

Approved

Date: *January 24, 2001*

MINUTES OF THE SENATE JUDICIARY COMMITTEE.

The meeting was called to order by Chairperson John Vratil at 9:38a.m. on January 23, 2001 in Room 123-S of the Capitol.

All members were present.

Committee staff present:

Gordon Self, Revisor  
Mike Heim, Research  
Mary Blair, Secretary

Conferees appearing before the committee:

Senator James Barnett  
Natalie Haag, Chief Counsel, Office of the Governor  
Elwaine Pomeroy, Kansas Credit Attorneys Association (KCAA)  
Judge Terry Bullock, 3<sup>rd</sup> Judicial District, Shawnee County  
Fred Logan, Attorney and Co-Chair, Kansans for an Independent Judiciary(KIJ)

Others attending: see attached list

Minutes of the January 18, 2001 meeting were approved on a motion by Senator Oleen, seconded by Senator Adkins. Carried.

Conferee Barnett requested introduction of a conceptual bill which would amend current law governing DUI prosecution to include "inhalants" as a DUI drug. (no attachment) Following brief discussion, Senator Umbarger moved to introduce the bill, Senator Schmidt seconded. Carried.

Conferee Haag requested introduction of the following two "clean-up" bills: make required publication in current law read "publication of only those procedures which are required by law"; and amend current law so that the governor may designate a person to sign warrants or requisitions for transport of prisoners across the state line. (no attachment) Senator Donovan moved to introduce the bill, Senator Goodwin seconded. Carried.

Conferee Pomeroy requested introduction of a bill which would amend the current statute defining wage garnishment by deleting the portion which prohibits a judgement creditor from using wage garnishment to enforce any claim which has been assigned. He summarized his purposes for requesting the bill. (attachment 1) Following discussion Senator Pugh moved to introduce the bill, Senator Umbarger seconded. Carried.

**SCR 1604—proposition to amend the Kansas Constitution, relating to the sections on nonpartisan selection of district judges and the creation of commission for evaluating judicial performance**

Conferee Bullock testified as a proponent of **SCR 1604**. He discussed the uniqueness of the judiciary when compared to the legislative and executive branches both of whom have constituencies who have elected them and he discussed the need for judges to be independent of political influence and accountable to voters. He urged Committee to enact this resolution so that litigating Kansas citizens would feel they are bringing their cases before fair and impartial judges. (attachment 2)

Conferee Logan testified as a proponent of **SCR 1604**. He stated that KIJ supports the recommendation of the Kansas Justice Commission to adopt a constitutional amendment that would require non-partisan appointment of judges on a statewide basis and provide for a formal Kansas Judicial Evaluation Commission which would prepare and make available to the public evaluations of each judge prior to each judicial retention election. He explained the resolution and discussed why he felt it represents the best public policy for the state especially in terms of restoring public confidence in the judicial system. (attachment 3) Lengthy discussion followed.

Written testimony supporting **SCR 1604** was submitted by Jack Focht, Appleseed Center for Law and Justice. (attachment 4)

The meeting adjourned at 10:30 a.m. The next regular meeting is January 24, 2001.

# SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: January, 23, 2001

NAME	REPRESENTING
Vicki Helsel	DOB
Frank L. Linsky	SELF
Aui Hyten	OJA
Terry Leatherman	KCCI
Marlee Carpenter	KCCI
Jim Meag	KBA
Steve Leben	SELF
John Bukaty Jr	SELF + KDJA
FRED LOBAN	KANSAS FOR Ind. Judiciary
Whitney Tamra	KS Bar Assn.
Paul Davis	KS Bar Assn.
BRUCE SPANO	SEC. OF STATE
Melissa Wagemann	Sec. of State
Shelley King	KAM/Proches, Braden, Parker & Assoc.
Barb Conrad	Ks Trial Lawyers Assoc
Ann Kimplice	K Trial Lawyers Assoc.
Rebecca Tepick	Sen. Barnett
Jack Focht	KANSAS Appellate Center
Joe Herold	KSC

Julie Numrick

Federico Consulting



5 Jud  
3-01  
att 1

**REQUEST FOR BILL INTRODUCTION**

**SENATE JUDICIARY COMMITTEE**

**JANUARY 23, 2001**

Thank you for giving me the opportunity to appear before you on behalf of the Kansas Credit Attorneys Association, which is a state-wide organization of attorneys whose practice includes considerable collection work, and Kansas Collectors Association, Inc., which is an association of collection agencies in Kansas.

We are requesting that subparagraph d of K.S.A. 2000 Supp. 60-2310 be deleted. I have attached a copy of the current statute.

Subparagraph d prohibits a judgement creditor from using wage garnishment to enforce any claim which has been assigned. For instance, if ABC Company buys an account from a creditor, whether that account is already in judgment or not, ABC Company cannot thereafter enforce the account against the debtor by the use of wage garnishment.

Assignment of an account does not refer to the typical arrangement whereby a creditor places an account for collection with a collection agency or collection attorney. In that situation, the account has not been assigned. The original creditor still owns the account and any enforcement of the account must be brought in the name of the original creditor.

An account is assigned where value is given by the assignee and the actual ownership of the account is transferred from the original creditor to the assignee.

Sen. Jud  
1-23-01  
att 1

This is a common arrangement in commerce today, particularly in the banking and finance industry. Consumer debt created by credit cards, promissory notes and mortgages is bought and sold every day. It is not unusual for a mortgage to be sold several times before the borrower pays it off.

Another common practice is in the telephone industry, where the consumer receives a bill from one telephone company that includes charges from one or more other companies. As an example, I write a check each month for my telephone service at home to Southwestern Bell, who in turn forwards part of the money included in the total bill to my long distance carrier.

The proposed amendment is not designed to necessarily encourage this practice, but simply to recognize that the arrangement is common in the market place and to allow the purchaser of debt the same enforcement options as does the original creditor. The consumer is not deprived of any remedies as the assignee on consumer paper remains subject to all of the same defenses that would affect the original creditor.

I understand that in 1998, 25 billion dollars of debt was sold in this country. There was a great increase in the sale of debt in 1999, when it is estimated debt sales increased to 425 billion dollars. A personal experience that I had a few months ago was with regard to my revolving credit account with J.C. Penney. I always pay the entire balance due each month. I was surprised to receive a notification that my account had been sold by J.C. Penney to a bank in Georgia.

Kansas is unusual in having this prohibition against wage garnishment for an assigned account. None of our surrounding states, Colorado, Iowa, Missouri, Nebraska,

and Oklahoma have any such prohibition. We believe that Kansas should recognize current practices in the business community.

It is important to remember that the debtor owes the same debt regardless. The sale of the debt is simply a matter of the creditor trying to manage its own credit policies and control cash flow. Today, paper is routinely sold to reduce operating costs, keep prices down and keep businesses afloat to employ people and continue to supply their goods and services. The cost of continuing to monitor and collect accounts causes creditors to sell off their paper. The debtor pays no penalty. The only difference to the debtor is to whom the check is written.

The debtor has received the services or received the goods, or received money that has been borrowed. The debtors should be held responsible for the debts that they have incurred.

