing their judges in partisan elections and having judges chosen through a non-partisan selection process. About half of the judicial districts in the state presently use each system: 14 of 31 judicial districts, covering 53 counties, elect their judges in partisan elections, while 17 of 31 judicial districts, covering 52 counties, use the non-partisan selection process. The four largest counties are evenly divided: Johnson and Shawnee counties use merit selection; Sedgwick and Wyandotte counties use partisan elections.

The non-partisan selection system presently used in Kansas provides for substantial public input. In fact, in many ways, it actually increases the extent to which informed public input can guide judicial selections. Half of the members of each nominating commission are non-lawyers appointed by the elected members of the local county commission (or, in multi-county districts, by each county commission in the district). The other half of each nominating commission consists of lawyers elected by the lawyers in the judicial district. News releases are routinely sent out soliciting public input regarding nominees, and letters from the public regarding nominees are received and considered. The commission then interviews the nominees, in addition to considering the comments it has received. Once the commission sends three names to the Governor, who must choose one as the new judge, there is once again an opportunity for substantial public input to the Governor, who is elected by all of the people. Thus, the non-partisan system provides for knowledgeable, public participation, while judicial elections often receive much less publicity — and generate much less voter interest — than elections for other public offices. Voters in partisan judicial elections often

are forced to make uninformed choices because candidates for judge are prohibited by rules of judicial ethics from stating how they would rule on legal issues or decide cases.

This issue is one on which the baseline opinions of those who work within the system are greatly at odds with those held by the general public. Those within the system strongly favor the non-partisan system.

| How District Judges Should Be Selected | Judges | Attorneys | General Public |
|---|---|---|---|
| Appointed by Governor | 77% | 77% | 35% |
| Partisan Election | 23% | 23% | 65% |

Although we do not doubt that the baseline public opinion favors election, it probably is not as strong as the Justice Commission survey suggests. There simply is no way, in the context of a telephone survey on this subject, to provide sufficient detail about the process to the person answering the survey. Our question asked: "There are people who argue that state and local judges should run for office in a competitive election as candidates of a political party, while others believe that these judges should be appointed by the governor with citizens voting every four years on whether or not to retain the appointed judge. For [local trial judges], please indicate whether you think the judges should be elected or appointed by the governor." The question did not provide information regarding the existence of nominating commissions, or the screening procedures used by those commissions. In a fuller presentation of the issue – something simply unattainable in a telephone survey – we think the baseline view of the public would be much closer.

We believe that this difference in viewpoint can be narrowed or eliminated through a well-conceived discussion of the issue as part of the election process in which a proposed constitutional amendment would be considered. The Commission's recommendation is supported by members who reside in both election and selection districts. Majorities of voters in the districts that already use the non-partisan system approved that change in the past, and some counties have turned down attempts to switch back. In Shawnee County in 1984, 64 percent of voters chose to retain non-partisan selection after the issues were widely discussed in a visible campaign. We believe that these results are examples of effective education campaigns about the inherent problems of partisan elections, something with which judges and attorneys are much more familiar.

Contested, partisan elections require substantial fund-raising by committees supporting the judges seeking election. Who would contribute to judicial elections? The answer is simple: lawyers and others who have frequent business before the courts. This relationship leads parties before the court to question the fairness and integrity of the process. If your lawyer gave nothing to the judge, and the other lawyer gave $500, will you suspect unfair influence when you lose? What if the opposing lawyer was the judge's campaign chairperson? Will you try to settle the case because you

fear that you will not be able to get a fair hearing? Unfortunately, these are not abstract, hypothetical questions. That is one of the things that judges and attorneys know about the system.

| Election of Judges Creates Potential for Conflict of Interest When Attorneys or Parties Have Supported Judge | Judges | Attorneys |
|---|---|---|
| Strongly Agree | 55% | 40% |
| Agree | 24% | 38% |
| Neutral | 8% | 9% |
| Disagree | 11% | 9% |
| Strongly Disagree | 3% | 5% |

| Appointment of Judges Leads to a More Impartial Judiciary | Judges | Attorneys |
|---|---|---|
| Strongly Agree | 37% | 53% |
| Agree | 32% | 27% |
| Neutral | 14% | 13% |
| Disagree | 7% | 5% |
| Strongly Disagree | 9% | 2% |

The problems inherent in judicial elections were well summarized by Stacie Sanders, whose father is a district judge, in her Note: "Kissing Babies, Shaking Hands, and Campaign Contributions: Is This the Proper Role for the Kansas Judiciary?" 34 Washburn L.J. 573 (1995). In addition to the conflict of interest and appearance of impropriety issues, she provides testimonial evidence of the time investment required for retail politics: door-to-door campaigning, fund-raising and advertising, all while carrying on a full-time job that has a docket that does not go dormant. Unlike the legislative branch of government, the judicial branch does not have a season when it is not in session. The expense of these campaigns is also quite significant. Even in a rural district, in which the expenses might be the least, the Sanders article reports expenditures of twenty percent of the judge's annual salary for a contested race. In Sedgwick County, one campaign committee spent approximately $57,000. This, too, is an impediment to obtaining the best possible judges. To campaign full-time, the lawyer in private practice will necessarily work less hard on the income-producing aspects of the practice and will spend substantial sums of his or her own funds in a contested race in which the result cannot be guaranteed. If he or she wins, there is a possible election loss looming only four years away, and if the incumbent loses, he or she no longer has a private practice base with ongoing clients to which to return. Lawyers typically apply in greater numbers for a judicial vacancy when non-partisan selection is used than when they are forced to run as a Republican or a Democrat in a partisan election.

The central issue, though, in our view, is the inherent conflict between the independence, integrity and impartiality a judge must display and represent and the need to raise funds and engage in retail partisan politics. This conflict has led the Kansas Commission on Judicial Qualifications – the group that receives, reviews and acts upon ethical complaints against Kansas judges – to take the rare step of writing to the Kansas Justice Commission in support of merit selection of judges. Its letter noted "that some of the most difficult issues involving judicial ethics ... [relate] to [what is] appropriate political activity for those judges subject to partisan election." Its comments, made after considering election-related ethical complaints and issues over many years, are compelling:

> Kansas has removed its Supreme Court Justices and Court of Appeals Judges from the political process. Electors in seventeen of the state's thirty-one judicial districts have likewise voted to remove their district judges from the political process. Judges in those seventeen judicial districts are subject to a nonpartisan selection process.

Judges in the remaining fourteen judicial districts who are elected through a partisan political process find themselves enmeshed in the political system to attain and retain an office founded on impartiality and independence. The conflict is inherent in the system.

Modern-day elections, including judicial elections, require large commitments of money and time. Family members, friends, fellow church members, clients and others are routinely requested to provide work and money for these campaigns, but normally those most interested in who will be elected judge are the attorneys who work in that court. It is a fact of life that a judge who must raise money and enlist help to conduct a campaign to attain the office is under obligation to someone and usually to many. As a result, that judge's impartiality is subject to question anytime a party or an attorney comes before the judge who is known to have contributed to the judge's election campaign. The judge then becomes subject to disqualification in that case if the judge's impartiality might reasonably be questioned. The more successful the judge is as a fund-raiser, the more significant the impact on the judge's ability to perform his or her job. However, it is no less problematic when the judge goes in debt to conduct the campaign and has to engage in fund-raising activities to retire the debt after the election. The public does not understand this dilemma and the election process significantly diminishes the impartial appearance of all judges, no matter how circumspect their conduct.

It is a tribute to the integrity of the Kansas judiciary that relatively few serious disciplinary complaints are filed against judges. In presenting this position paper in support of nonpartisan selection, the Commission on Judicial Qualifications does not impugn the integrity of individual judges but rather suggests that judges and the public would be well served by removing judges from the political process.

We agree with the Kansas Commission on Judicial Qualifications and with the judges and attorneys who work in our judicial system on a daily basis. The system needs to be changed to protect its integrity and independence. We ask Kansas to adopt a constitutional amendment expanding the current, non-partisan selection system to the entire State. Members of the Commission are committed to lead the educational effort to explain to voters why this change is so important to the continued integrity of – and public confidence in – our judicial system.

**(b) To increase the information available to voters, the constitutional amendment adopting non-partisan selection of district court judges should authorize creation of a Kansas Judicial Evaluation Commission. The Commission would prepare and make available to the public evaluations of each judge prior to each judicial retention election. The Commission should include lawyer and non-lawyer members, appointed in equal numbers by the Governor and by the Kansas Supreme Court.**

Rationale

All public officials should be accountable to the citizens of this State. The work done by judges is uniquely difficult for the public to evaluate. The actions of a judge over his or her term of office take place in hundreds of individual cases. Most of the time, no one other than the parties is present. Finding out whether a judge is generally fair, knowledgeable, polite to litigants, or is otherwise doing a good job cannot be accomplished by a trip to the library, a single visit to the courthouse, or even several courthouse visits. When voters are asked whether a judge should be retained in office, they should be given some solid information upon which they might make that decision.

In addition to public accountability, most workers benefit from some supervision and feedback regarding their work. Judges generally do not receive any. Each judge is assigned a docket of cases and is responsible for handling them. No one systematically reviews the judge's work and provides feedback. Comments made to the judge by attorneys or litigants are always suspect: if such comments are negative, they may just be sour grapes regarding a particular decision; if positive, they may just be an attempt to curry favor with a judge the attorney or litigant is likely to see again in the future.

At least four states – Alaska, Arizona, Colorado and Utah – have well-established, statewide judicial performance evaluation programs in place. These programs provide a comprehensive review of each judge's performance prior to retention elections. Some of them also provide interim reports to the judge during his or her term of office, allowing private feedback to be exchanged and, hopefully, acted upon.

