

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Mike O'Neal at 3:30 P.M. on March 15, 2006 in Room 313-S of the Capitol.

All members were present except:
Michael Peterson- excused

Committee staff present:
Jerry Ann Donaldson, Kansas Legislative Research
Jill Wolters, Office of Revisor of Statutes
Cindy O'Neal, Committee Secretary

Conferees appearing before the committee:
Senator Tim Huelskamp
Kathy Porter, Office of Judicial Administration
Carol Green, Clerk of the Appellate Courts
Randall Allen, Kansas Association of Counties
Jim Clark, Kansas Bar Association
Patricia Scalia, Kansas Board of Indigent Defense
Rich Gannon, Kansas Press Association
Mike Merriam, General Council, Kansas Press Association
Tim Mulcahy, Director of Justice Information Management Systems
Frank Denning, Johnson County Sheriff
Ed Peterson, Johnson County Commissioner
Doug Smith, Kansas Credit Attorney Association
Paul Morrison, Johnson County District Attorney Association
District Judge Meryl Wilson, 21st Judicial District, Manhattan
District Magistrate Judge Timarie Walters, 20th Judicial District, St. John
District Judge Richard Smith, 6th Judicial District, Mound City

Chairman O'Neal opened the hearings on **SB 419 - statements of substantial interest; filing required for certain officers and employees of the judicial branch.**

Senator Tim Huelskamp appeared as the sponsor of the bill. Current law exempts judicial branch employees from filling out and filing a Statement of Substantial Interest form for public review. The proposed bill would require Supreme Court Justices, Court of Appeals Judges, members of the Commission on Judicial Qualifications, members of the Supreme Court Nominating Commission, law clerks assigned to an appeals judge or justice and any appellate nonjudicial court employee that performs specific duties. (Attachment 1)

Kathy Porter, Office of Judicial Administration, informed members that there is a Supreme Court Rule that requires all judges fill out a financial disclosure, which is on file in the Clerk of the Appellate Courts. The records are available for public review. Therefore, she saw no need to change what is currently being done. (Attachment 2)

Carol Green, Clerk of the Appellate Courts, stated that the only time she would notify a judge or justice that someone requested to review their disclosure form is if she felt there was a security threat.

The hearing on **SB 419** was closed.

The hearing on **SB 407 - courts; increasing juror's fees;** was opened.

Randal Allen, Kansas Association of Counties, appeared as a proponent of the bill which would increase the compensation a juror receives to between \$10 - \$50 per day, depending on what each county wanted to pay. (Attachment 3)

CONTINUATION SHEET

MINUTES OF THE House Judiciary Committee at 3:30 P.M. on March 15, 2006 in Room 313-S of the Capitol.

Jim Clark, Kansas Bar Association, supported the pay increase, because it would not be a mandate and would be done at the discretion of the board of county commissioners. ([Attachment 4](#))

Kansas Trial Lawyers Association did not appear before the committee but requested their written testimony in support of the bill be included in the committee minutes. ([Attachment 5](#))

The hearing on **SB 407** was closed.

The hearing on **SB 505 - electronic access to court records; exemption from fees**, was opened.

Patricia Scalia, Kansas Board of Indigent Defense, appeared in support of the bill. She explained that the bill would allow free electronic access to court records if the defendant is indigent. The Board of Indigent Defense could not afford the proposed \$2.00 fee per access that has been discussed between the Court and INK. That amount would cost them \$17,000 annually. ([Attachment 6](#))

Kathy Porter did not oppose the bill but was concerned because most judicial districts do not have electronic access to their records. ([Attachment 7](#))

Rich Gannon, Kansas Press Association, appeared to request an amendment which would make probable cause affidavits submitted in support of arrest warrants open to the public. ([Attachment 8](#))

Mike Merriam, General Council, Kansas Press Association, explained that *State v. Stauffer* triggered the statutory closing of arrest warrant affidavits. False affidavits have resulted in numerous cases since that time and he believes that this amendment would hold the affidavits accountable. ([Attachment 9](#))

The hearing on **SB 505** was closed.

The hearing on **SB 337 - compensation for certain judicial branch employees, docket fees; electronic access to court records**, was opened.