Elwaine F. Pomeroy  
For Kansas Credit Attorneys Association  
And Kansas Collectors Association, Inc.

S. Jwd  
-23-01  
att 2

**TESTIMONY OF  
JUDGE TERRY L. BULLOCK  
BEFORE THE  
SENATE JUDICIARY COMMITTEE  
JANUARY 23, 2001**

Thank you for this opportunity to appear before you in support of the merit selection of judges. I have had the pleasure of serving for the past quarter century under the merit selection plan and I also have the perspective of one who practiced law under an elective system prior to that.

First, the old (elective system). During my years in practice, I worked in a firm that was largely Republican. When we represented clients with substantial matters before Democrat Judges, we hired Democrat lawyers to sit with us at counsel table. This was done, because we couldn't take a chance that our opponent or the client on the other side had contributed more to the judge's election campaign than we had. This was disgusting to me then and it still is.

The position of judge is unique in our society. That is why the judiciary is a separate branch of our government. Legislators and Governors have constituencies. They are supported by persons and groups who wish to have their agendas become law. They are accountable to those constituencies. They make promises before the election and voters, rightfully I think, keep tabs on whether they keep those promises before voting to re-elect them. Judges, on the other hand have no constituencies except the Constitution and laws of our State and Nation. We are sworn to uphold and defend those sacred documents and to see that Justice is done in our Courts, without regard to the high or low social station of the parties, without regard to the color of the skin on the litigants, without regard to the economic status of those who appear before us, without regard to which Church, Synagogue or Mosque they attend, or for that matter if they attend none. We are sworn to provide fair, attentive, unbiased justice, under the law which you make and we would be removed from office if we favored any class, group of supporters or otherwise skewed the level playing field, which all who come to Court desire and deserve.

Judges must be independent. That does not mean unaccountable. The merit system makes judges superbly accountable. For starters, everything we do is in public. Further, every decision we make is reviewed by superior courts for legal correctness. We are also accountable to the Commission on Judicial Qualifications which can remove us from office for misconduct (and they will and have). Finally, each four years we are accountable to the voters who can simply say NO to any one of us they believe has failed to live up to the high calling to sit the bench of justice. Some say this is not a REAL election since there is not another candidate and there are no yard signs, posters, special interest groups or promises made. The short answer to that is: say what you like, retention elections work. There have

*S. Jwd  
1-23-01  
att 2*

been a number of NO votes in Kansas and those who were involved tell me there were good and substantial reasons for them. In other words, when there is a problem, the word gets around and the people respond, as they ought. When there isn't, the system is not corrupted with the trappings of an inappropriate political process which is the grist of the mill for Legislative and Executive branch elections and anathema to the Judicial branch.

Consider also the quality of candidates who would be involved in an elected system. Those who can raise money, those who can glibly issue 30 second sound bites, those who are willing to prostitute the process by playing up to the special interests and moneyed classes and institutions. As a matter of conscience, I can tell you I would not and could not serve in such a system. I could not take large sums of money from supporters (often lawyers who appear in my court) and then try to both be fair and make it appear to the parties that I was. How would you feel if you lost your case and then later found out that the other lawyer or litigant was one of the larger contributors to the judge's election campaign. The very thought is repugnant to me.

You have read the horror stories occurring elsewhere. Some time ago there was a gigantic case in Texas with many billions in damages involving two large oil companies. When the dust settled, it was revealed that the Justice who wrote the decision for the winning company had received a quarter-of-a-million dollar contribution to his election campaign from the winning side --- and there was nothing wrong with that in Texas. Well there is something wrong with that. As another example, there are in other states at this moment Supreme Court races which are costing in the tens of millions of dollars. With that kind of money somebody wants something they can't get from the Legislature in the regular way and which they think they can buy in this fashion. Think of it, to win your trial you only need to buy one judge. To change the policy for the entire State and even overrule the Legislature, all you need to do is buy four Supreme Court Justices. In the grand scheme of things, that probably would be much cheaper than trying to sway the entire Legislature and the Governor at the same time. This isn't Justice. This isn't Kansas. This isn't good policy for our people.

Proponents of the election system in Shawnee County have recently used the arguments that crime rates have increased since our judges became selected by merit and that more money has been spent to improve the Courthouse. You know, surely, that blaming the Judges for crime is like blaming the mortician for death! We only get involved long after the fact. Further, you also know the reason many are not sent to prison who once were is the direct result of your sentencing guidelines and your decision last year to grant early release to parolees and probationers. Concerning money, I'm sure you also know we do not have the power to tax anyone for anything. The only budget we have is from the Legislature and from the County Commission. These political entities make the funding decisions, not the Court. In short, if these are the arguments for elections they are shallow, false and transparent. I can only hope no more than a few fall for them. But here we are, for the third time having to defend our good system from attack in this statutory scheme where only



a few can force repeated election campaigns and another vote. This is why we need to settle the issue once and for all with a Constitutional provision.

Last year I worked with the Judicial Council to modernize the Code for Limited Actions. During one conference with a Legislative Committee Chair, we were advised that an amendment would be required to make the statute acceptable to the Kansas Bankers. He said if we did not, the legislation would not pass because, "frankly, the Bankers get their way." Imagine if we had Bankers financing Judicial campaigns. Imagine further that a Bank was trying to wrongfully foreclose on your farm. How would you feel if your case was before that Judge. A recent poll conducted by the Justice Initiative found 85% of the persons who work in elective systems believe political considerations affect the results of court decisions. Do you see why the political system that works as it is supposed to here in the Legislature is uniquely unsuited for the Court?

Finally, I would just say this: if you aren't rich enough to buy a judge yourself, pray for the success of merit selection where you can at least have a level playing field and that cold neutrality which we all expect and deserve when, God forbid, any of us finds ourselves in trouble and in need of Justice. Remember, when they say it's not about the money, it's about the money.

S. Jud  
23-01  
#3

**TESTIMONY OF FRED LOGAN, CO-CHAIR  
OF KANSANS FOR AN INDEPENDENT JUDICIARY,  
BEFORE THE SENATE JUDICIARY COMMITTEE**

**January 23, 2001**

Jill Docking and I are chairing Kansans for an Independent Judiciary, a group of citizens who are dedicated to improving the judicial system in Kansas. We have submitted to you Senate Concurrent Resolution 1604. I am grateful for this opportunity to represent Mrs. Docking and our group and to discuss this resolution with you.

We support the recommendations of the Kansas Justice Commission, which was chaired by Mrs. Docking and the late Governor Robert F. Bennett. The Kansas Justice Commission recommended the adoption of a constitutional amendment that would require non-partisan appointment of judges on a statewide basis. It also recommended a constitutional amendment that would provide for a formal Kansas Judicial Evaluation Commission that would prepare and make available to the public evaluations of each judge prior to each judicial retention election.