The American Judicature Society, which since 1913 has supported improvement of the nation's courts and efficient administration of justice at all levels, recently completed an extensive study of these judicial performance evaluation programs, conducting voter exit surveys during the 1996 election and also conducting surveys of judges and judge evaluators. Especially after such programs have been in place for more than one election, voters were aware of the evaluation process and many voters indicated they obtained information specifically from those reports. In Alaska, where two decades of information was available, there was a direct correlation between the ratings of the judges in the evaluations and their votes in the retention elections. Judges reported that the reviews were fair and that the reports would help them in improving their job performance.

Kansas lawyers strongly support implementing some formal method of judicial evaluation. Kansas judges, by a sizeable plurality, also support such evaluations.

| **Some Form of Evaluation Should Be Implemented** | **Judges** | **Attorneys** |
|---|---|---|
| Strongly Agree | 15% | 41% |
| Agree | 33% | 34% |
| Neutral | 35% | 14% |
| Disagree | 9% | 7% |

We agree that such a program should be established in Kansas. Good examples of such programs are found in each of the states listed above. Alaska has had the longest experience, having started retention evaluations in 1976. Its commission conducts a professional survey of lawyers, police officers and probation officers; sends a questionnaire to each judge; surveys jurors; reviews performance-related data (such as case handling statistics); sends a separate questionnaire to selected lawyers who have recently appeared before the judge; and seeks general public input. The commission then publishes the result of each survey, along with its recommendation of whether the judge should be retained in office. Similar processes, with some variations, are used in each of the states. Sample reports from other states are found in Appendix C.

The establishment of a judicial performance evaluation program is not without accompanying costs. To provide a credible evaluation, with appropriate public input, is an involved process.

These programs can have several potential benefits. First, they provide meaningful information that voters can use when evaluating whether a judge should be retained in office. Second, they can be a powerful mechanism for removing the rare judge who proves unfit for the bench. This can occur either by voters acting upon an unfavorable recommendation or by a judge choosing not to seek retention after learning that he or she will be receiving an unfavorable review. Third, they provide meaningful information for judges to use in improving their own performance. At present, Kansas judges do not receive any systematic feedback about their job performance.

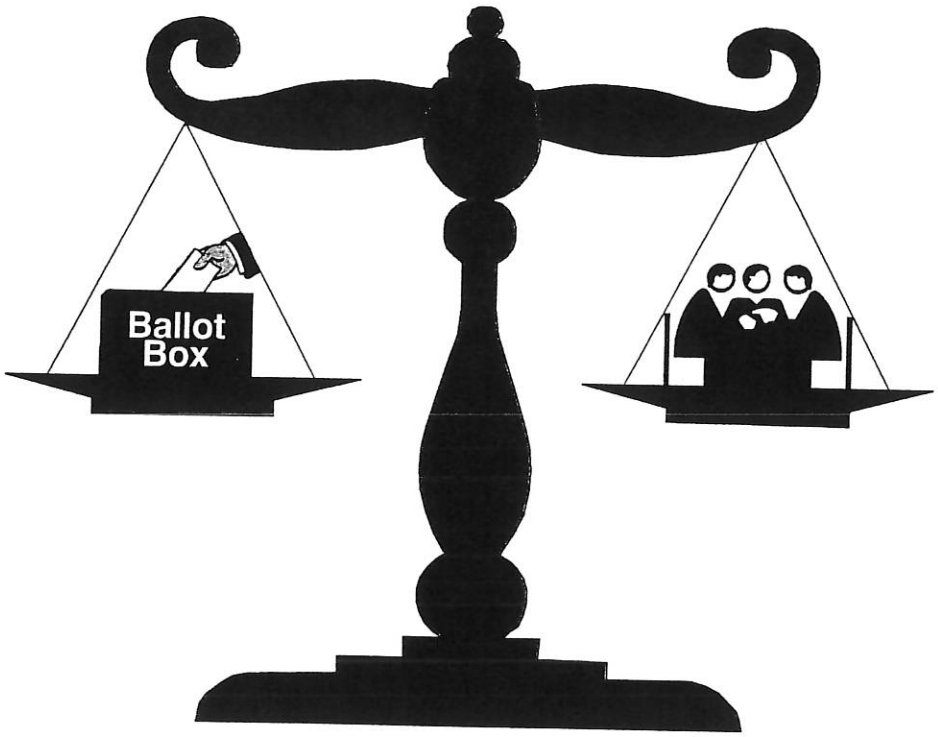
| State | 1996 Budget |
|---|---|
| Alaska | $107,550 |
| Arizona | $256,400 |
| Colorado | $17,000 |
| Utah | $121,750 |

Notes:
1. Utah figure based on 1997-98 budget request; 1996 data not available.
2. Colorado figure apparently excludes separate funding of local commissions.

We propose including this recommendation in the same constitutional amendment package that would make merit selection a uniform, statewide method of selecting judges. We think the two recommendations go hand in hand, and that guaranteeing the citizens a useful judicial performance evaluation process would be quite helpful in justifying support for the nonpartisan, merit selection system. Indeed, we doubt that the judicial evaluation process we propose could be implemented fully in districts where judges are elected since it would be unfair to publicize the evaluation of an incumbent judge but provide no evaluation for the opponent.

We suggest that the constitutional provision not attempt to provide detailed procedures for the judicial evaluation commission to follow. The methodologies will, no doubt, need to be developed and refined over time. This can best be done, in our view, under rules adopted by the Kansas Supreme Court. Arizona's program, for example, operates primarily under rules established by the Arizona Supreme Court. Some others establish their own rules or operate under statutory directives. The Kansas Supreme Court has the constitutional mandate to supervise the lower courts of the State. In addition, through its staff and its own training, the Kansas Supreme Court is uniquely qualified to design and implement a judicial performance evaluation program. A variety of helpful resources are available. Accordingly, we recommend that the constitutional amendment

authorize creation of the performance evaluation commission, while leaving the rules governing its operation to be established by court rule.




# THE SELECTION OF JUDGES IN KANSAS: A COMPARISON OF SYSTEMS

By Jeffrey D. Jackson

Since 1958, judicial selection in Kansas has been the product of a bifurcated system, wherein supreme court and court of appeals judges are selected through the use of a non-partisan commission system, and district court judges are selected by either a non-partisan commission system or partisan election, at the option of the local judicial district.[1] The selection of judges has recently become an issue in the state of Kansas due to the Kansas Justice Initiative. The Initiative, conducted by the Kansas Justice Commission, represents the first "stem to stern" study of the Kansas court system since 1974, and focuses upon ways to improve the court system, including reform in the selection of judges.[2] A survey conducted on behalf of the Kansas Justice Commission by the Docking Institute of Public Affairs concluded that nearly 63% of citizens in Kansas favored the election of district court judges rather than the appointment of such judges by the governor, and 54percent favored the election of appellate court judges.[3] Conversely, a survey of judges and attorneys in the state by the same organization revealed a strong bias in favor of gubernatorial appointment over competitive election.[4]

The conclusions to be drawn from this response are highly questionable. It is clear that neither of the choices given to respondents in the survey actually reflect either of the methods currently used to select judges in Kansas. The questions asked failed to distinguish or explain the difference between partisan and nonpartisan election, and further did not explain the role of the judicial nominating commission in the selection of candidates from whom the governor appoints district and appellate court judges.

The effect of these surveys has been two-fold. First, the results of the surveys have already led some groups to call for a movement toward partisan election in order to "reform" the judicial selection system in accordance with the "will of the people."[5] In its final report, however, the Kansas Justice Commission has recommended the presentation of an amendment to the Kansas Constitution which would adopt a uniform method of non-partisan judicial selection statewide, and which would also create a judicial evaluation committee, with the responsibility of evaluating the performance of judges and making public those evaluations prior to retention elections.[6]

One reason for the difference of opinion on this issue arises from the inherent difficulty of attempting to reduce the concepts involved in judicial selection into simple choices, such as those used in the surveys. In reality, the mechanics of the different methods of judicial selection and the policies each method is designed to address are far more complex, and the advisability of one method over another is not readily apparent to the casual observer. Before any conclusions are drawn regarding what method of judicial selection is best for Kansas, a more thorough analysis is needed.

To that end, this article will discuss the history of judicial selection which led to the adoption of the two systems currently in use in Kansas, as well as the different objectives which are vital to the development of a system of judicial selection. The article will also analyze the manner in which each of the two current methods seeks to meet those objectives and its relative success in so doing.

## II. JUDICIAL SELECTION - THE KANSAS EXPERIENCE

Kansas entered the Union in 1861, at a time when the movement toward an elected judiciary was at its peak.[7] In conformance with that movement, Kansas provided that all of its judges were to be elected.[8]

Dissatisfaction with the involvement of political parties in the selection process, however, led some states to move to nonpartisan election in the late 1800's and early 1900's.[9] While the nonpartisan system was implemented as a reform attempt, it came under quick criticism, with the major objection being that the electorate was unable to make reasoned choices without the benefit of party labels to differentiate between the candidates.[10] As was the case in other states, Kansas experimented with nonpartisan elections in the early 1900's as a means to alleviate some of the problems associated with partisan elections.[11] Enacted in 1913, nonpartisan judicial elections proved to be unsatisfactory, and the legislation authorizing them was repealed in 1915.[12]

The Kansas Bar Association spearheaded further attempts at reform in 1923 and 1925 which would have resulted in the nomination of judicial candidates at party conventions

**Footnotes**

1. *See, infra* notes 23-29 and accompanying text

2. Kansas Justice Initiative,website at http://ks courts. org/ksjstin.htm.

3. The Docking Institute of Public Affairs Center for Survey Research, Kansas Citizens Justice Initiative Public Opinion Survey, at 21, 65-66. (1998). Respondents were asked the questions: "Should local trial judges be elected by citizens or appointed by the governor?" and "Should judges who hear appeals be elected by citizens or appointed by the governor?".