Tim Mulcahy, Director of Justice Information Management Systems, explained that the bill expands the purpose for which money could be expended from the Judiciary Technology Fund to include the operation and maintenance of a statewide system of electronic access to court records. There would be an increase in docket fees to fund the system. ([Attachment 10](#))

Frank Denning, Johnson County Sheriff, informed the committee that Johnson County has established the Justice Information Management System (JIMS) as their central computer repository for district court records. These records are available at no cost when they are accessed. The bill proposes a \$75.00 registration fee and a \$2.00 per-search fee for each record. It would have a negative impact on daily operations for the Sheriff's Office. ([Attachment 11](#))

Ed Peterson, Johnson County Commissioner, commented that the JIMS cost \$4 million to set up and another \$2 million each year to maintain. He strongly discouraged a user fee for those individuals wanting to access court records via the internet. ([Attachment 12](#))

Jim Clark, Kansas Bar Association, appeared in support of free electronic access to court records but opposed a docket fee to help set the program up. ([Attachment 13](#))

Doug Smith, Kansas Credit Attorney Association, was concerned with the docket fee generating \$3.2 million dollars that would go towards the development of the system and wondered what would happen to that money once the system was up and running. ([Attachment 14](#))

Paul Morrison, Johnson County District Attorney Association, informed the committee that their website received a quarter of a million "hits" last year. ([Attachment 15](#))

CONTINUATION SHEET

MINUTES OF THE House Judiciary Committee at 3:30 P.M. on March 15, 2006 in Room 313-S of the Capitol.

Kathy Porter, Office of Judicial Administration, liked the docket fee to expand technology but was concerned that it was at the expense of raising judges salaries. (Attachment 16)

District Judge Meryl Wilson, 21st Judicial District, Manhattan, requested that the committee amend the bill back to its original form providing for a \$9,000 salary increase for district judges and district magistrate judges. (Attachment 17)

District Magistrate Judge Timarie Walters, 20th Judicial District, St. John, informed the members that the national median salary for district magistrate judges is \$99,000 and Kansas district magistrate judges are currently receiving \$50,000. Kansas is ranked 31st in judges salaries. (Attachment 18)

District Judge Richard Smith, 6th Judicial District, Mound City, explained that the proposed increase in the docket fee would raise \$3,197,417 with the cost of the judicial salary initiative being \$2,970,297. Some docket fees would be raised as little as \$2.00 and other as much as \$39.00. Even with the increase in docket fees, Kansas' fees would still be less than surrounding states. (Attachment 19)

The hearing on SB 337 was closed.

The committee meeting adjourned at 5:30 p.m. The next meeting was scheduled for 3:30 p.m. on March 16, 2006 in room 313-S.

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State Capitol, Room 128-S
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STATE OF KANSAS

Senator Tim Huelskamp, Ph.D.

Committee Assignments

Elections & Local Government,
Chairman
Information Technology, Co-Chairman
Kansas Legislative Education &
Research, Past President
Agriculture
Medicaid Reform Task Force
Natural Resources
Natural Resources Legacy Alliance

Testimony by Senator Tim Huelskamp
House Judiciary Committee – SB 419
Wednesday, March 14, 2006

Mr. Chairman and fellow committee members:

Thank you for the opportunity to visit with you about SB 419 – a bill that would bring more financial disclosure to the Judicial Branch.

All of us are personally familiar with the Ethics requirement that nearly 4,000 state employees – including the Legislature – file a Statement of Substantial Interest for public review. We detail ownership, investments, compensation and other financial arrangements that reveal any potential conflict of interest as we make public policy for the state.

But the law specifically exempts the entire Judicial Branch from this disclosure requirement. In response, the Rules of the Supreme Court require every Supreme Court justice and court of appeals judge to file their own – and very similar – financial disclosure. However, these requirements have two prime deficiencies – both of which are corrected in SB 419.

First, the Rules require these disclosures to be filed with the Clerk of the Appellate Court. The Clerk maintains a public log of those who request to review these filings. Consequently, if any attorney, for example, wanted to review potential conflict of interest of any judge that might be handling their case, the judge could know of this review. SB 419 avoid this possible conflict by requiring a copy of the Court's own disclosure to be filed with the Secretary of State for public review – just like every other state employee and elected officer.

Second, and more important, SB 419 extends the financial disclosure requirement to every judicial employee or official that has a possible substantive impact on public policy. This is identical to the requirements placed on employees in both the Executive and Legislative branches. In addition to the aforementioned justice and judges, members of the Commission on Judicial Qualifications, members of

House Judiciary

Date 3-15-06

Attachment # 1

the Supreme Court Nominating Commission, law clerks, and other significant employees would file these financial disclosures. All of these individuals – whether through nomination or discipline of judges or the writing of significant contracts or even Court opinions – have a potential, substantive impact on the public. And as a result, I believe the public should know of any potential conflicts of interest that may be present.

In conclusion, SB 419 is a good government measure. It simply shines a little more light on a branch of government that, as we all know, has had a significant impact on major decisions even in the Legislature. The public deserves to know as much about the Judicial Branch, as they know about the Executive and Legislative branches.

Mr. Chairman and committee members, thank you for your time and attention today. I will stand for questions at the appropriate time.