These recommendations are embodied in Senate Concurrent Resolution 1604. I want to take a moment to explain the resolution and then I want to show you why it represents the best public policy for the state. \*\*\*

I have been a proud participant in the rough-and-tumble of the political process. I served as chairman of the Kansas Republican Party from 1987 to 1989. The rough-and-tumble works well in a legislative race; it is a disaster in the context of selecting judges. Each one of you understands, better than anyone, just what is involved in a modern political campaign: money, targeted direct mail, and surveys very carefully designed to determine voter sentiment. Consider how that world of the political campaign fits with the world of a judge who is to be independent and impartial.

Let me graphically illustrate for you how politics, campaigns, and fundraising can undermine public confidence in the judiciary:

*You are a beautician who runs a beauty shop. Your landlord gives you notice to quit the premises. This is in clear violation of your lease. You file a suit to obtain a temporary restraining order. Just before the hearing, you learn that the landlord and members of his family contributed \$5,000 to the judge in his recent election effort.*

or

*You are a farmer in a legal dispute with the local grain elevator operator. At trial, you are bewildered by procedural rulings that gut your case. You later learn that the judge who made the rulings received \$1,000 from his political party, which is not your political party, and thousands more from the individual who owned the grain*

S. Jud  
1-23-01  
att 3

*elevator.*

or

*You are a Sedgwick County District Court Judge who has struck down a clearly unconstitutional state law that was promoted by a powerful interest group. In your reelection campaign, you are battered for your decision by an opponent who is astonishingly well-funded. That is nothing, however, compared to the beating you take when the interest group that promoted the law starts running expensive television advertising urging voters to call you to tell you what a bad decision you made.*

These scenarios, which could become reality in fifty-three counties, point out an inescapable truth: decisions made by judges who are selected through a partisan selection process will always be subjected to a different kind of smell test, a smell test that undermines public regard for our system of justice in this state.

There is no question that there are many fine men and women who have been elected to district court judgeships through a partisan election process. That is no answer, however, to the questions that are raised by the public when scenarios such as these arise. It is also no answer to the problems of public perception that are created when a judge is forced to solicit campaign contributions, frequently from lawyers who appear in front of him or her, and is elected through the skilled use of targeted direct mail, television advertising, or any of the other techniques of modern campaigns.

Judges and lawyers overwhelmingly believe that the election of judges creates the potential for a conflict of interest. In a survey conducted by the Kansas Justice Commission, seventy-nine percent of the judges and seventy-eight percent of the attorneys strongly agreed or agreed with the statement, "Election of judges creates the potential for a conflict of interest when attorneys or parties have supported the judge." Only fourteen percent of the judges and fourteen percent of the attorneys disagreed or strongly disagreed with that statement. Sixty-nine percent of the judges and eighty percent of the attorneys agreed or strongly agreed with the statement, "Appointment of judges leads to a more impartial judiciary."

The survey results underscore what the Kansas Justice Commission defined as the central issue raised by the election of judges: "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." The Kansas Commission on Judicial Qualifications took the rare step of endorsing merit selection of judges. In a written report to the Kansas Justice Commission, it stated:

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 fundraiser, 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 into debt to conduct the campaign and has to engage in fundraising 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.

There is one way for Kansas to address this problem. It should adopt a constitutional amendment that spreads the current non-partisan appointment system of district court judges to the entire state.

As Kansans adopt such a system, however, they should also establish, through constitutional amendment, a Kansas Judicial Evaluation Commission. It would prepare and make available to the public evaluations of each judge prior to each judicial retention election.

Four states, Alaska, Arizona, Colorado, and Utah have statewide judicial performance evaluation programs in place. These programs provide a comprehensive review of each judge's performance prior to retention elections. Surveys in these states have shown a high level of voter satisfaction with the information that has been made available. Judges in these states have reported that the reviews were fair and that the reports helped them in improving their job performance.

Our group supports adoption of a constitutional amendment establishing a uniform method of non-partisan appointment of district court judges. We believe that that system promotes public confidence in the judiciary. We also believe that it is possible to have such a method of selection and to assure that judges selected through that system are accountable to the citizens of this state.

We urge you to approve Senate Concurrent Resolution 1604.

S. Jud  
1-23-01  
4

# FOULSTON & SIEFKIN L.L.P.

Bank of America Tower  
534 Kansas Avenue, Suite 1515  
Topeka, Kansas 66603-3437  
(785) 233-3600  
Fax (785) 233-1610

ATTORNEYS AT LAW  
Bank of America Center  
100 N. Broadway, Suite 700  
Wichita, Kansas 67202-2295  
(316) 267-6371  
Fax (316) 267-6345

810 Frontview  
P.O. Box 1147  
Dodge City, Kansas 67801-1147  
(316) 227-8126  
Fax (316) 227-8451

MEMBER OF LEX MUNDI, THE WORLD'S LEADING ASSOCIATION OF INDEPENDENT LAW FIRMS

Jack Focht  
(316) 291-9519  
jfocht@foulston.com

Testimony Of Jack Focht, President Of Kansas Appleseed Center For Law And Justice  
Offered Before Senate Judiciary Committee  
January 23, 2001

My name is Jack Focht. I am a lawyer with the law firm of Foulston & Siefkin L. L. P. I have been practicing law in Kansas over 40 years. I am here today as the President of the Kansas Appleseed Center For Law and Justice to offer testimony in support of merit selection of judges in Kansas, as well as to support a plan of evaluation of judges.

A debt of gratitude is due to the citizens of Kansas who participated in and are responsible for the recommendations of the Kansas Citizens Justice Initiative. It is their good work that brings us here today. Kansas Appleseed took an independent path and arrived at the same destination, but without the work of the Kansas Citizens Justice Initiative we would not be in a position to support part of their recommendations today as urged by the Kansans For An Independent Judiciary.

I am sure the first question that popped into your mind is "What is the Kansas Appleseed Center For Law and Justice." In the written materials I have supplied in connection with my testimony is some material, which describes in some detail the purpose and philosophy of the Appleseed Foundation and the Appleseed Centers, which are in affiliation with one another through the Foundation. Those materials may be found under Tab 1.

In short hand fashion I would tell you that Kansas Appleseed Center for Law and Justice is a 501(c)(3) corporation organized according to the laws of the State of Kansas for charitable and educational purposes. Our Articles of Incorporation describe some of our purposes to include:

S. Jud  
1-23-01  
att 4

- (a) Providing an effective voice for the public at large and for individuals and groups that otherwise would be unable to obtain effective legal representation in Kansas.
- (b) Furthering the public interest in the development and application of law by courts, agencies, legislative bodies, and others in Kansas and assisting the advancement and improvement of the administration of justice.
- (c) Advancing the cause of social, economic and political justice in Kansas.

We were organized in the summer of 1999. Our Board of Directors is listed under Tab 2. In summary we have one retired Federal 10<sup>th</sup> Circuit Court of Appeals Judge, James Logan, former Dean of the University of Kansas Law school, one retired Kansas Supreme Court Judge, Harold Herd, who also served in the Kansas Legislature for many years and presently is on the faculty at Washburn, a former legislator, Carol Sader of Johnson County. Several of us have a number of years of experience in the Kansas courts. These include Robert Weary of Geary County, Roger Stanton of Prairie Village, Theresa James of the Wallace Saunders firm in Sedgwick County, and Larry Rute, the Deputy Director of Kansas Legal Services located in Topeka. We have lay members, who include Don Rezac who is in the cattle business in Emmet, Kansas and who is known to those of you in the Legislature, and a retired bank president and lawyer, Jordan Haines of Wichita.