4. The Docking Institute of Public Affairs Center for Survey Research, Kansas Citizens Justice Initiative Surveys of Kansas Judges and Attorneys (1998) at 9. As in prior survey, judges and attorneys were asked to identify whether district court judges should be selected by gubernatorial appointment or competitive election. 77.4% of judges surveyed and 76.5% of attorneys surveyed favored gubernatorial appointment.

5. *See* Jim Hitch, *Let Us Judge Who's the Judge, Hays Daily News,* July 24, 1998, at A6. This editorial, which was quoted in several other area newspapers, concludes that "[w]e are not generally pleased with the way justice is being administered, apparently, and that is why the problem is being studied". Based on this conclusion and the results of the Kansas Justice Commission surveys, the editorial states that the public should get its way and judges should stand for election. According to Hitch, "[j]judges ned to be in touch with real people who might have something to say about the way justice is administered." *Id.*

6. *See* Kansas Citizens Justice Initiative-Draft Final Report, May 4, 1999. Such a judicial evaluation commission would be made up of lawyers and non-lawyers on an equal basis, appointed by the Governor and the Supreme Court. *Id.*

7. *See* Sari S. Escovitz, *Judicial Selection and Tenure* 6 (1975). Early judicial selection systems in America either vested the power of appointment in one or both houses of the legislature, in the governor with the advice of his council, or in the governor subject to the consent of the council. However, this appointment method of selecting judges was short-lived, and was soon eclipsed by the popular election of judges. *Id.* at 4-5. The use of popular elections for the judiciary flourished during the popular sovereignty movement, and became the predominant method for selecting the state judiciaries, especially in the newly settled West, with every new state form 1846 to 1912 adopting judicial elections in some form. *See* Phillip L. Dubois, From Ballot to Bench 3 (1980); Lyle Warrick, Judicial Selection in the United States: A Compendium of Provisions 3 (2nd Ed. 1993).

8. *See* Ks Const. art. 3, § 11 (1859) (providing that "[alll the judicial officers provided for by this article shall be elected at the first election under this constitution").

9. Warrick, *supra* note 7, at 3-4. Warrick reports that by 1927, twelve states employed a nonpartisan system for the election of judges.

10. *Id.* at 4. This is a prevalent criticism of nonpartisan elections. Nathan Heffernan notes: "If a candidate cannot pose as either a Republican or Democrat and espouse the respective partisan position, what can the candidate stand for in an election?" Nathan S. Heffernan, Judicial Responsibility, Judicial Independence and the Election of Judges, 80 Marq. L. Rev. 1035, 1043-44 (1997).

11. John F. Fontraon, Jr., The KBA Story, in Requisite Learning and Good Moral Character: A History of the Kansas Bench and Bar 16 (1982). Under this nonpartisan plan, separate judicial ballots were voted on at primary elections. These ballots, rather than listing the judicial candidates as belonging to a particular party, instead listed all of the candidates for the particular office. The two candidates receiving the most votes in the primaries were declared the nominees and had their names placed on the general election ballot. *Id.*



1-10

...ther than party primaries, thus alleviating one of the problems with popular elections at the primary level: lack of voter recognition.[13] However, these attempts were rebuffed by the legislature. One disgruntled KBA committee member stated that the attempt failed because it was viewed by the legislature as "an effort to take from the people their cherished right of selecting men for judicial positions concerning whose qualifications they know nothing".[14]

***. . . the election system subjected judges to the realm of politics.[15]***

In fact, the entire idea of an elected judiciary, whether achieved in a partisan or nonpartisan manner, came under attack in the early 1900's on the grounds that the election system subjected judges to the realm of politics.[15] Critics such as Roscoe Pound complained that '"putting courts into politics, and compelling judges to become politicians in many jurisdictions . . . had almost destroyed the traditional respect for the bench.'"[16] This criticism led Albert M. Kales, the director of research for the newly formed American Judicature Society, to devise a new system for selecting judges, which, after a lengthy period of time and some revision, was endorsed by the American Bar Association and adopted in 1940 by the State of Missouri.[17] The so-called "Missouri Plan" provided for a judicial nominating committee to nominate candidates for the bench, a governor could then make appointments from the list. The appointed judge would then subsequently run for retention in a noncompetitive election.[18] This plan, which became also known as the "merit plan" or "commission plan", began gaining acceptance throughout the country in the 1950's.

The advent of the commission plan spurred debate as to whether that plan should be adopted by Kansas. A resolution for the submission of a constitutional amendment which would adopt the commission plan was introduced in 1953, but defeated in the house judiciary committee.[19] Again proposed in 1955, the resolution was defeated in the senate judiciary committee.[20] However, subsequent events were to lead to the adoption of the commission plan for the selection of supreme court justices: The intensive lobbying efforts of the Kansas Bar Association; and public outcry over the infamous "triple play" of 1956.[21]

The "triple play" involved Chief Justice of Kansas Supreme Court Bill Smith, Governor Fred Hall, and Lieutenant Governor John McCuish. In 1956, Governor Hall was defeated in the Republican Primary by Warren Shaw, who then lost the general election to Democrat George Docking. In December of that year, Chief Justice Smith, who was seriously ill, forwarded his resignation to Governor Hall. Hall then immediately resigned his post of Governor in favor of Lieutenant Governor McCuish, who prematurely returned from a Newton Hospital to make his first and only official act of his 11 day tenure as Governor: The appointment of Hall to the supreme court.[22] Such a result would have been avoided under the commission plan, as the nominating commission would have determined which candidates to send to the governor for appointment, rather than allowing the governor to appoint replacement justices in between elections.

The legislature submitted a proposal to amend the constitution to adopt the commission plan for the selection of supreme court justices only, and this amendment was passed by a wide margin in the 1958 general election.[23] The Kansas commission plan for the selection of supreme court justices provides for a statewide supreme court nominating commission, composed of a member of the bar from each of the four congressional districts as well as a non-lawyer member from each district.[24] The lawyer members are selected by a vote of the members of the bar in each congressional district, while the non-lawyer members are appointed by the governor.[25] The commission is chaired by a member of the bar who is selected in a statewide vote of all members of the bar.[26] Candidates for the supreme court are reviewed by the commission, which nominates three of the candidates to the governor, who then selects the new justice from among those three candidates within 60 days.[27] In the event the governor fails to make a selection within 60 days, the chief justice of the supreme court makes the selection.[28] This same procedure is also used to select judges to the court of appeals.[29] Once selected, judges in these two courts must stand for retention at the next general election which occurs after one year in office, and if retained, must stand for retention every four years thereafter.[30]

In 1972, the constitution was amended again to allow

12. *Id.*
13. *Id.* at 16-17.
14. *Id.* at 17.
15. Escovitz, *supra* note 7, at 7-8
16. Warick, *supra* note 7, at 4 (quoting from Roscoe Pound, The Causes of Popular Dissatisfaction with he Administration of Justice, reprinted in 20 Judicature 178 (1937)).
17. Escovitz, *supra* note 7, at 8-9. Kale's plan as originally devised would have used an elected justice to full judicial vacancies from a list submitted by a judicial nominating commission. The appointed judges would then, after a short period of time, be subject to a retention election. In 1926, Harold Laski, a political scientist from England, revised the plan by substituting the governor for the elected justice as appointing officer. This plan was endorsed by the American Bar Association in 1937. *Id.*
18. *Id.* at 9. The initial plan adopted by Missouri provided that the judicial nominating commission, composed of three lawyers elected by members of the State Bar Association and three lay persons appointed by the governor and chief justice of the Missouri Supreme Court, submit a list of three nominees to the governor for selection.
19. *Id* at 17.
20. *Id.*
21. *See* Fontron, supra note 11, at 17 (explaining lobbying efforts of the Kansas Bar Association); Stacie L. Sanders, *Kissing Babies, Shaking Hands, and Campaign Contributions: Is this the proper Role for the Kansas Judiciary?*, 34 Washburn L. J. 573, 577-578 (1995) (noting the role of the "triple play" in the decision to implement the commission plan).
22. Brain J. Moline, Bill Smith: *The Jurist as Politician*, J. Kan. Bar Ass'n, Nov-Dec 1988 at 31, 34-35.
23. Fontron, *supra* note 11, at 17.
24. K.S.A. 20-119; 20-120; 20-124.
25. K.S.A. 20-120; 20-124.
26. K.S.A. 20-119.
27. K.S.A. 20-135.
28. K.S.A. 20-135.
29. *See* K.S.A. 20-3004 to 20-3005. The Kansas Court of Appeals was established in 1975.