SUPREME COURT NOMINATING COMMISSION

Chairman Richard C. Hite
 100 N. Broadway
 Suite 950
 Wichita, KS 67202
 Original Election 2001-2005
 Re-elected 2005-2009

ELECTEDAPPOINTED BY GOVERNOR

FIRST CONGRESSIONAL DISTRICT

David J. Rebein
 810 Frontview
 PO Box 1147
 Dodge City, KS 67801
 Original Election 2002-2006

Debbie L. Nordling
 HC 01 Box 2AA
 Hugoton, KS 67951
 Original Appt. 1998-2002
 Re-appointed 2002-2006

SECOND CONGRESSIONAL DISTRICT

Patricia E. Riley
 PO Box 67209
 Topeka, KS 66667
 Original Election 2003-2007

Dale E. Cushinberry
 2424 California Street
 Topeka, KS 66605
 Original Appt. 2003-2007

THIRD CONGRESSIONAL DISTRICT

Thomas J. Bath, Jr.
 7944 Santa Fe
 Overland Park, KS 66204
 Original Election 2000-2004
 Re-elected 2004-2008

Vivien B. Jennings
 5413 Norwood Road
 Fairway, KS 66205
 Original Appt. 2004-2008

FOURTH CONGRESSIONAL DISTRICT

Lee H. Woodard
 257 N. Broadway
 Suite 300
 Wichita, KS 67202
 Original Election 2001-2005
 Re-elected 2005-2009

David N. Farnsworth
 7700 E. 13th Street N #55
 Wichita, KS 67206-1289
 Original Appt. 2005-2009



Supreme Court of Kansas

KAY MCFARLAND
Chief Justice

Kansas Judicial Center
Topeka, Kansas 66612-1507

(785) 296-5322

**House Judiciary Committee
Wednesday, March 15, 2006**

Testimony in Opposition to 2006 SB 419

Thank you for the opportunity to testify on this bill. I am Kathy Porter, the Assistant to the Judicial Administrator, and with me is Carol Green, the Clerk of the Appellate Courts, who heads the office with which judges currently file Judicial Financial Disclosure Reports.

Since 1974, Kansas judges, including Supreme Court justices, Court of Appeals judges, district judges, and district magistrate judges, have been required to file Judicial Financial Disclosure Reports. Since 2002, senior judges, full-time municipal judges, and any other persons earning \$15,000 or more per year from the performance of judicial duties have been required to file a report. Reports are readily available to the public in the Office of the Clerk of the Appellate Courts. A copy of the judicial reporting form, together with filing instructions, is attached for your review, as is a copy of the Kansas Governmental Ethics Commission Statement of Substantial Interests (SSI) form, together with its definitions and guide.

The Governmental Ethics Commission SSI form and Judicial Financial Disclosure Report forms are substantially similar in the categories of information to be disclosed. This is not surprising given the fact that, in adopting the 2002 revisions to the judicial reporting requirement, the Judicial Branch closely examined judicial reporting requirements from other states, federal judicial reporting requirements, and the Kansas Governmental ethics requirements. However, the Kansas Judicial Disclosure Report differs significantly from the SSI form in that it requires an additional category of information for liabilities of the reporting individual, the individual's spouse, and the individual's dependent children or stepchildren. This reporting category was considered relevant for judges because a major purpose of judicial reporting is to provide information about potential conflicts of interest. Including the liabilities of spouses and children was considered relevant for that same reason.

Information required in other reporting categories on the SSI form and the judicial form is substantially similar. The first reporting category on the SSI form, "Ownership Interests," requires the reporting individual and the individual's spouse to report legal or equitable interests in excess of \$5,000 or 5%, whichever is less. The judicial form requires the reporting of legal or equitable interests in excess of \$5,000 for the individual reporting, the individual's spouse, and the individual's dependent children or stepchildren.

House Judiciary

Date 3-15-06

Attachment # 2

The second reporting category on the SSI form, “Gifts or Honoraria,” requires a report of gifts or honoraria having an aggregate value of \$500 or more, received by the reporting individual or the individual’s spouse. The judicial form requires the reporting of gifts, bequests, or favors received by the reporting individual and the individual’s spouse, dependent children, and dependent stepchildren for which the value exceeds \$150.

The third reporting category on the SSI form asks for compensation from all places of employment and any other business from which the reporting individual and the individual’s spouse received \$2,000 or more in compensation which was reported as taxable income on the individual’s federal income tax returns. The judicial form requires the reporting of the individual’s income exceeding \$500 from any single payor or in excess of \$3,000 from all payors, and the income of the individual’s spouse exceeding \$3,000 from a single source during the reporting period.