We have determined that we will be involved in and advocate for systemic and/or institutional change, which affects the administration of justice in the State of Kansas. The matter under study by this committee has become one of our major projects. We believe that the suggested changes to the laws of Kansas will immensely improve the administration of justice in the State of Kansas. We are here to urge you to recommend to your colleagues these improvements.

We have attached under Tab 3 a proposal developed by a committee of our center. We take no pride of authorship nor do we seek to impose our ideas upon you unless they seem to be better than other plans or proposals before you. Judge Logan was the author of most of the materials we suggested as alternatives to the proposals of the Kansas Citizens Justice Initiative. We are committed to two basic changes:

1. Changing the present system to provide for initial selection of trial judges based on merit; and
2. Adopting a mechanism that will allow the people to evaluate and decide whether to retain a sitting judge.

The difference in the proposals submitted by the Kansans For an Independent Judiciary as a result of the recommendations of the Kansas Citizens Justice Initiative and Kansas Appleseed are simply a difference in degree and structure. Our interest is in the adoption of an amendment and enabling legislation that carries forward this dual role, as we believe that the people will only approve such a proposition if they are given something of greater value, a system for discerning whether judges should or should not be retained.

The "Final Report Of The Kansas Justice Commission" short hands some of the many reasons for removing the selection of judges from the partisan area. Simply put, there should not be Democratic, Republican, Libertarian, Reform or any other party justice. There should only be justice, for all, without fear of prejudice or impartiality. A cartoon showing ridiculous partnership of political partisanship and judicial elections appears in the October 26, 2000 edition of the Wichita Eagle along with an editorial which states in part: "No, none of this attacks the main argument for

appointing judges, which is that the elective system forces candidates into unseemly politicking and moneygrubbing.” The editorial writer, Randy Brown applauds the ideas for merit selection but in the typical cynical stance of the journalism predicts that people won’t buy them.

The present system forces the raising of money by judicial candidates from the very people who must or may appear as parties or attorneys before the recipient of the campaign donation. Whether it affects judgment or not is not the issue. It certainly may appear to. It smacks of the rich having control of the courts. We have seen some sad and sorry sights, both in Kansas and elsewhere because of the specter of buying judgeships. I have friends whose son won election to the Supreme Court of Texas, but it took two millions dollars to run the campaign. Money should not and cannot buy justice.

I have been assigned the task of attempting to analyze the role and impact of money in the judicial elections in Sedgwick County. To that end I have been gathering the required filings with the Secretary of State and the Election Commission. I have not completed the entire review but the preliminary results demonstrate the change that has taken place in Kansas judicial races. Sedgwick County had six (6) contested judge races. The incomplete returns demonstrate that in excess of \$440,000 was spent in those races. Actually the figures to date are \$444, 950.00 spent and \$440,561.41 raised. That is an average of between seventy three (\$73,000) and seventy four(\$74,000) thousand dollars for each race, split between the candidates.

The greatest expenditure was in the race for division 21 where Douglas Roth defeated the incumbent, Jennifer Jones. His reports indicate he outspent her \$86,269.02 to \$24, 347.06. Looking



at the contributor list lends credence to the claim that a particular decision made by Judge Jones upset family members and friends who raised and contributed significant sums to cause her defeat. Roth received 74,810 votes and Jones 65,726 a difference of 9084 votes. Actually this candidate spent more than \$1.00 for each vote cast.

What are the issues for judges that are uniquely partisan issues? Should we elect a judge because he/she says they will be hard on criminals? Will a Democrat be softer than a Republican? To make such statement is to demonstrate the folly of the argument.

We have urged a system where the best and the brightest that choose to apply will be subject to inspection prior to selection for appointment. This system has worked well in the appellate decisions made in this state and in those parts of the state where merit selection is the choice. We simply believe it should become the rule rather than being left to the option of the individual and several judicial districts.

We do not suggest that the people will vote for this amendment unless they understand that what they are giving up, the right to select judges based on party labels, is being replaced with a more valuable choice, the ability to have information about the performance of sitting judges.

Can any lawyer say that he is not asked by his friends, family and clients who to vote for? Which one of us has not heard the phrase: "I don't know anything about the candidates for judge."

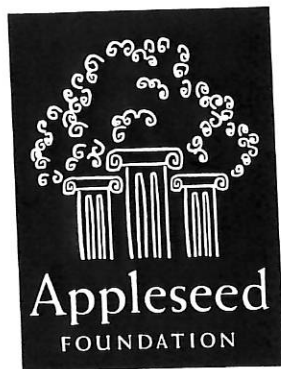
We can do better. We should do better. These changes should be made because they are right; not because they are popular. It has been said that the people would not vote for the Bill of Rights if they were simply put on a ballot without explanation of their application, but when fully understanding the magnitude of the decision the voters would opt for the guarantees secured by those

rights. We believe that an informed populace would rather have good judges whom they can remove if unsatisfactory than a judge who gets elected because of the party label or because of a huge campaign war chest supplied by litigants and lawyers.

Kansas Appleseed stands ready to assist in the effort to educate and inform the people of the State of Kansas about the wisdom of these changes.

# Appleseed: Sowing the Seeds of Justice

FIVE YEAR REPORT 1993-1997



**“Good new ideas are rare in today’s world.  
Appleseed is a great one.”**

—FRANK WEIL, *Appleseed Board member, Chairman & CEO, Abacus & Associates, Inc.*

“Being a part of Appleseed  
enables me to harness the energies  
of volunteers who are experts  
on cutting edge issues ...  
and I feel like I am having an impact ....”

—ANNETTE LOVOI, *Executive Director, Texas Appleseed*

*“In the next decade, thanks to Appleseed,  
we may look right across the land,  
from the Atlantic to the Pacific,  
and see the pristine nobility of our profession  
and the grandeur of the law to solve problems  
rooted as never before in our history.”*

—RALPH NADER

“Appleseed is looking for people who can be  
either full-time or part-time Thurgood Marshalls,  
who in the thirties and forties did the kind  
of unglamorous work which finally led  
to the 1954 decision in *Brown vs. Board of Education.*”

—MARK GREEN, *Public Advocate, New York City*

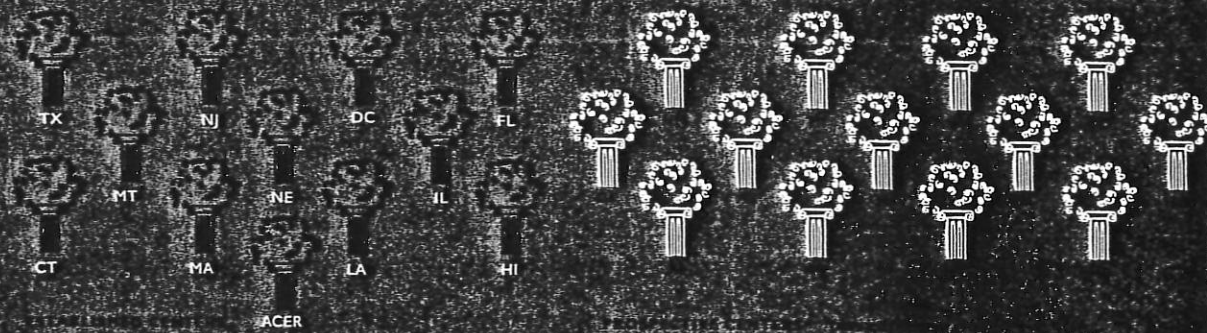
**“Appleseed is living proof that  
even lawyers can do good work.”**

—ALICE RIVLIN, *Vice-Chair, Board of Governors of Federal Reserve System*

“Too many causes go untended  
in the absence of dedicated  
and caring lawyers.  
Appleseed is ahead of the curve,  
making sure that attention  
is given to the important issues... .”