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judicial districts to opt for a nonpartisan selection of district judges.[31] In accordance with this amendment, Kansas adopted statutory provisions to implement the commission plan at the district court level for those judicial districts who wished to do so.[32] Under the statutory scheme established by the legislature, voters in a judicial district may submit a petition signed by at least 5 percent of the qualified voters who voted for the office of secretary of state in the preceding general election to change their district's method of judicial selection from election to the commission plan, or vice versa.[33] It is the duty of the secretary of state, upon receipt of such a petition, to place this issue on the ballot at the next succeeding general election occurring more than 90 days after the filing of the petition.[34]

***Once a district votes to institute the commission plan for its judges, it is required to set up a district judicial nominating commission . .***

Once a district votes to institute the commission plan for its judges, it is required to set up a district judicial nominating commission consisting of an equal number of lawyers and non-lawyers, chaired by a supreme court justice or district court judge appointed by the Chief Justice of the Supreme Court.[35] The lawyer members of such commission are elected by the lawyers of judicial district, while the non-lawyer members are appointed by the county commissioners of the counties within the judicial district.[36] Whenever a vacancy occurs in the office of district judge, the commission nominates 2-3 persons for the office and submits those names to the governor, who then has thirty days to make the appointment from the nominees.[37] If the governor fails to do so within thirty days, the chief justice of the supreme court makes the appointment.[38] As is the case with supreme court and court of appeals judges, each newly appointed district judge must then stand for retention at the next general election which occurs after one year in office, and if retained then remains in office for a four year term before having to once again stand for retention.[39]

Since the establishment of the commission plan as an alternative to the partisan election of district court judges, 17 judicial districts have opted to implement the plan, while 14 districts still continue the partisan election of their district court judges.

With this historical perspective, we now turn to an examination of some of the recognized objectives that judicial selection systems are designed to foster. Among these are judicial independence and its converse, judicial accountability, as well as judicial quality and representativeness.

***The concept of judicial independence is that judges should be free to decide cases according to their merits,***

## III. GOALS OF JUDICIAL SELECTION

### A. JUDICIAL INDEPENDENCE AND ACCOUNTABILITY

Judicial independence has been called "the backbone of the American democracy",[40] the "bulwark of the Constitution",[41] and "an indispensable element of our constitutional framework and its commitment to freedom".[42] The concept of judicial independence is that judges should be free to decide cases according to their merits, without fear of reprisal from the public or the executive or legislative branches of government.[43] In other words, a judge, in deciding a case, should not be forced to consider whether his or her decision, if contrary to public opinion or the will of the executive or legislative branch, will result in the loss of his or her job, but instead should be free to make the proper decision under that judge's understanding of the law and facts, whether the decision is popular or not.

The importance of an independent judiciary has been long recognized in American legal theory.[44] Joseph Story, in 1821, stated: "It is in vain, that we insert bills of rights in our constitutions, as checks upon legislative power, unless there be firmness in courts, in the hour of trial, to resist the fashionable opinions of the day."[45] History is replete with examples of decisions made by the courts which, although contrary to public opinion or the will of the other branches

30. KS Const. art. 3, § 5; K.S.A. 20-3006.

31. Sanders, *supra* note 21, at 579. The amended section requires the legislature to "provide a method of nonpartisan selection of district judges and for the manner of submission and resubmission thereof to the electors of the judicial district". KS Const. art. 3, § 6. The amendment was approved by the electorate, 349,264 to 211,026. Francis H. Heller, *The Kansas State Constitution: A Reference Guide* 83 (1992).

32. *See* K.S.A. 20-2901. et seq. In 1973, Chief Justice Harold R. Fatzer appointed a Judicial Study Advisory Committee to survey the court system and make recommendations for its modernization, including a recommendation for a plan to implement a nonpartisan selection system. The Committee enthusiastically recommended the Missouri plan. Sanders, *supra* note 21, at 579-80.

33. K.S.A. 20-2901(a), (g).

34. K.S.A. 20-2901(g).

35. K.S.A. 20-2903. The chairperson of the commission does not vote, but instead simply presides over the meetings of commission.

36. K.S.A. 20-2904, 2905. The number of members on each commission is dependent on the number of counties in each judicial district. In a district consisting of one county, each member of the board of county commissioners appoints one non-lawyer member, and the same number of lawyer members are elected. In judicial districts consisting of two counties, each county board appoints two members, while in three county judicial districts, each county board appoints one non-lawyer member. K.S.A. 20-2905(1) to (3).

37. K.S.A. 20-2909, 20-2911.

38. K.S.A. 20-2911(a).

39. K.S.A. 20-2912.

40. Penny J. White, *It's a Wonderful Life, or is it? America Without Judicial Independence*, 27 U. Mem. L. Rev. 1, 3 (1966).

41. William H. Rehnquist, *An Independent Judiciary: Bulwark of the Constitution*, 9 N. Ill. U.L. Rev. 1 (1998).

42. Dan L. Nolan, Jr., We Must Maintain an Independent Judiciary, Tenn. Bar J., Sept-Oct 1997, at 3.

43. *See* White, *supra* note 40 at 4.

44. Alexander Hamilton wrote in 1778 that judicial independence was necessary to "guard the rights of individuals from the effects of those ill humors, which the arts of designing men, or the influence of particular conjuncters, sometime disseminate among the people themselves, and which, though they speedily give place to better information, and more deliberate reflection, have a tendency in the



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ficult, and the public, who may feel that the judge is "letting criminals go on a technicality."

*In order for a court system to function, it is essential that the public have a proprietary interest in the system.*

This does not mean, however, that the concept of judicial accountability has no place in the formation of a method of selecting and retaining judges. Instead, accountability works in combination with independence to ensure that the judicial system retains the respect and confidence necessary to its effectiveness.[59] In order for a court system to function, it is essential that the public have a proprietary interest in the system. Thomas E. Brennan notes that while other cultures might accept "a justice system administered by their elders, hereditary Levites, or monarchial appointments", the confidence of the community in America requires some degree of participation.[60] If the public instead feels that it has no voice in the selection and retention of their judges, the system itself will lack legitimacy. To this end, all selection and retention systems, whether state or federal, involve some level of accountability.[61] The question is only one of degree.

As the above analysis demonstrates, judges should not be subjected to the pressure that their decision, if contrary to public opinion or the will of the government, will result in the loss of their jobs. On the other hand, there should also be some avenue by which a judge who has proven to be clearly biased or incompetent may be removed from bench. Further, if the public is to have faith in the legal system, the public itself must be able to not only engineer the removal of such judges, but to have some input into their selection.

Thus, it would seem that the ideal system of selection and retention of judges would provide a high level of independence for individual judges, so that they are free to make decisions in accord with the law rather than worrying about public or government opinion as to the results. There must also be a system whereby the public can remove the judges, but removal must not be made so that it will be used simply as a tool to remove those judges who make decisions with which the popular majority disagrees.

**B. QUALITY**

If the above goal of judicial independence seems somewhat subjective, in that there are many different positions on the mix between independence and accountability, there are no such problems with the goal of quality. The question with regard to quality is one of composition, not degree: What are the attributes that make for a qualified judge?

*All would agree that a high level of competence is to be sought in a judge.*[62]

One attribute that seems basic with regard to judicial quality is competence, that is, the ability of the judge to understand the law and apply it to a situation. All would agree that a high level of competence is to be sought in a judge.[62] However, there is little consensus as to the other attributes that comprise judicial quality. Frequently listed desirable attributes for judges include honesty, moral courage, diligence, courtesy, patience, decisiveness, independence, impartiality, open-mindedness and experience.[63] It should be noted that these are all personal attributes which are not unique to the field of judge, but rather are generally desirable for any job.[64]

One method to determine what attributes are uniquely essential to judicial quality is to examine the rules governing judicial behavior. The Kansas Code of Judicial Conduct[65] provides five canons which govern the behavior of judges in the state. It is possible, from examining the types of behavior that the Code attempts to foster, to distill two specific attributes which its authors felt were essential to judicial quality.

First, and foremost, the Code stresses impartiality, both in action and appearance. All of the five canons concern impartiality to some extent.[66] Second, the Code stresses diligence in the performance of official duties. In addition to disposing of all judicial matters promptly, efficiently and fairly, judges are directed to place the duties of the office above all and to refrain from those activities which would interfere with the performance of those duties.[67]

For purposes of objective analysis, then, the three important attributes which make up the objective of judicial qual-

58. *Id.* at 420-21.

59. *See* Strephen B. Burbank, *The Past and Present of Judicial Independence*, 80 Judicature 117, 118 (1996). Burbank uses the history of the federal judiciary to point out the roles played by both independence and accountability in our representative democracy.

60. *See* Thomas E. Brennan, *Nonpartisan Election of Judges: The Michigan Case*, 40 SW. L.J. (Special Issue), May 1986, at 23, 24.

61. It is true that in the federal system this accountability is severely minimized. However, it exists pre-appointment in that the judge must be confirmed by the senate, who themselves are elected, and it exists post-appointment in that a judge may be impeached for treason, bribery or other high crimes and misdemeanors. *See* U.S. Const. art II, § 3; art III, § 1. *See* also William G. Ross, *Participation by the Public in the Federal Judicial Selection Process*, 43 Vand. L. Rev. 1 (1990) (examining the influence of public opinion on the judicial selection process).

62. Actually, maybe not everyone would agree. Witness the statement of Senator John Hruska following Senate hearings on the nomination of G. Harrold Carswell for associate justice of the Supreme Court. When interviewed about testimony indicating that Carswell was not the most competent person for the job, Hruska states "There are a lot of mediocre judges and people and lawyers, and they are entitled to a little representation, aren't they? We can't have all Brandeises, Frankfurters, and Cardozos." Roman L. Hruska, Interview after speech in United States Senate, quoted in the *New York Times*, 17 Mar. 1970, at 21. *See* Davidow, *supra* note 1, at 418-19 (relating Hruska incident and stating that, other things being equal, the most intelligent people should be in government).

63. Davidow, supra note 53, at 417.

64. *See* Rosenberg, *supra* note 54, at 1067-68. Rosenberg notes that measuring these qualities is a highly subjective sand difficult process.

65. Rule 601A, 1998 Kan. Ct. R. Annot. 445-471. This Code, with some modifications, is based on the *American Bar Association Model Code of Judicial Conduct* adopted on August 7, 1990. Id. at 445.