The SSI form next requires the reporting individual to list organizations or businesses in which the individual and the individual’s spouse hold a position of officer, director, associate, partner, or proprietor at the time of filing. The judicial form requires the individual to report businesses, organizations, labor organizations, educational or other institutions or entities in which the individual holds or has held a position of officer, director, associate, partner, proprietor, trustee, guardian, custodian, or similar fiduciary, representative, employee, or consultant at the time of filing the report or during the reporting period. Positions in both for-profit and not-for-profit organizations are reportable.

The final reporting category on the SSI form, “Receipt of Fees and Commissions,” requires the reporting of any client or customer who pays fees or commissions to a business or a combination of businesses from which the reporting individual or the individual’s spouse received an aggregate of \$2,000 or more in the preceding calendar year. The judicial reporting form requires the individual to report each client or customer who pays fees or commissions to a business or combination of businesses from which fees or commissions the judge or the judge’s spouse received an aggregate in excess of \$3,000 during the reporting period.

Regarding the reporting requirement for judges, it is unclear what would be accomplished, or how the public would be better served, if SB 419 were enacted into law. It is clear that both the SSI form and the judicial reporting form require similar information from those required to report, and that each is designed to provide the public with relevant information about the person required to report. With the exception of the additional “liabilities” reporting category required of judges, the additional requirement that judges report financial information regarding children and stepchildren in some reporting categories, and the differences in threshold reporting amounts in some categories, the information required on both forms is similar. No judge has ever failed to file the required statement, and the Judicial Branch is unaware of any accusations of false statements.

A recent newspaper article cited as a possible reason for this legislation some concern that the Judicial Branch would change its reporting requirements. It is likely that what was meant is that the Judicial Branch could simply cease its reporting requirement unless it is embedded in statute. As stated previously, the Judicial Branch has had a reporting requirement without legislative involvement since 1974, and has required the disclosure of relevant financial information in a responsible manner for approximately 32 years. The judicial duty to report is rooted in Canon 4 of the Code of Judicial Conduct, and that duty to report will continue regardless of the outcome of this bill. The more stringent reporting requirements of the judicial form are tailored to judges and the Canon 4(H) requirement that payments to judges “not give the appearance of influencing the judge or otherwise give the appearance of impropriety.” The Canon 4(H) reporting requirement will remain in place regardless of any action the Legislature might take. The enactment of SB 419 would mean that judges would file the Judicial Financial Disclosure Reports with both the Secretary of State and with the Clerk of the Appellate Courts.

Also of concern is the Senate Committee’s addition of the Commission on Judicial Qualifications and the Supreme Court Nominating Commission to the list of those persons who must file a Judicial Financial Disclosure Report. Members of both commissions are not involved in purchasing, contracting, or procurement. They do not write or draft contracts, and do not award grants, benefits, or subsidies. They also do not inspect, license, or regulate any person or entity. They are not in any way involved in fiscal matters relating to the Judicial Branch. Under K.S.A. 46-282(a)(1), it could be argued that their positions are “defined as a major policy making position.” However, the Commission on Judicial Qualifications serves in an advisory capacity to the Supreme Court, and the Supreme Court Nominating Commission’s decisions are limited by the Constitution and statute to the selection of the three names to be sent to the Governor when a vacancy occurs on the Supreme Court or Court of Appeals. Requiring the members of these commissions to submit a Financial Disclosure Report would appear to treat them differently than members of Executive and Legislative Branch boards and commissions who are not named in statute as persons required to file statements.

Thank you for the opportunity to testify, and I would be happy to stand for any questions.

JUDICIAL FINANCIAL DISCLOSURE REPORT
FOR CALENDAR YEAR 2005

Report required by Supreme Court Rule 601A Relating to Judicial Conduct
Canon 4, Subsections D, E, and H (2005 Kan. Ct. R. Annot. 571 - 578)

Return on or before April 15, 2006, to:

Commission on Judicial Qualifications
Attn: Financial Disclosure Reporting
301 SW Tenth Avenue, Room 374
Topeka, Kansas 66612

The instructions accompanying this form are a guide to be followed in preparing your annual financial disclosure report. Please read the instructions before completing the form. Complete all parts, checking "NONE" wherever you have no reportable information. **This report must be typed** but may be completed online at www.kscourts.org, printed and mailed. Sign on the last page.