—VARD JOHNSON, *President, Nebraska Appleseed, partner, Broom, Johnson & Clarkson*

# A Growing Movement



Each Appleseed Center is rooted in its community, with its own mission, character and governing board. And each draws upon the Foundation and other Centers for ideas and assistance—yielding a whole far greater than the sum of the parts. Nationally and locally, Appleseed is complementing and strengthening public service initiatives already in place.

In just five years, Appleseed has engaged a diverse spectrum of lawyers, other professionals, and citizen-leaders committed to creating a better society. So far, Appleseed has:

- Created 12 public interest law centers in 11 states, which are solving problems effectively in their own communities
- Enabled advocacy in communities and on issues where the public interest is most tested and least represented
- Leveraged thousands of hours of volunteer time, and harnessed the skills of accomplished professionals, many of whom had never been involved in public interest work
- Helped millions of people and affected billions of dollars

All with an average annual budget of \$275,000.

With Legal Services prevented from doing precisely the systemic problem-solving that Appleseed takes up, Appleseed plays a critical role.

Appleseed is continuing to grow, because the problems facing communities across America call out for the kinds of solutions that Appleseed is uniquely able to provide.

# Harnessing the Energy of Volunteers

*"I think this is the best thing  
to come down the pike for mobilizing energy,  
talent and direction  
in a long, long time."*

ARTHUR MILLER, Bruce Bromley Professor of Law, Harvard Law School

APPLESEED IS EFFECTIVE because it harnesses the time and talents of volunteer lawyers, professionals and other civic leaders to make a difference in their own communities and across the country.

In one year, one Center with one staff person—DC Appleseed—leveraged \$880,000 worth of volunteer time. Every \$1 contributed to that Center generates \$10 in volunteer hours. The Appleseed Fund for Justice's child support project, which will improve dramatically the collection of child support in Illinois, used 52 volunteers, and was chaired by a retired state supreme court justice. In all, the Appleseed Fund coordinates 80 volunteers on its various projects with two paid staff.

What makes Appleseed unique, as one reporter recently noted, is that its volunteers are senior partners in major law firms, law school deans, general counsels of major corporations, along with young lawyers and students. Their wealth of knowledge, skills and connections build a bridge between generations, and are

instrumental to the success of Appleseed's initiatives.

Typically, Appleseed Centers develop interdisciplinary task forces that bring together volunteers who embrace a wide variety of professional backgrounds and points of view. Unlike many pro bono causes, volunteers are both the architects and builders of Appleseed projects. Volunteers are involved at the earliest juncture, called upon to use their creative and analytical skills to both identify the cause of a problem and develop a strategy suited to solve it.

Appleseed mobilizes successful lawyers who have not been involved in pro bono efforts. In doing so, Appleseed, in the words of Harvard Law Professor Richard Parker, helps "to build into all sorts of legal careers a vital element of well-organized, high-impact public interest law."

At the same time, Appleseed is nurturing the idealism and talents of young lawyers and law students to take on significant public issues as a full-time career or, more likely, as an integral part of their private practice. Appleseed's fellowship program

gives law students an unmatched opportunity to use their skills in support of public interest projects across the country. And, Appleseed is creating new public interest positions—15 so far—to provide an outlet for careers dedicated to public service.

## Ensuring a Voice

CUTBACKS IN FEDERAL funding of legal services in 1994 shut the doors of the only statewide organization working on policy and law reform issues affecting poor and working Nebraskans.

With Appleseed's assistance and start-up funding, Nebraska Appleseed was able to fill this critical gap. Nebraska Appleseed's Board of Directors includes a former Governor, the General Counsel of Berkshire Hathaway, and many other leaders of the bar and public life. With its experienced staff, they have made Nebraska Appleseed the leading—and often the only—voice for reform in the state.

As its first effort, Nebraska Appleseed began to sort out the effects of federal welfare reform, which another federal law placed off-limits to legal services.

Nebraska Appleseed persuaded the state to extend a lifeline to the state's 14,000 legal immigrants, who were cut off from public assistance. It made sure that lawyers were available to protect hundreds of disabled children who faced the sudden loss of their benefits.

Nebraska Appleseed commissioned research that revealed that the jobs available for most unskilled former welfare recipients would not sustain a single parent with two children. Today, Nebraska Appleseed is working to address this gap before families are left hungry or homeless. Finally, Nebraska Appleseed is monitoring nearly \$5 million in job-training funds to ensure that the money is used to help low-wage workers enter living wage jobs.

Turning to the meatpacking industry, where shockingly poor health and safety conditions became a national scandal, Nebraska Appleseed exposed a different kind of abuse.

Nebraska Appleseed is challenging a closed-door deal between the state and a major meatpacker, which gave away \$2.5 million in tax "incentives" to induce construction of a plant on which building had started months earlier. Nebraska Appleseed's suit seeks to prevent abuses by setting out clear criteria for awarding incentives, potentially valued at \$1.5 billion, in the future. And, Nebraska Appleseed

is working to make sure that the industry is held accountable for the use and abuse of undocumented workers, who account for one-fourth of all meatpackers.



*Appleseed's work is defined and dramatized by the work of its local Centers. Not only in Nebraska, but also in Hawaii, Louisiana, Montana, and other states. Appleseed is making sure that there is at least one powerful voice for the public interest. These Centers take on very different issues, but they share a common mission to improve the quality of life and law in states where the resources are modest and the needs intense.*



provides the financial, professional, legal and technical support to launch, strengthen and sustain Appleseed Centers.

At the outset, in Nebraska, as with all new Centers, the Foundation recruits and trains local leadership, and serves as staff until a full-time lawyer is hired. The Foundation provides challenge funding to help jump start local efforts, yielding maximum leverage for our dollars. Finally, Appleseed helps strategize and launch each Center's initial projects.

The Appleseed Foundation continues to help Centers at every stage of their development. Most important, the Foundation serves as a clearinghouse, connecting the knowledge, experience and energy of Appleseed Centers, and allowing good ideas to take root. The Foundation provides technical support, outreach, and fundraising assistance, state-of-the-art computer equipment and technology to network Appleseed Centers, and much more. The Foundation provides experts in a range of fields, from criminal justice to antitrust law, linking Appleseed Centers' grass roots to national know-how.