66. *See Id.* at 449-469. Cannon 1 directs judges to act in accordance with the other standards in order to maintain public confidence in the impartiality of the judiciary. Cannon 2(B) provides that a judge "shall



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, are competence, impartiality, and diligence. A system of judicial selection and retention should therefore seek to fulfill this objective by encouraging the advancement of competent, impartial and diligent individuals to the bench, and not only to retain those individuals, but also refrain from impeding their impartiality and diligence.

***. . . the three important attributes which make up the objective of judicial quality are competence, impartiality, and diligence.***

### C. REPRESENTATIVENESS

The final objective of systems of judicial retention and selection should be representativeness; that is, judges should be representative of the community in which they serve. Davidow suggests that this function is analogous to the jury system in criminal cases, where the objective is for jurors to reflect a cross-section of the community, with the expectation that their view will reflect the beliefs, attitudes and values of the community.[68] Thus, a system of judicial selection and retention should seek to achieve a judiciary which reflects the values of the entire community, rather than favoring any one particular group.

With these objectives firmly established, we now turn to an examination of the success of the two methods through which Kansas judges are selected in meeting these objectives.

## IV. AN ANALYSIS OF THE TWO SYSTEMS

### A. JUDICIAL INDEPENDENCE AND ACCOUNTABILITY

With regard to the concept of judicial independence and accountability, the commission system scores highly. Although providing for more accountability than the federal system, the commission system as used in Kansas allows judges to decide cases free from the external pressures of the government and the public. By only subjecting judges to a retention vote, the commission system helps to diminish the possibility that judges will be called to account for the results of their decisions rather than for their skill as judges.

It is with regard to the subject of accountability that the commission system is often criticized. Critics note that historically, very few judges lose in retention elections, and point to this as proof that accountability is lacking under the commission system.[69] However, if this criticism is accurate, it is not because the system fails to provide for a method of accountability. While judges are subject to selection by the nominating commission and appointment by the Governor, the commission system requires that they stand for retention at what is essentially the first available general election following their appointment, thus giving the public an early opportunity to pass on the propriety of the selection.[70] Following this early evaluation, the judge is subject to a retention election every four years, thus giving the public periodic opportunities to voice its opinion on the judge's performance in office.[71] While it may be said that the overwhelmingly high rate of retention shows a lack of accountability, this claim is impossible to evaluate without empirical evidence showing that demonstrably bad judges are being retained.

***It is with regard to the subject of accountability that the commission system is often criticized.***

Further, the measure of judicial accountability in a selection and retention system is not only whether judges are being retained or dismissed, but also the effect of the system on judicial behavior.[72] A 1991 survey of current and former judges in 10 states, including Kansas, found that a majority of the judges felt that voter image of their performance was the most important factor in retention elections, and a majority also felt that retention elections influenced judicial behavior. A majority also felt that competent judicial performance was the most effective thing a judge could do to win a retention election.[73] These responses indicate a larger degree of judicial accountability in the commission system than the sole use of retention rates might suggest.

Partisan elections, on the other hand, are not as protective of judicial independence. Rather than shielding judges from the pressures of the public in reaching a decision, partisan elections directly subject judges to these very pressures, and increase the likelihood that judges will be removed from office simply because a decision, although legally correct, is unpopular to a majority of persons, or even to a vocal minority. The simple threat of losing his or her job because of an unpopular decision may be enough to create unwarranted pressure on a judge.

not allow family, social, political or other relationships to influence the judge's conduct or judgement", use the office to advance his or her own or other's private interests, or convey or permit others to convey the impression that they can influence the judge. Cannon 3(A)(5) directs the judge to perform judicial duties without bias or prejudice. Cannon 3(E) requires the judge to disqualify himself or herself in a proceeding where the judge's impartiality might be questioned. Cannon4(1) directs the judge to refrain from extra-judicial activity that would cause reasonable doubts on the judge's capacity to act impartially as a judge. Cannon 5(A)(3)(d)(i) and (ii) prohibit a judicial candidate from making pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office and from making statements that commit or appear to commit the candidate with respect to cases, controversies or issues that are likely to come before the court.

67. *See* Cannons 3(B)(8), 4(A)(3) (1988 Kan. Ct. R. Anno. 450-464).

68. Davidow, *supra* note 53, at 423.

69. *See* Dubois, *supra* note 48, at 45-46. Dubois notes that the merit system itself tends to favor incumbents because it provides little in the way of cues, and thus incumbents are favored in the absence of other information.

70. *See* K.S.A. 20-2912.

71. *Id.*

72. Larry T. Aspin and William K. Hall. *Retention Elections and Judicial Behavior, Judicature*, May-June 1994, at 306, 312-13. 64.7% of the judges surveyed felt that voter image of judicial performance was the primary determinant in the way people voted in judicial retention elections, while 60.5% indicated that judicial retention elections influenced judicial behavior. *Id.*

73. *Id.* 43.7% cited "competent performance on the bench", while

The strength of partisan elections supposedly lies in their ability to guarantee accountability.[74] In theory, at least, judicial elections provide for a large measure of desired accountability, in that the public can easily remove biased or incompetent judges and elect more qualified judges. However, there is a question as to whether this accountability actually exists in practice. It has been pointed out that while some voters in partisan judicial elections may make their choices based on the actions or fitness of the candidate in question, others may be influenced simply by the party of the candidate, resulting in the election of "party hacks and brothers-in-law" on party slates.[75] Dubois counters these arguments by asserting that elections achieve accountability by setting out the "general directions and broad boundaries of public policy".[76] Thus, the public has the choice, by choosing judges of a particular party, to broadly influence the general tenor of the court's decision. However, this notion of accountability seems no more concrete than that claimed by the advocates of the retention election, in that while in each case it is possible for an incompetent or biased judge to be removed from office, there is no guarantee that the public will do so.

***The strength of partisan elections supposedly lies in their ability to guarantee accountability . . .***

Further, although the partisan election system claims to provide the public with a voice in the actual selection of judges, in reality the majority of judges in partisan election systems are appointed by the state governor to fill judicial posts which become vacant between elections.[77] This original selection of judges provides for even less public input than that under the commission system, because there is no bipartisan committee to check the power of the governor to appoint the judge of his or her choosing.[78]

On the whole, the commission system seems superior with regard to the goal of judicial independence and accountability. While it provides for a large amount of independence, it also offers a measure of accountability that allows the public input in determining its judges. While the partisan election system allows for what should theoretically be a greater degree of public accountability, this accountability is somewhat diluted in practice due to partisan politics, and comes at the expense of judicial independence.

### B. QUALITY

We now turn to the second major goal of selection systems, that of judicial quality. As stated above, judicial quality can be divided into three attributes which are important for judges to possess: competence, impartiality, and diligence. The goal of a selection system with regard to quality should be to select to the bench competent, impartial and diligent judges, and to make sure that those judges are retained and that their abilities in those areas are not compromised.

***The goal of a selection system with regard to quality should be to select to the bench competent, impartial and diligent judges, . . .***

With regard to the attribute of competence, little empirical data exists. While the commission selection system lays claim to its base in "merit", there is little evidence that judges elected under a partisan system are any less competent than their commission selected counterparts.[79]

What is known, however, is that in some cases, popular election has resulted in the defeat of highly competent incumbent judges simply because they failed to display charismatic campaigning skills, or are members of a different political party than that which has become popular.[80] An especially egregious example of this activity occurred in Texas in 1994, when Stephen Mansfield campaigned for the Texas Court of Criminal Appeals on promises of greater use of the death penalty, greater use of the harmless error doctrine, and sanctions for attorneys who filed what he termed to be "frivolous appeals" in death penalty cases. Despite the fact that Mansfield had been found before the election

others cited such things as "be fair and impartial", "good management of cases" and "be knowledgeable". In total, 53.3% of the judges referenced competent judicial performance.

74. *See* Dubois, *From Ballot to Bench*, *supra* note 7, at 28. Dubois notes that the role of popular elections in enabling the public to assert control over the course of judicial policy-making is the "mainstay" of the argument favoring such elections over other methods of judicial election and retention.

75. Janice C. May and Nathan C. Goldman, *Judicial Selection: An Analysis*, 45 Tex. B.J. 316, 317-18(1983). May and Goldman also question the findings of partisan election advocates like Dubois who believe that the party label is an important factor in determining future judicial decisions. *Id.*

76. Dubois, *supra* note 48, at 50-51.

77. *See* Anthony Champagne, *The Selection and Retention of Judges in Texas*, 40 SW. L.J. (Special Issue), May 1986, at 53, 65-67. A survey of Texas judges found that of the judges serving in 1984, 67% of the trial court judges had obtained their posts through appointment, and 51% of appellate court judges had done so. *See* also Krivosha, *supra* note 53, at 19. Krivosha notes that the legal system in partisan election states works simply because most judges are actually appointed to their posts rather than elected.

78. Krivosha, *supra* note 70, at 19.

79. *See* Champagne, *supra* note 77, at 53, 104-05. A subjective survey conducted by the Missouri bar found that, on the subject of judicial quality as a whole, members of the bar found little difference between elected judges or commission selected judges. There was some difference, in that fewer commission selected judges earned the highest marks, and further that fewer commission selected judges received the lowest marks. Thus there was a greater variance in the perceived quality of the elected judges. *Id* at 104. A study by entry Glick and Craig Emmert of state supreme court justices showed that both merit and elected judges had comparable educational backgrounds. Henry Glick and Craig Emmert, *Selection Systems and Judicial Characteristics*, 70 Judicature 229-235 (1987).