1. Person Reporting (Last name, first, middle initial)

2. Title (Indicate active or senior status; full or part-time) _____

3. Court _____

4. Judicial Office Address _____

5. Date of Report _____

I. COMPENSATION [reporting individual (I) and spouse (S); for Honoraria, reporting individual (I) only; see Section I of Instructions and Canon 4H(1)]

_____ NONE (*No reportable Compensation*)

<u>Date</u>	<u>Name of Payor</u>	<u>Payee (I or S)</u>	<u>Nature of Activity</u>
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II. FEES AND COMMISSIONS [reporting individual (I) and spouse (S); see Section II of Instructions and Canon 4H(2)]

_____ NONE (*No reportable Fees and Commissions*)

<u>Name of Client or Customer</u>	<u>Address</u>	<u>Payee (I or S)</u>
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III. OWNERSHIP INTERESTS [reporting individual (I), spouse (S), dependent child or dependent step child (DC); see Section III of Instructions and Canon 4D(1), (2), (4); 4H(3)]

_____ NONE (*No reportable Ownership Interest*)

<u>Business Name and Address</u> (List address only if not publicly traded)	<u>Type of Business</u>	<u>Description of Interests Held</u>	<u>Held by Whom</u> (I, S, DC)
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IV. GIFTS, BEQUESTS, OR FAVORS [reporting individual (I), spouse (S), dependent child or dependent step child (DC); see Section IV of Instructions and Canons 4D(5)(a-h) and 4H(4)]

_____ NONE (*No reportable Gifts, Bequests, or Favors*)

<u>Date</u>	<u>Donor</u>	<u>Recipient (I, S, DC)</u>	<u>Description</u>
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V. POSITIONS [reporting individual (I) only; see Section V of Instructions and Canon 4D(3)(a)(b); 4H(5)]

_____ NONE (*Nothing to report*)

<u>Name of Business/Organization/Entity</u>	<u>Address</u>	<u>Position Held</u>
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VI. LIABILITIES [reporting individual (I), spouse (S), dependent child or dependent step child (DC); see Section VI of Instructions and Canon 4H(6)]

_____ NONE (*No reportable liabilities*)

<u>Creditor</u>	<u>Person Responsible for Liability (I, S, DC)</u>	<u>Description</u>
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VII. ADDITIONAL INFORMATION OR EXPLANATIONS *(Indicate section of Report)*

Date

Signature of Reporting Judge

FILING INSTRUCTIONS FOR JUDICIAL FINANCIAL DISCLOSURE REPORT

WHO MUST FILE: All active and senior status judges, as well as all part-time and pro tempore part-time judges who derive at least \$15,000 of their annual income from the performance of judicial duties.

SECURITY ISSUES:

Every person reporting should be aware that this Financial Disclosure Report is a public document. To satisfy security concerns, please comply with the following recommendations:

- When filing, do **not** list your residential address. Enter your Judicial Office address **only**.
- Do **not** provide more financial detail than is required by these instructions. For example, specific dollar amounts are **not** to be included.
- Do **not** report your personal residence or residences in Part III.
- Do **not** report any mortgage, equity loan, or line of credit secured by a personal residence, vehicle, boat, or motor home in Part VI.
- Do **not** provide your federal income tax return with this Report.

This Report will be on file in the Office of the Clerk of the Appellate Courts in Topeka, Kansas, as a public document pursuant to Canon 4H(7). Requests for its release must be in writing, must be signed, and must include the name, occupation, and address of the requester and of the individual or organization on whose behalf it is requested. If you have any concerns or questions about the release of your report, please call the Office of the Clerk of the Appellate Courts.

I. COMPENSATION: Compensation means income received for the personal services of the judge or judge's spouse and income derived from business; royalties, including ownership of mineral rights; annuities; and life insurance and contract payments.

Do **not** disclose the following compensation:

- Compensation for your current employment as a judge by the State of Kansas
- Your other income that did not exceed \$500 from any single payor or in excess of \$3,000 from all payors during the reporting period
- Your spouse's income that did not exceed \$3,000 from a single source during the reporting period
- Any specific monetary amounts
- Political campaign receipts
- Income derived from the Kansas Public Employees Retirement Fund (KPERS)
- Income derived from deferred judicial compensation plans
- Income derived from retirement plans, including individual retirement account income
- Social Security benefits
- Death benefits under insurance policies, gifts, inheritance, tort recoveries
- Other compensation for injuries and sickness
- Disability compensation
- Veteran's benefits
- Fees and commissions (to be reported in Part II)

Honoraria received for the performance of marriage ceremonies should be treated as compensation and reported if the total amount from all payors exceeds \$3,000 during the reporting period or if the amount received from an individual payor exceeds \$500.

Judges may accept honoraria or speaking fees generally, provided that the compensation is reported if in excess of the monetary limits, is reasonable and commensurate with the task performed, and no conflicts or questions arise of undue influence or partiality. Actual and necessary travel expenses incurred for the judge and one traveling companion are not honoraria.

II. FEES AND COMMISSIONS: List each client or customer who pays fees or commissions to a business or combination of businesses from which fees or commissions the judge or the judge's spouse received an aggregate in excess of \$3,000 during the reporting period. *The phrase "client or customer" relates only to businesses or combination of businesses.*

Do **not** list fees and commissions paid by clients or customers **who are individuals** and not businesses or combination of businesses.