Malcolm Rich, Executive Director of the Appleseed Fund for Justice in Chicago, notes that "The Appleseed Foundation helps us formulate ideas for organizational growth and development, situates us as a part of a national network, and provides innovative fundraising suggestions. The Foundation's support has dramatically increased the effectiveness of our reform-minded efforts."



# Sowing the Seeds of a Better Society

*"I like the Appleseed projects —they generally require quite a wide range of legal and other skills, aren't focused primarily on litigation, have a solid chance of doing some real public good and call for policy judgments that are different and broader than those I usually encounter."*

—PETER HAJE Appleseed Board member, Executive Vice President, General Counsel and Secretary, Time Warner, Inc.

THERE ARE NO EASY ANSWERS or formulas for solving the complex problems that Appleseed Centers address. Appleseed believes that by encouraging diverse, innovative local reform, it will come up with the best possible solutions. In addition to the projects described in previous pages, Appleseed Centers are:

#### **Making Government Work Better.**

DC Appleseed developed a plan and won the support of the President and Congress to solve the District of Columbia's \$5 billion pension liability.

Texas Appleseed Advocacy Fund helped pass the first legislation to ensure that any private system for delivering public assistance would be accountable, fair and effective. Texas Appleseed helped draft and pass a pioneering ordinance that will allow government to ensure that hazardous materials carried across the Mexican border will be transported safely.

New Jersey Appleseed advocated on behalf of the last stable, middle-class minority neighborhood in Atlantic City, which would be dislocated by a highway being built to serve a casino.

#### **Preserving Access to Justice.**

Texas Appleseed is working to catalyze leaders of the bar to protect immigrants in the face of federal legislation that sharply limited asylum and judicial review.

Montana Appleseed advocated in a potentially precedent-setting case to allow state courts to award fees to non-profits to enable them to bring litigation of significant public interest.

#### **Protecting Children and Families.**

The Appleseed Fund for Justice in Chicago has designed a new child support system that will reengineer one of the nation's worst systems.

Massachusetts Appleseed established the first program to train lawyers in the state to provide free legal assistance to low-income parents who wish to adopt children in foster care, eliminating a major barrier to moving children into permanent homes.

#### **Advocating for Consumers.**

New Jersey and Connecticut Appleseed are helping to protect \$1.5 billion in public assets as health care insurers in their states convert from non-profit to for-profit companies. In New Jersey, Appleseed with an appellate court victory ensured that consumers have access to information about HMO's services and pricing.

Massachusetts Appleseed secured a bank's commitment for a \$1 million model loan program to assist elderly homeowners in refinancing illegal loans from substandard lenders.

Montana Appleseed has filed a class action against a national company, which finances the work of fraudulent contractors who victimize homeowners in Montana.

# Donors to the Appleseed Foundation, 1993-1997

Appleseed is grateful  
for the generous contributions listed  
in this directory. The number of donors  
is well in the hundreds of thousands.

## \$1,000 - \$2,499

GEORGE B. ADAMS  
ANDERSEN CONSULTING  
ANDERSEN GOVERNMENT SERVICES  
THE ARCHITECTURAL HERITAGE  
FOUNDATION  
ARENT FOX KINTNER PLOTKIN  
& KAHN  
ROGER S. BASKES  
BELL ATLANTIC  
JOAN Z. BERNSTEIN  
BEVERIDGE & DIAMOND  
DONALD E. BIEDERMAN  
RICHARD L. BRAUNSTEIN  
DAVID O. BROWNWOOD  
BERNARD BRESSLER  
BUTLER FAMILY FOUNDATION  
CADELL & CHAPMAN  
HARTLEY JAMES CHAZENI  
JOHN F. COGAN  
WILLIAM T. COLEMAN  
JOE CREWS  
ROBERT L. CROSBY  
CROWELL & MORING  
JONATHAN W. CUNEO  
PAUL R. D'AMATO  
DIANA M. DANIELS  
M. DAVID DISTLER  
GARY G. ELDEN  
DAVID B. FILVAROFF  
S. JOSEPH FORTUNATO  
LEON FRIEDMAN  
FULBRIGHT & JAWORSKI, LLP  
GILLETTE CORPORATION  
ARNOLD GREENBERG  
STEPHEN GREENBERG  
RICHARD A. GROSSMAN  
JOHN H. HECHINGER, SR.  
HOGAN & HARTSON, LLP  
HENRY A. HUBSCHMAN  
JACOB BURNS FOUNDATION  
RICHARD G. KASS  
ROBERT J. KATZ  
WILLIAM B. KING  
KPMG PEAT MARWICK  
WILLIAM LANGSTON

THOMAS R. LONG  
PETER L. MALKIN  
WILLIAM B. MALLIN  
MCGLINCHEY, STAFFORD LANG  
FOUNDATION  
WILLIAM G. MESERVE  
NADIA MILLERON  
MINTON, BURTON, FOSTER  
& COLLINS  
ALAN MORRISON  
JOSEPH E. MULLANEY  
JOHN PAYTON  
PUBLIC SAFETY RESEARCH  
INSTITUTE  
SHELDON RAAB  
BRUCE M. RAMER  
GERSHON M. RATNER  
RISCASSI & DAVIS, PC  
ALAN J. ROTH  
MILES L. RUBIN  
LOWELL E. SACHNOFF  
SALADOFF & HOLTZ, PC  
VICTOR E. SCHWARTZ  
GERALD H. SHERMAN  
EARL J. SILBERT  
SKADDEN, ARPS, SLATE, MEAGHER  
& FLOM  
RONALD J. TABAK  
PARKER THOMSON  
BEN F. VAUGHAN  
THOMAS J. VESPER  
HARRIS K. WESTON  
WILEY, REIN & FIELDING  
JOHN B. WINSTON I  
WOLF FOUNDATION  
NIGEL G. WRIGHT

## \$2,500 - \$4,999

ARTHUR ANDERSEN  
BARON & BUDD  
DAVID F. CAVERS  
DAVID A. DOHENY  
J. CHRYS DOUGHERTY  
DIANE DWIGHT  
SHELDON ELSÉN  
ALLEN E. EVANS

WALTER J. HANDELMAN  
DONALD HIRSCH  
GREGORY S. C. HUFFMAN  
JOSEPH L. HUTNER  
MEREDITH J. KANE  
KENNETH LEWIS  
MCDERMOTT, WILL & EMERY  
MORGAN, LEWIS & BOCKIUS LLP  
DAVID PAGE  
ROBERT LICHTEN FOUNDATION  
WILLIAM SCHURTMAN  
DAVID SILVER  
STEPHEN D. SUSMAN  
PAUL H. TOBIAS  
RALPH S. TYLER  
WILMER, CUTLER & PICKERING