80. See Heffernan, *supra* note 10, at 1036-37. In Wisconsin, which operates under a nonpartisan election system, three Wisconsin Supreme Court justices, including Chief Justice George Currie in 1967, were defeated by opponents simply because they were, in Heffernan's terms "charismatically impaired" in that they lacked the presumptuous ego that candidates for political office seem to require. *Id.* *See* also Thomas E. Brennan, *Nonpartisan Election of Judges: The Michigan*



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have misrepresented his record, had virtually no experience in criminal law, and had been fined for practicing law without a license in Florida, he defeated an incumbent judge who had served twelve distinguished years on the court.[81] Thus, on this issue the retention vote encompassed in the commission system does a better job of ensuring that qualified individuals, once on the bench, are retained.

***. . . the mere requirement of participating in partisan politics discourages some qualified individuals with experience from running for the bench . . .***

Further, it has been suggested that the mere requirement of participating in partisan politics discourages some qualified individuals with experience from running for the bench, in that not only are the costs of participating in an election high and results uncertain, but the time involved takes the candidate away from his or her practice.[82] While proponents of judicial elections, in rebuttal, point to the number of highly competent judges which have chosen to engage in the "high risk" game of partisan politics, this does not effectively counter the argument that an even larger pool of highly qualified judges might seek the nomination if the uncertainty of doing so were reduced.[83]

Both the systems in theory show some vulnerability with regard to impartiality. The greatest potential problem occurs with partisan judicial elections, and involves the need to raise campaign funds. In a partisan election, campaign costs can be fairly substantial.[84] The money for these costs has to come from somewhere, and in most cases it comes from lawyers who expect to practice before the judge to whom the money is donated.[85] This raises serious questions with regard to a judge's impartiality in cases involving lawyers who are contributors. If nothing else, it creates an appearance of impropriety which diminishes respect for the judicial system.[86]

Even where contributions do not come from lawyers, contributions from other special interests raises concerns with judicial impartiality. Recently, there has also been a trend of business interests becoming involved in the financing of judicial campaigns in order to elect pro-business judges.[87] Such special interests contributions, no matter what the source, pose a grave threat to the impartiality of a judge who is dependent upon such sources for campaign financing, and even where they do not actually influence the judge's decision, they undermine public confidence and respect.

Kansas has attempted to lessen the problems inherent in political campaigning by passing rules which prohibit judicial candidates in a partisan election from directly soliciting or accepting campaign contributions, mandating instead that such contributions be solicited and accepted by a committee established by the candidate.[88] However, because candidates must publicly disclose campaign contribution over fifty dollars, this rule does little to prevent the problem, in that candidates are certainly aware of major contributors to their campaign.[89]

This is not to say that the commission system has no vulnerability with respect to campaign contributions. Nationally, some judges have been known to accept substantial contributions for retention campaigns.[90] However, such contributions are generally much smaller than those involved in partisan elections.[91] Further, Kansas has enacted rules which serve to minimize, if not entirely eradicate, campaign financing problems in retention elections. Under Cannon 5(C)(4) of the Kansas Rules of Judicial Conduct, only those incumbent judges in a retention election who face active opposition to their retention may engage in soliciting and accepting campaign funds through a committee set up for that purpose.[92] As a result, those judges up for retention who do not face active opposition may not solicit or accept campaign funds.[93] Thus, there is little opportunity for problems with regard to impartiality to develop.

Certainly, with regard to the attribute of impartiality, the partisan election system falls short. Under a partisan election system, judges are forced to actively seek campaign contributions from lawyers, law firms, and other special interests, all of which not only potentially affect the impartiality of the judge, but compromise the confidence of the public in the judiciary. On this score, the commission system, especially as it is used in Kansas, is clearly the better choice.

The third component with regard to quality, diligence, is again difficult to empirically measure. While there is no

*Case*, 40 SW. L.J. (Secial Issue), May 1986, at 23, 24. Writing in favor of nonpartisan elections rather than partisan elections, Brennan notes that in a twenty year period, six members of the Michigan Supreme Court with nearly fifty years of judicial experience were defeated at the polls by opponents "whose principal qualification was loyalty to a different political party".

81. *See* Stephen B. Bright, *Political Attacks on the Judiciary*, 80 Judicature 165, 171 (1997).

82. Krivosha, *supra* note 53, at 18; Sanders, *supra* note 21, at 582.

83. *See* Heffernan, *supra* note 10, at 1045 ) arguing that many great lawyers have chosen to seek the bench despite the risks).

84. *See* Mark Hansen, *A Run for the Bench*, A.B.A. J., October 1998, at 68, 69. Hansen notes that in 1995, two candidates for the Pennsylvania Supreme Court raised together nearly $2.8 million dollars. *See* also Champagne, *supra* note 77, at 84-88. Champagne found that in 1982, the average total contributions to successful district candidates in Dallas County was over $44,000.00 while the average contributions for winning candidates for the Texas Supreme Court for 1982-84 was over $570,000.00. Sanders reports that in Kansas a district judge might expect to spend twenty percent of a year's salary on his or her campaign. Sanders, *supra* note 21, at 582-83 n. 65.

85. Marlene Arnold Nicholson and Bradley Scott Weiss, *Funding Judicial Campaigns in the Circuit Court of Cook County*, 70 Judicature 17, 21-22 (1986). Nicholson and Weiss found that in the 1984 elections in Cook County, Illinois, contributions from lawyers and law firms consisted of 54% of the total outside contributions to judges in partisan elections. *See* also Hansen, *supra* note 84, at 70 (finding that more than 40 percent of the nearly $9.2 million dollars raised by the seven winning candidates for the Texas Supreme Court in 1994 came either from parties and lawyers with cases before the court or from contributions linked to those parties.

86. *See* Joel Achenbach, *Why Reporters Love Judicial Elections*, 49U. Miami L. Reve. 155 (1994). Achenbach, a reporter for the *Washington Post*, addressing his own experience in the Florida Judicial system, states that: "I wondered whether my lawyer contributed to this guy's election campaign. Did the opposing counsel make a contribution?

evidence which suggests that elected judges are any less diligent than those selected through the commission system, the partisan election system provides one important roadblock which hinders the ability of its judges in this regard. In order to gain election and to retain office, judges in a partisan election system must take time out to run political campaigns. Often these campaigns drastically detract from the time the judge has to fulfill his official duties.[94] As a result, the justice system suffers. Such problems are largely avoided by the commission system, especially where, as in Kansas, judges who do not face active opposition are forbidden to campaign for retention.

Overall, with regard to the general goal of selection systems to promote judicial quality, it may be said that while there is little difference in the systems with regard to attracting competent judges, the commission system does a better job than the partisan election system in retaining knowledgeable judges. Further, the commission system is clearly superior to the partisan election system in promoting impartiality and diligence of judges.

### C. REPRESENTATIVENESS

The final goal to be promoted in developing a system of judicial selection and retention is representativeness. Stated simply, the judicial selection system should attempt to produce a judiciary which reflects the values of the entire community, rather than favoring any one particular group. At first glance, it would seem that the partisan election system would provide the best opportunity for establishing a representative judiciary, because any person may become a candidate. However, in practice this is not necessarily true with regard to opportunities for minorities or women to become judges. A 1985 nationwide survey found that those states which had adopted the commission system had a higher percentage of minority and women judges than those which selected judges through partisan election.[95] One reason for this apparent discrepancy has to do with the dilution of minority voting strength in judicial districts.[96] Because a majority is required to elect a judge in a partisan election, and because judicial districts are usually fairly largely drawn, it is extremely difficult for minority judges to be elected.[97] Under the commission system, on the other hand, at least some minority and women judges tend to be appointed. The main problem with representativeness in the commission system is that the lawyer members of the commission tend to be white males, while the non-lawyer members, because they are appointed by the governor, tend to belong to the majority political party and make nominations with its view in mind.[98]

The bottom line is that neither system does a particularly effective job of ensuring representativeness.[99] However, it appears that the commission system is slightly better in this regard than the partisan election system, and provides more opportunities for women and minorities to become judges.

## V. EVALUATION

Of the two systems currently in use, the commission system better achieves the goals of judicial selection. It provides for a large degree of judicial independence, while at the same time providing a modicum of accountability to the people of Kansas. While the commission system is not markedly better than the partisan election system in selecting the most competent judges, it better insures that those judges, once selected will retain their seats. The commission system in Kansas also eliminates almost entirely the necessity for judicial campaigns found under the partisan election system, and as a result promotes the impartiality and diligence of its judges. Finally, although neither system is particularly proficient in achieving the goal of representativeness, the commission system seems to provide more opportunity for the selection of minority and women judges.

The proposal to adopt the commission system recommended by the Kansas Justice Commission embodies the advantages of the commission system. In addition, it takes steps to address one of the main problems associated with the selection of judges: lack of public awareness. In order to provide the public with more information regarding the qualification of judges, the a Kansas Justice Commission has recommended the formation of Kansas Judicial Evaluation Commission.[100] This judicial evaluation commission would be made up of both lawyer and non-lawyer members, chosen equally by the Governor and the supreme court.[101] It would have the responsibility of evaluating judges and making such evaluations available to the public prior to retention elections.[102]

The creation of a commission for judicial evaluation, as recommended by the Justice Commission, has the advantage of providing the public with a guide to use in evaluat-

How would I know that I hadn't already lost the case?" Id. at 157.

87. *See* Charles Mahtesian, Bench Press: Business Moves in on the *State Courts, Governing*, August 1998, at 18. In part, this trend is a response to efforts of organized labor in funding judicial candidates. *Id.* at 19.