The term "business" means any corporation, association, partnership, proprietorship, trust, joint venture, or a governmental agency unit, or a governmental subdivision, and every other business interest, including ownership or use of land for income. The term "combination of businesses" means any two or more businesses owned or controlled directly by the same interests. The term "other business interest" means any endeavor which produces income, including appraisals, consulting, authorships, inventing or the sale of goods and services. It is unnecessary, for the purposes of this definition, that the interest have a formal business name or structure. In the case of a partnership, it is a partner's proportionate share of the business, and hence of the fee, which is reportable, without regard to expenses of the partnership.

III. OWNERSHIP INTERESTS: List any corporation; partnership; proprietorship; trust; retirement plan, including individual retirement accounts; joint venture; and every other business interest, including land used for income, in which either you or your spouse or dependent children or dependent step children have owned a legal or equitable interest exceeding \$5,000 during the reporting period.

The individual holdings of a trust which exceed \$5,000 must be listed if the individual has control over the assets of the trust.

For a retirement plan, disclose only the name of the plan unless the holdings are held in the individual's name and subject to his or her control.

The value of a business interest is to be determined as of December 31 of the reporting period or, if disposed of during the reporting period, the valuation as of the date of disposition. The value assigned to a holding is the fair market value.

Do **not** disclose the following under this section:

- Certificates of deposit
- Bank savings or checking accounts
- Shares in a credit union
- Life insurance policies
- Annuities
- Notes
- Bonds
- Mortgage on a personal residence
- KPERS
- Interests in deferred judicial compensation plans

Ownership of other stocks and shares in mutual funds must be disclosed. For an interest in a mutual fund or pooled or common trust fund administered by an independent financial or brokerage institution (such as XYZ Mutual Fund), disclose only the name of the fund. Business interests include, among other things, property held for rental, farming, and commercial purposes, and businesses operated out of your home. For each real estate interest, indicate the general geographic location, such as city or county and state. If more than one parcel of real estate is owned in the same geographic area, identify each parcel by number (Parcel 1, 2, 3, etc.)

IV. GIFTS, BEQUESTS, OR FAVORS: A gift is a payment, advance, forbearance, rendering, or deposit of money, or anything of value, unless consideration of equal or greater value is received by the donor.

Do not report the following:

- Gifts received from a spouse or relative
- Bequests and other forms of inheritance received as the result of the death of the donor
- Gifts received as a trustee of a trust for the benefit of another
- Scholarships received from an educational institution
- Communications to your office, such as subscriptions to newspapers and periodicals
- Student loans or loans from a lending institution in its regular course of business on the same terms generally available to persons who are not judges
- Suitable mementos of a function honoring you

List all other gifts, bequests, favors, and loans received by you, your spouse or dependent children or dependent step children, during the reporting period for which the value exceeds \$150. This includes the value of continuing education programs, the costs of which are paid by others, that are attended by the judge. Continuing education program expenses paid by the judge's employer are not reportable.

V. POSITIONS: List any business, organization, labor organization, educational or other institution or entity in which you now hold or have held a position of officer, director, associate, partner, proprietor, trustee, guardian, custodian, or similar fiduciary, representative, employee, or consultant at the time of filing this report or during the reporting period. Positions in for-profit and not-for-profit organizations and businesses are reportable. Report positions even if you are not compensated and if neither you nor any member of your family has a financial interest in the entity.

Do not report:

- Positions held in a judicial organization, such as the Kansas District Magistrate Judges Association
- Positions held by virtue of a Kansas Supreme Court appointment, *e.g.*, the Kansas Lawyers' Fund for Client Protection

VI. LIABILITIES: List all of your liabilities and those of your spouse, your dependent children or dependent step children to any creditor which exceeded \$10,000 at any time during the reporting period.

Do not report as a liability in this section:

- Any liability owed to a spouse, parent, brother, sister, or child
- Any mortgage secured by real property which is a personal residence of you or your spouse
- Any loan secured by a personal motor vehicle, household furniture, or appliances that does not exceed the purchase price of the item securing the liability
- Any revolving charge account whose balance did not exceed \$10,000 on December 31 of the reporting period
- Political campaign funds.



TESTIMONY
concerning Senate Bill No. 407
re. Juror Fees

House Judiciary Committee
Presented by Randall Allen, Executive Director
Kansas Association of Counties
March 15, 2006

Mr. Chairman and members of the committee, my name is Randall Allen, Executive Director of the Kansas Association of Counties. I am here today to express our support for Senate Bill 407. The bill would amend K.S.A. 43-171 to give boards of county commissioners the discretion of increasing compensation to jurors from the current \$10 per day to an amount in a range from \$10 to \$50 per day.