## \$5,000 - \$10,000

BARBARA ALDAVE  
STEPHEN M. BOYD  
CHARLES L. BROCK  
COVINGTON & BURLING  
NICHOLAS W. FELS  
JOHN D. FISCH  
FRIED, FRANK, HARRIS, SHRIVER  
& JACOBSON  
HERBERT P. GLEASON  
PETER R. HAJE  
HARMAN FAMILY FOUNDATION  
WILLIAM H. HAZEN  
JUDITH RICHARDS HOPE  
JAMES S. HOSTETLER  
LEMBERG FOUNDATION  
EDWARD M. LEVIN  
RONALD LEWIS  
ELLIOTT MANNING  
RICHARD J. MEDALIE  
JACK H. OLENDER & ASSOCIATES, PC  
KATHY D. PATRICK  
PAUL, WEISS, RIFKIND, WHARTON  
& GARRISON  
RALPH I. PETERSBERGER  
ROSENMAN & COLIN, LLP  
STANLEY P. STRAUSS  
SUMMIT FUND OF WASHINGTON  
EUGENE L. VOGEL

THE WASHINGTON POST  
COMPANY  
RICHARD WERTHEIMER

## \$10,000 - \$19,999

DEBS FOUNDATION  
EMOND & VINES  
GAIL ERICKSON  
TOMMY JACKS  
LARRY KING  
HUGH LATIMER  
ALAN L. LEFKOWITZ  
EUGENE & AGNES E. MEYER  
FOUNDATION  
ARTHUR R. MILLER  
NORMAN FOUNDATION  
JESSIE SMITH NOYES  
FOUNDATION DIRECTOR'S  
DISCRETIONARY FUND  
RONALD J. PALAGI  
BERTRAND B. POGREBIN  
ABE POLLIN  
SALOMAN FOUNDATION  
NANCY BOXLEY TEPPER  
WALTER UMPHREY  
D. GIBSON WALTON  
WOODS CHARITABLE FUND  
PHILIP F. ZEIDMAN

## \$20,000 AND ABOVE

ANONYMOUS  
ROBERT L. BACHNER  
CONSUMER SUPPORT  
& EDUCATION FUND  
MARK R. JOELSON  
JOYCE FOUNDATION  
ROBERT H. MUNDHEIM  
RALPH NADER  
OPEN SOCIETY INSTITUTE  
PAUL D. RHEINGOLD  
SAFETY SYSTEMS FOUNDATION  
SMART FAMILY FOUNDATION  
SONY USA FOUNDATION  
STERN FAMILY FUND  
TURNER FOUNDATION  
URIS BROTHERS FOUNDATION  
FRANK A. WEIL

## IN-KIND CONTRIBUTORS

ARTHUR ANDERSEN

BUFFALO BILLIARDS & FORMAN  
BROTHERS

LEGAL SEA FOODS

4-14

**"Good new ideas are rare in today's world.  
Appleseed is a great one."**

JEANNE WELLS, Appleseed Board member, Chairman & CEO, Abacus & Associates, Inc.

"Being a part of Appleseed  
enables me to harness the energies  
of volunteers who are experts  
on cutting edge issues ...  
and I feel like I am having an impact ...."

ANNETTE LOVO, Executive Director, Texas Appleseed

*"In the next decade, thanks to Appleseed,  
we may look right across the land,  
from the Atlantic to the Pacific,  
and see the pristine nobility of our profession  
and the grandeur of the law to solve problems  
rooted as never before in our history."*

RALEIGH NADER

"Appleseed is looking for people who can be  
either full-time or part-time Thurgood Marshalls,  
who in the thirties and forties did the kind  
of unglamorous work which finally led  
to the 1954 decision in Brown vs. Board of Education."

MARIE GREEN, Public Advocate, New York City

**"Appleseed is living proof that  
even lawyers can do good work."**

ARTICLE RIVKIN, Vice-Chair, Board of Governors of Federal Reserve System

"Too many causes go untended  
in the absence of dedicated  
and caring lawyers.  
Appleseed is ahead of the curve,  
making sure that attention  
is given to the important issues... ."

HOWARD JOHNSON, President, Nebraska Appleseed, partner, Broom, Johnson & Clarkson

## KANSAS APPLESEED BOARD OF DIRECTORS

Reginald L. Robinson  
Counselor to the Chancellor  
University of Kansas  
230 Strong Hall  
Lawrence, KS 66045-1752  
(785) 864-3629  
(785) 8644120 (fax)  
robinson@co.wpo.ukans.edu

Honorable James K. Logan  
The Logan Law Firm  
153 W. 151st St., Suite 110  
Olathe, KS 66061  
(913) 390-8900

Honorable Harold S. Herd  
Washburn Law School  
1700 College  
Room 301  
Topeka, KS 66621  
(785)231-1010 ext. 1631

Larry R. Rute  
Deputy Director  
Kansas Legal Services, Inc.  
712 South Kansas Ave., Suite 200  
Topeka, KS 66604  
(785) 233-2068  
(785) 354-8311 (fax)

Jack Focht  
Special Counsel  
Foulston & Siefkin  
700 Bank of America  
Wichita, KS 67202  
(316) 267-6371  
(316) 267-6345 (fax)  
[jfocht@foulston.com](mailto:jfocht@foulston.com)

Carol Sader  
8612 Linden Drive  
Prairie Village, KS 66207  
(913) 341-9440 (phone & fax)  
[HCSADER@aol.com](mailto:HCSADER@aol.com)

Don M. Rezac  
12350 Ranch Rd.  
Emmett, KS 66422  
(785) 224-5613 (mobile)  
(785) 535-2961 (home)  
(785) 8894514 (fax)

Theresa James  
Wallace, Saunders, Austin, Bron & Enoch, Chtd.  
600 EPIC Center  
301 N. Main  
Wichita, KS 67202-4806  
(316) 269-2100  
(316) 269-2479 (fax)  
tij@wi.wsab.com

Robert Weary  
Weary-Davis  
819 N. Washington Street  
P.O. Box 18  
Junction City, KS. 6641-0187  
(785) 762-2210  
wearylaw@wearylaw.com

Roger Stanton  
Berkowitz, Feldmiller, Stanton, Brandt, Williams & Stueve, LLP  
Suite 227, 4121 West 83rd Street  
Prairie Village, KS. 66208  
(913)649-7007  
stanton@bfsbws.com

Jordon L. Haines  
Bank of America Center  
100 North Broadway  
Wichita, KS 67202  
(316) 262-4311

FAX MEMORANDUM

TO: Carol Sader, fax 913-341-9440  
Teresa James, fax 316-269-2479

FROM: James K. Logan

DATE: September 8, 2000

IN RE: Kansas Appleseed - Judicial Selection Project

---

Dear Carol and Teresa,

Enclosed herewith is a draft of the proposed changes in the Kansas Constitution and the statutes to carry out the nonpartisan selection of all district judges in Kansas. Roger Stanton has approved this draft.