88. *Kansas Code of Judicial Conduct*, Canon 5(C)(2) (1998 Kan. Ct.R. Annot. 468).

89. Sanders, *supra* note 21, at 583. K.S.A. 25-4148 requires the filing of periodic reports which disclose the name and address of each person who has made one or more contributions in excess of $50, along with the amount and date of such contributions. *Id.*

90. *See* Marlene Arnold Nicholson nd Norman Nicholson, *Funding Judicial Campaigns in Illinois*, 77 Judicature 294, 295-96 (1994) (finding that some justices in Illinois Supreme Court retention elections raised as much as $25,000 in 1980-90).

91. *Id.*

92. 1998 Kan. Ct. R. Annot. 469.

93. *See* Cannon 5(D), *Kansas Rules of Judicial Conduct* (1997 Kan. Ct. R. Annot. 447) (prohibiting judges from engaging in any political activity not authorized by the Rules).

94. Sanders, *supra* note 21, at 583-84. In addition to time spent actively campaigning, the pressure of an upcoming election may prove distracting for the judge in the performance of his or her official duties. *Id.* *See* also Heffernan, *supra* note 10, at 1045 (noting that one of the problems of the Wisconsin elective system is that judges must spend time away from their duties to campaign).

95. Fund for Modern Courts, Inc., *Success of Women and Minorities in Achieving Judicial Office: The Selection Process* (Dec. 1985). The study found that in states using the commission system 17.1% of the judges were women or minorities, as compared with 11.2% in those states using partisan election.

96. Davidow, *supra* note 53, at 427.



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-g judges, thus furthering the goal of accountability by allowing the public to make a more informed decision on which judges it retains. A judicial evaluation commission will presumably also further the goal of judicial independence by providing the public with an independent view, which will help to counteract the influence of campaigns waged by those who would seek to remove judges simply because of a disagreement with a particular ruling.

***Judicial selection in Kansas has for the most part mirrored that in the nation as a whole.***

## VI. CONCLUSION

Judicial selection in Kansas has for the most part mirrored that in the nation as a whole. It has evolved throughout the years in an attempt to achieve the possible judiciary, with the proper mix of independence and accountability, made up of the most competent judges who are representative of the values and ideals of the areas in which they serve. This steady evolution has moved Kansas from a statewide system of partisan election of judges to a system in two which different methods of judicial selection are used. While no method of judicial selection is perfect, the people of Kansas deserve to have the best judges available. It is for such reasons that studies such as the one undertaken by the Kansas Justice Commission are necessary. A comparison of the selection systems currently in use reveals that the commission system, particularly when used in conjunction with a system for evaluating judges and disseminating those evaluations to the public, and not partisan election, is the best method for Kansas.

Jeff Jackson


### About the Author:

Jeffery D. Jackson is a reserch attorney for the Hon. Robert Davis, Kansas Surpreme Court. He is a 1992 graduate, cum laude, of the Washburn University of Law. Prior to his current employment, he was a staff attorney for the Kansas Court of Appeals and law clerk for Justice Davis, as well as an associate with the firm of Bennett & Cillon, L.L.P. in Topeka.


97. *Id.*
98. *See Id.* at 430. Kansas has actually been fairly progressive in this regard. Of the 9 members of the commission in 1997-98, four were women.
99. *Id.* at 425-26, 430-31.
100. *See Kansas Citizens Justice Initiative-Draft Final Report, supra* note 6.

March 20, 2000

Senate Judiciary Committee Members
and
House Judiciary Committee Members

Testimony Seeking Amendment of SCR No. 1642

Judge John Bremer
Legislative Committee Chairman
Kansas District Magistrate Judges Association

Mr. Chairmen, members of this joint meeting of the Senate and House Judiciary Committees:

I would like to thank you for the opportunity to address you today. I am John Bremer, District Magistrate Judge from the 17th Judicial District and Legislative Chairman for the District Magistrate Judge's Association. I will be presenting the association's views on this issue.

Members of our association are split on the issue of nonpartisan selection of judges of the district court. About half have nonpartisan selection and like it and, the other half don't and don't want anything to do with it. There are a few exceptions in both camps.

Our legislative committee reviewed the resolution and considered urging this committee to maintain the status quo except for two matters.

The first is the detail in which the method of evaluating judicial performance is to be described in the Kansas Constitution as found starting on line 6 of page 2 of

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the resolution. We believe this description is too specific for the Constitution since even minor changes are difficult. Our discussions with other judges in other states lead us to believe that the Supreme Court should establish the evaluation procedure by court rule following the guidelines and recommendations passed by the legislature. This would continue the checks and balances which exist between the branches of government and would allow the guidelines and recommendations to be changed as necessary. This first matter is a minor consideration to our association and we leave it in your sound discretion.

The second matter is near and dear to all of the members of our association. When the county courts were consolidated with the state courts, the counties went along with the merger with the understanding that the existence of a resident judge with an office in each county was preserved and protected by KSA 20-301(b). Sadly, this isn't the case. The Kansas Association of Counties feels that it is necessary to continue to express its support for "one judge/one county" in it's year 2000 Legislative Platform Policy Issues and, my association feels it is necessary to annually appear before various committee hearings to protect 301(b). Those of you who have been on your committees long know that 301(b) has a lot of popular support.

The reason I mention this is if the sentence starting at line 21 of the resolution was amended to read "Each judicial district shall have at least one district judge and each county of such district shall have at least one judge of the district court who is a resident of and has the judge's principal office in that county." Our legislative committee and our association could back this bill and, this backing would probably be quite influential in the passage of a constitutional amendment in those areas where judges now stand for election.

Earlier I mentioned that we thought that the language of this resolution was too specific and that it might hamper necessary revision. Now we are urging you to adopt more specific language in another area and, I suspect that you are wondering if this more specific language might not also hinder necessary change.

My answer is no. The change sought by the elimination of 301(b) is actually a matter of county consolidation and support for this section is strong because the counties and their residents want no part of consolidation. Yet, counties have been known to enter into mutually advantageous consolidation agreements for fire protection across county lines and for landfills. There is no reason to believe that the counties could not be persuaded to consolidate if they

were convinced that it was necessary and if they could do so in a mutually advantageous manner.

The inclusion of the language of the proposed amendment would require that a matter that is actually county consolidation be handled as a matter of county consolidation this would gain county support by allowing the counties to consolidate in a mutually advantageous manner rather than at the direction of outsiders who would not have to live with the disruptive results.

We urge you to adopt the above language from 301(b) in your resolution.

I thank you for your consideration.

John R. Todd
1559 Payne
Wichita, Kansas 67203
(316) 262-3681 office
(316) 264-6295 residence
e-mail: johntodd@fn.net

Date: March 20, 2000

To: Members of the SENATE and HOUSE COMMITTEES ON JUDICIARY

Subject: SENATE CONCURRENT RESOLUTION NO. 1642

My name is John Todd. I live in Wichita, and am here to speak as a *private citizen* who is interested in Court reform. I am a real estate broker by profession.

I *do not* favor the appointment of District court judges as proposed in this Senate Concurrent Resolution, nor do I favor the election of judges as the Kansas Constitution currently allows.

I *favor* Gerry Spence' suggestion as detailed in his book ***"From Freedom to Slavery"*** and quote Mr. Spence as follows:

**"Our judges should be drafted in the same manner that jurors are drafted—to act as judges for a limited calendar of cases after which they would be released to return to their practices. Every trial lawyer should be required to support the system in this fashion the same as every citizen is required to serve as a juror. If judges were drafted from the trial bar we would soon clear our dockets, because we could call up as many judges as were necessary to bring our dockets current. If judges were drafted, we would no longer be saddled for life with the political cronies of those in power, or be faced with judges who have received campaign contributions from our opponents. To be sure, we would experience some bad judges. But, Lord knows, we have them now—and often for life! On the other hand, we would benefit from the best minds in the legal business, who under our present system rarely seek the judiciary."**

In his book, ***"With Justice For None"***, Mr. Spence further explains:

**"If we could only raise the caliber of judges slightly, we could elevate the qualify of justice enormously. Even a majority of ABA members believe that "a significant proportion of judges are not qualified to preside over serious cases."**

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**Perhaps we expect too much of them. Judges are usually not individuals born of expansive minds and spacious souls. Often they have enjoyed mediocre success in practice or in politics and have sought the judiciary to obtain respect and power."**

I have enclosed copies of testimony I presented this morning before the Senate Judiciary Sub-Committee regarding **Senate Bill No. 632** that calls for ***Municipal Court Reform.*** I would call your attention to two Wichita Eagle articles enclosed with that testimony that describes how the Wichita Municipal Court has been incarcerating citizens in the Sedgwick County jail for collection of fines, reminiscent of the 17th Century English *"debtor's prisons"*. The articles further question if citizens are receiving "due process of law" as guaranteed by statutes and the Constitution, and whether the Municipal Court is more interested in collecting revenue than dispensing justice. The citizen abuses found in Wichita Municipal Court in my opinion are directly related to the manner in which Judges are selected. I would suggest that Senate Concurrent Resolution No. 1642 be expanded to bring the Municipal Courts under the supervision of the Kansas Supreme Court, and further provide that Municipal Court Judges be selected in the same manner as District court judges.

Thank you for allowing me to speak today. I would be glad to answer questions.

Sincerely,

John R. Todd

Session of 2000

# Senate Concurrent Resolution No. 1642

By Special Committee on Judiciary

2-10

A PROPOSITION to amend section 6 of article 3 of the constitution of the state of Kansas, relating to nonpartisan selection of district judges.