As you probably know, these costs are paid from counties' general funds. As such, in prior years we have been concerned with any bill which places an unfunded mandate on county governments and have consistently opposed legislative proposals which increase the juror fee on a blanket basis in statute. We appreciate the spirit of this bill and that of the drafters in giving counties the option of establishing different rates, depending on the financial situation in each county. This also provides an opportunity for commissioners to consider compensating jurors at one rate for the first day or two of service (i.e. in recognition of the civic obligation that all of us have as citizens) and at a potentially higher rate if a jury is held for a longer time period. I would think that at least some commissioners would be interested in exploring this concept with the judges in their counties.

Given the fact that the per diem rate has not been adjusted since 1971, we understand the rationale for providing a way to adjust the rate. Some and perhaps several counties will choose to increase the rate if this bill is enacted. As such, we urge the committee to report the bill favorably for passage.

The Kansas Association of Counties, an instrumentality of member counties under K.S.A. 19-2690, provides legislative representation, educational and technical services and a wide range of informational services to its member counties. Inquiries concerning this testimony should be directed to Randall Allen or Judy Moler by calling (785) 272-2585.

300 SW 8th Avenue
3rd Floor
Topeka, KS 66603-3912
785•272•2585
Fax 785•272•3585

House Judiciary

Date 3-15-06
Attachment # 3



**KANSAS BAR
ASSOCIATION**

Testimony in Support of

SENATE BILL NO. 407

Presented to House Judiciary Committee
March 15, 2006

The Kansas Bar Association is a voluntary, professional association of over 6,700 members dedicated to serving Kansas lawyers, their clients, and the people of Kansas.

The KBA has a long-standing policy in support of increased compensation for citizens called to jury duty. KBA has supported several measures over the years to increase jury compensation where appropriate. While there have been recent proposals to increase juror compensation, such as the "Jury Patriot Act" back in 2004, such measures were flawed because the burden of the increased compensation fell on plaintiffs wishing to file a civil case, through increased docket fees. **SB 407** on the other hand, does not impose the cost of the fee increase on a disproportionate number of civil litigants, but is to be paid out of a county general fund, at the discretion of the board of county commissioners.

Consequently, the Kansas Bar Association is in support of **SB 407**, and urges the Committee to recommend it favorably.

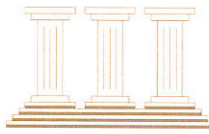
James W. Clark
KBA Legislative Counsel
785-234-5696

* * *

House Judiciary

Date 3-15-06

Attachment # 4



KANSAS TRIAL LAWYERS ASSOCIATION

Lawyers Representing Consumers

To: Representative Mike O'Neal, Chairman
Members of the House Judiciary Committee

From: Callie Jill Denton
Kansas Trial Lawyers Association

Date: March 15, 2006

RE: SB 407 Increasing Jurors' Fees (As Amended by the Senate)

I am submitting testimony on behalf of the Kansas Trial Lawyers Association, a statewide nonprofit organization of attorneys who represent consumers and advocate for the safety of families and the preservation of Kansas' civil justice system. I appreciate the opportunity to provide you with comments in support of SB 407.

One of the most important features of our justice system is the jury. Yet it has been increasingly difficult to get private citizens to serve on juries. As a result, courts may be left, as in Shawnee County, with a deficit of eligible jurors. A lack of jurors does not serve any party in the process: justice takes longer and costs everyone more.

Declining participation levels may be due, in part, to the financial burden placed on private citizens to serve on juries. Although KTLA believes it is the duty and responsibility of all citizens to voluntarily participate when called to serve, we also believe that if possible compensation to jurors should be increased to account for the financial losses of being called away from work or hiring a child care provider in order to be away from young children. SB 407 is an acknowledgment of the need to provide a more realistic stipend to Kansans that are volunteering their time to make our system of justice work.

KTLA acknowledges that the bill as amended by the Senate does not compel counties to increase the fees paid to jurors. However, eliminating the current mandated amount would allow counties with jury pool shortages to provide a larger juror fee if they can.

Thank you for the opportunity to provide you with our testimony, and we urge your support of SB 407.

Terry Humphrey, Executive Director

Fire Station No. 2 • 719 SW Van Buren Street, Suite 100 • Topeka, Ks 66603-3715 •

E-Mail: triallaw@ink.org

House Judiciary

Date 3-15-06

Attachment # 5

TESTIMONY
TO THE HOUSE JUDICIARY COMMITTEE
on SB 505
March 15, 2006

Chairman O'Neal and members of the committee:

My name is Pat Scalia and I serve as the Executive Director of the State Board of Indigents' Defense Services.