I need to explain that a review of the Kansas Constitution indicates that there needs to be some changes in Article 3, Sections 6 and 8. Thus, it will have to be placed before the voters. We did the minimal changes in the existing provisions, delegating to the Legislature the details as would seem to befit the constitutional amendments. If the clause is too long or complicated, it might not be approved. If we changed it so that the election or nonpartisan selection is at the option of the Legislature, it will wipe out the merit appointment system used in about half of Kansas counties. I do not know whether it is too late to get the matter on the ballot for this year, but I assume it is. This means that any legislation to implement will have to come after the adoption of the constitutional amendment, if it is adopted. But we have gone ahead and made the changes in the current statute necessary to carry out the program if it is made applicable to all district judges. Surprisingly, that is not too extensive, as you can see by the mark-up of the sections in 20-2901, et seq.

The hard part came in drafting the evaluation system, which we all believe is important in order to sell the project to the public. We did this by legislative act, new sections at the end of the current provisions. The same kind of evaluation system could be established by Supreme Court Rule, but Justice Herd thought it would be better to have it done this way, at least as we interpret his remarks in an earlier letter to us. I suppose the choice of which way to go is one by the Legislature, but we do think that it is important to have a proposed evaluation system in place in connection with the campaign to have the constitutional amendment passed.

Carol Sader  
Teresa James  
September 8, 2000  
Page 2

We did a mock-up like a legislative bill without trying to retype all the sections in which we made minor changes. The actual bill would be drafted by the Legislative counsel's office and certainly would include the entire remaining section after these changes that are proposed, and may take a slightly different form than this little model. It would not be something to be done in the 2001 session if the constitutional amendment cannot be placed on the ballot until 2002.

In drafting the evaluation system, we included in the first section the goals that we thought were appropriate instead of setting out the items the evaluation could consider. We left that to the Commission, partly because the different evaluators: lawyers, jurors, and non-lawyers who have contact with the court system should be asked different questions based on what is appropriate for them. We think the Commission can come up with an appropriate questionnaire, although perhaps there should be formulated one uniform questionnaire for each of the three categories. It could be worked up on the basis of questions asked by the individual states that have such systems so that there can be a uniform questionnaire used throughout the State of Kansas. We can discuss that at our Applesed meeting.

On what groups should participate, we followed the decision of our committee to have basically three groups. In accordance with our committee decision, we limited the non-survey sources that were always to be considered to the publicly available legal disciplinary records of the judge. The other items on the list, you will recall, our committee thought should be determined by the Commission itself.

As to the membership on the evaluation commission, you will recall that we thought about having the Chief or other Supreme Court Justice, possibly other judges at the same level, such as an administrative judge, attorneys and non-lawyers. But in reviewing the statute, the Judicial Nominating Commissions are already set up in every district that currently has a non-partisan selection system. It seemed simpler to use that same commission to do the evaluations, because it contained a Supreme Court justice or a judge to serve in lieu thereof, plus an equal number of lawyers and non-lawyers, with the lawyers elected by their peers and the non-lawyers by the Board of County Commissioners. The proposed act would allow them to appoint or hire such additional help as they consider necessary or desirable to carry out the functions.

On the funding, there is already a fund under K.S.A. 20-138 for the Supreme Court and Court of Appeals Nominating Commissions. We thought we should simply let that fund pay for the district commissions, realizing, of course, that it would take substantially more monies. But instead of a legislative appropriation, which might have the effect of killing the bill, we believe, in accordance with our committee's decision, that we just add sufficient dollars to every court case filed in district courts in Kansas to provide the additional funding. With the commissions already in place, the cost should not be great, particularly if the commissions would use the bar associations to distribute the

Carol Sader  
Teresa James  
September 8, 2000  
Page 3

questionnaires to lawyers and court personnel to distribute the questionnaires to jurors and non-lawyer persons with major contact with the court system. Perhaps some clerical help would be needed to tabulate the responses and to prepare a document or news release for release to the public. If the questionnaires were established to be uniform statewide, there would not be any initial work to formulate those questions. You will recall that we did not want to make this anything close to the expensive proposition it is in most of the other states that have adopted this system of evaluation.

You will note that we gave some flexibility to the commission as to the information it revealed to the public, but did require the commission to make a report to each judge in the election years in which the judge was not up for consideration for retention (for the judge's self-help) and made a discussion with the judge mandatory any time the commission had doubts as to whether to recommend for retention. We did require some statistical data and an ultimate recommendation of whether to retain.

I will bring to the Monday meeting copies for all the members, plus a copy of the pages of questions we considered in our committee review (a copy of which I am sending to Judges Waxse and Leben).

Jim

JKL/nm

Enclosures

cc: Roger Stanton, *via fax 913-649-9399 (without enclosures)*  
Judge Steve Leben, *via fax 913-715-4000*  
Judge David Waxse, *via fax 913-551-5480*



## JUDGE SELECTION AND RETENTION

Although our organization has made a tentative decision to support the proposed changes to require all Kansas trial judges to be appointed subject to retention elections, as are the appellate judges, there are some things to consider:

### Preliminary Questions

1. Such a law with an evaluation system similar in any significant way to other states which appoint all judges would apply (presumably) to our Kansas Supreme Court and Kansas Court of Appeals judges. Does that run a risk of reversal of the selection system for those judges, or a risk of incurring those judges opposition to the change for trial judges?

2. How many of the incumbent trial judges in districts with election of judges were initially appointed to their position, and how many currently run unopposed? The current August issue of the ABA Journal has an article "Bench Battle" which says that a study of 11 states providing for judicial elections showed 53% of 1929 judges first got their jobs by appointment instead of at the polls (topped by Minnesota's 89%). The article says that 85% of Florida's 731 trial judges have faced no opposition at the polls. Does this mean judicial elections are not what they are touted to be; that governors appoint (not from a panel) and once in office most judges run unopposed either because the bar likes them or lawyers fear the consequences of an unsuccessful challenge?

We might like to know how many trial judges in Kansas districts which elect were initially appointed and how many never faced opposition in subsequent elections. And how many who did face opposition later were appointed by a Republican governor in a solidly Democratic county (Wyandotte) or vice versa. It might prove interesting and provide some grist to support at least making the Governor appoint from three originating with a panel.

3. The current (July) issue of the Journal of the Kansas Trial Lawyers Association has pro and con articles on the subject of election of district court judges. The con article cites a number of federal judge appointments in Kansas for their political connections to the President or a U.S. Senator. But is not that in line with the ABA article's comments that many judges subject to the electoral process got their head start the same way?

### Evaluation Plans

If we are to help support the elimination of the selection, we need to resolve a number of questions before we draft a proposed evaluation plan. Some are as follows:

12. How financed?

- A. Legislative appropriation.
- B. County Commissioners budget (for district judges).
- C. Solicitation by bar associations or other groups.
- D. Volunteer services.
- E. Added responsibilities to Supreme Court personnel and budget.
- F. Other \_\_\_\_\_

13. Other questions.

- A. Is there justification for difference procedures in thinly populated districts than in metropolitan areas?
- B. Are different criteria and procedures to be utilized in evaluating appellate judges with statewide jurisdiction than district court judges?
- C. Should judges be evaluated a year or more before elections to be given a chance to improve their image and performance?
- D. Do the evaluating commissions need special training programs?