*Be it resolved by the Legislature of the State of Kansas, two-thirds of the members elected (or appointed) and qualified to the Senate and two-thirds of the members elected (or appointed) and qualified to the House of Representatives concurring therein:*

Section 1. The following proposition to amend the constitution of the state of Kansas shall be submitted to the qualified electors of the state for their approval or rejection: Section 6 of article 3 of the constitution of the state of Kansas is hereby amended to read as follows:

"§ 6. **District courts.** (a) The state shall be divided into judicial districts as provided by law. Each judicial district shall have at least one district judge. The term of office of each judge of the district court shall be four years. District court shall be held at such times and places as may be provided by law. ~~The district judges shall be elected by the electors of the respective judicial districts unless the electors of a judicial district have adopted and not subsequently rejected a method of nonpartisan selection.~~ The legislature shall provide ~~a method of~~ *for the* nonpartisan selection of district judges and for the manner of submission and resubmission thereof to the electors of a judicial district. ~~A nonpartisan method of selection of district judges may be adopted, and once adopted may be rejected, only by a majority of electors of a judicial district voting on the question at an election in which the proposition is submitted.~~ Whenever a vacancy occurs in the office of district judge, it shall be filled by ~~appointment by the governor until the next general election that occurs more than thirty days after such vacancy, or as may be provided by~~ such nonpartisan method of selection.

(b) The district courts shall have such jurisdiction in their respective districts as may be provided by law.

(c) The legislature shall provide for clerks of the district courts.

(d) Provision may be made by law for judges pro tem of the district court.

(e) The supreme court or any justice thereof shall have the power to assign judges of district courts temporarily to other districts.

(f) The supreme court may assign a district judge to serve temporarily on the supreme court.

*(g) The supreme court shall establish by court rules a commission for evaluating judicial performance. The rules shall include written performance standards and performance reviews which survey opinions of persons who have knowledge of the judge's performance. The public shall be afforded a full and fair opportunity for participation in the evaluation process through public hearings, dissemination of evaluation reports to voters and any other methods as the court deems advisable.*"

Sec. 2. The following statement shall be printed on the ballot with the amendment as a whole:

"*Explanatory statement.* The purpose of this amendment is to provide for the nonpartisan selection of all district judges. It removes the provision relating to election of district judges. The proposition requires the supreme court to establish a commission for evaluating judicial performance and that the public be afforded an opportunity for participation in the evaluation process.

"A vote for this proposition would eliminate the election of district judges and provide for the nonpartisan selection of all district judges. The supreme court would be required to establish a commission for evaluating judicial performance with participation by the public in the evaluation process.

"A vote against this proposition would continue in effect the current law which provides for the election of district judges, except where a nonpartisan selection of district judges has been adopted."

Sec. 3. This resolution, if approved by two-thirds of the members elected (or appointed) and qualified to the Senate, and two-thirds of the members elected (or appointed) and qualified to the House of Representatives shall be entered on the journals, together with the yeas and nays. The secretary of state shall cause this resolution to be published as provided by law and shall cause the proposed amendment to be submitted to the electors of the state at the general election in April in the year 2000 unless a special election is called at a sooner date by concurrent resolution of the legislature, in which case it shall be submitted to the electors of the state at the special election.



3-3

John R. Todd
1559 Payne
Wichita, Kansas 67203
(316) 262-3681 office
(316) 264-6295 residence
e-mail: johntodd@fn.net

Date: March 20, 2000

To: Members of the SENATE JUDICIARY SUB COMMITTEE

Subject: SENATE BILL NO. 632

My name is John Todd. I live in Wichita, and am here to speak as a *private citizen* who is interested in Municipal Court reform, and *favor* the passage of Senate Bill No. 632. I am not an attorney. I am a real estate broker by profession.

I have been studying the Wichita Municipal Court as an interested citizen since 1977. As a frequent visitor to the Court I have witnessed the workings of the Court, and I have had the opportunity to visit with citizens, many of whom, in my opinion been have been victimized by the actions of the Court.

I would call your attention to two Wichita Eagle newspaper articles enclosed with this testimony that describes how the Wichita Municipal Court has been incarcerating their citizens in the Sedgwick County jail for collection of fines, reminiscent of the 17th Century English *"debtor's prisons"*. The articles question if citizens are receiving "due process of law" as guaranteed by state statutes and the Constitution, and whether the Municipal Court is more interested in collecting revenue than in dispensing justice? In my opinion, the newspaper articles *clearly* explain the need for reform of the Wichita Municipal Court.

The primary problem inherent in the Wichita Municipal Court deals with the fact that there is no *separation of power* between the Legislative (the City Council), the Executive (the City Manager), and the Judiciary (the Judge) Branches of Government. The City Council promulgates the Law. The City Council hires the City Manager who hires the City Attorney to prosecute violators of the Law. Then, The Judge, who is hired by the City Council, tries the Case. The paychecks of the City Manager, the City Attorney, and the Judge are written by the City Council. The Municipal Court therefore is *not independent!*

The Municipal Court is not a Court of record. There is no stenographic record of the Court proceedings. The Judge can therefore say or do anything he wishes *with impunity!* I heard one Wichita Municipal Court Judge refer to his docket as the *"cattle call"*. On another evening, a friend of mine was threatened with 5 years in prison by the Judge if he didn't follow the Judges wishes. The Municipal Court jurisdiction actually allows a maximum sentence of one year in jail!

I have heard that California and at least one other western state has achieved Municipal Court reform by bringing their Municipal Courts and Judges under the supervision of their state Supreme Courts. The passage of Senate Bill No. 632 or the expansion of Senate Concurrent Resolution No. 1642 to bring the Municipal Courts and Municipal Judges under state Supreme Court supervision would certainly solve the *"separation of powers"* problems discussed earlier. The removal of the Municipal Courts and the money they generate from the Cities, would also end the *'debtor's prisons"*, and eliminate the corruption inherent when a Court is used as a *"revenue source"*.

I would recommend that the Legislature take a look at modifying the Home Rule provisions of the Kansas Constitution in a manner so that Cities could not *"opt"* themselves out of state statutes and the Constitution. Paragraph 16 of the Bill of Rights in the Kansas Constitution says that: *"No person shall be imprisoned for debt, except in cases of fraud."* Cities should not be allowed to sidestep these important Constitutional protections.

Court reform needs to start with the Municipal Courts and work it's way up. The slogan above the door of the Sedgwick County Court House a "free and independent Court for a free and independent people" needs to have real meaning.

Thank you for allowing me to speak today. I would be glad to answer questions.

Sincerely,

John R. Todd

KANSAS BAR ASSOCIATION

PRESIDENT
John C. Tillotson

606 Delaware
P.O. Box 10
Leavenworth, Kansas 66048-2645
Telephone 913-682-5894
FAX 913-682-2668

ASSOCIATION OFFICES
1200 SW Harrison St.
P.O. Box 1037
Topeka, Kansas 66601-1037
Telephone 785-234-5696
FAX 785-234-3813

October 30, 1997

Mr. John R. Todd
John Todd & Associates
805 South Main, Suite 103
Wichita, Kansas 67213

Re: Kansas Citizens Justice Initiative

Dear Mr. Todd:

I read with interest your letter of October 23, 1997 describing your concern over the operations of municipal courts.

During the 1974 study of the organization of Kansas courts, the Study Committee recommended that municipal courts be brought into the state court system. This would mean that judges and court procedures would be under the supervision of the Kansas Supreme Court, as are all other general jurisdiction and magistrate courts in the state of Kansas. It would also mean that the proceeds of filings and court costs would be removed from the municipal coffers and placed into the general operations budget for the state court system. This proposal was vigorously resisted by the large municipalities at the time of the 1974 recommendations and it failed to become law. My suspicion is that this source of revenue has become even more important to certain first class cities in the 1990's.

I urge you, however, to approach the Commission members when they meet in Wichita and discuss this matter with them.

Thanks for your interest in our project.

Very truly yours,

John C. Tillotson
President

JCT:mkv
cc: Ms. Jill Docking

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# SENATE BILL No. 632

By Committee on Judiciary

2-11

AN ACT concerning courts; relating to authority of supreme court; municipal courts; amending K.S.A. 12-4104 and 20-101 and repealing the existing sections.

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

Section 1. K.S.A. 12-4104 is hereby amended to read as follows: 12-4104. The municipal court of each city shall have jurisdiction to hear and determine cases involving violations of the ordinances of the city. Search warrants shall not issue out of a municipal court.

*Municipal courts and municipal judges shall be subject to the general administrative authority by the supreme court as provided in K.S.A. 20-101, and amendments thereto.*

Sec. 2. K.S.A. 20-101 is hereby amended to read as follows: 20-101. The supreme court shall be a court of record, and in addition to the original jurisdiction conferred by the constitution, shall have such appellate jurisdiction as may be provided by law; and during the pendency of any appeal, on such terms as may be just, may make an order suspending further proceedings in any court below, until the decision of the supreme court. As provided by section 1 of article 3 of the Kansas constitution, the supreme court shall have general administrative authority over all courts in this state, and the supreme court and each justice thereof shall have such specific powers and duties in exercising ~~said~~ *such* administrative authority as may be prescribed by law. *The supreme court shall have general administrative authority over all municipal courts in this state.* The chief justice shall be the spokesman for the supreme court and shall exercise the court's general administrative authority over all courts of this state. The chief justice shall have the responsibility for executing and implementing the administrative rules and policies of the supreme court, including supervision of the personnel and financial affairs of the court system, and delegate such of this responsibility and authority to personnel in the state judicial department as may be necessary for the effective and efficient administration of the court system.

Sec. 3. K.S.A. 12-4104 and 20-101 are hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.