It is the statutory duty of the Board to provide the Sixth Amendment right to counsel and related defense services to indigent persons accused of felonies. To accomplish that duty, BIDS uses electronic access to court records where that service is available. Electronic access is being used to determine what cases we have been appointed to defend, the charges and crime levels charged, the assistant district attorney assigned to the case, the court reporter at the past hearings for ordering transcripts, monies that have been paid, or are due to the court, bond amount for the client, bond supervision for the client, to review all documents filed in the case and prior cases, to review appellate records and document retrieval. An informal survey indicates that BIDS accesses court records electronically 5,850 times annually.

Over the last many months, the Court has been in discussion with INK regarding the establishment of on-line access to court files statewide at a cost of \$2.00 per access. That rate would result in cost to indigent defense of \$117,000 annually. The Board of Indigents' Defense does not have such funds to pay for the electronic access. Further, the public defenders cannot keep up with a caseload averaging over 200 cases per attorney annually without electronic access. The bill would also allow court appointed attorneys free electronic access. These are the attorneys who accept appointments in geographic areas not covered by a public defender office. If there was a charge for their access to court files, there would be another six figure cost to BIDS for the over 27,000 cases handled by either public defender or assigned counsel annually.

If the Court goes forward with a statewide information system, then BIDS would certainly be the beneficiary of that as long as we were not foreclosed from access because of cost.

Respectfully submitted,



Patricia A. Scalia
Executive Director

House Judiciary

Date 3-15-06
Attachment # 6



Supreme Court of Kansas

KAY MCFARLAND
Chief Justice

Kansas Judicial Center
Topeka, Kansas 66612-1507

(785) 296-5322

House Judiciary Committee

Wednesday, March 15, 2006

Testimony in Opposition to 2006 SB 505

Sections 1 through 3 of SB 505 would provide that Board of Indigents' Defense attorneys and other attorneys appointed by the court to represent indigent defendants would have access to electronic court records at no charge. The Board of Indigents' Defense Services would be exempt from paying user fees to access electronic court records.

The Supreme Court does not oppose free access to electronic records for the Board of Indigents' Defense Services where electronic access is available. As noted in the testimony on SB 337, electronic access to district court records is currently limited to a few judicial districts, but the Court proposes to develop a statewide uniform system of electronic access to district court records with the costs to be paid by reasonable user fees. The Court would exempt from the payment of any user fees lawyers representing indigent litigants, police and sheriffs' departments, county and district attorney offices, child support collection workers, advocates for crime victims, children's advocates, programs serving victims of domestic violence, and others.

The Supreme Court does oppose Section 4 of the bill, which was deleted by the Senate Judiciary Committee. That section would prohibit the Information Network of Kansas, or INK, from entering into any contract, lease, or other form of agreement which may result in the charging of fees for electronic access to court records. INK is established by statute "to provide electronic access for members of the public to public information of agencies via a gateway service." K.S.A. 74-9302. Section 4 would harm the Supreme Court's coordinated effort to enhance statewide equity, uniformity, efficiency, and effectiveness and would jeopardize achieving the goal of maximizing public access to court information

I ask that you concur with the Senate's deletion of Section 4 from 2006 SB 505.

House Judiciary

Date 3-15-06
Attachment # 7



FLEESON, GOOING,
COULSON & KITCH, L.L.C.
L A W Y E E R S
EST. 1886

Gerrit H. Wormhoudt
Willard B. Thompson
Thomas D. Kitch
J. Eric Engstrom
Stephen E. Robison
Ron Campbell
Gregory J. Stucky
Charles E. Millsap
Edward J. Healy
Linda K. Constable
Charles E. Cole, Jr.
William P. Tretbar
Susan P. Selvidge
Thomas J. Lasater
David G. Seely
Stephen M. Stark
Lyndon W. Vix
William L. Townsley,
III
John R. Gerdes
Kent A. Meyerhoff
Brian R. Collignon
Brooks G. Kancel

Michael P. Cannady
Christopher M.
Mitchell
Special Counsel

Howard T. Fleeson
(1895-1957)
Homer V. Goosing
(1894-1986)
Wayne Coulson
(1910-1985)
Paul R. Kitch
(1911-1987)
Donald R. Newkirk
(1919-1997)
Dale M. Stucky
(1919-2002)
Phillip Mellor
(1925-2005)

March 15, 2006

To: Rep. Mike O'Neal, chairman, and members of the House Judiciary Committee
From: Lyndon Vix, counsel to The Wichita Eagle
Re: SB 505

Thank you for the opportunity to speak in support of the proposed amendment to Senate Bill 505, which would make probable cause affidavits submitted in support of arrest warrants open to the public.

Under our current law, contained in subsection (2) of K.S.A. 22-2302, probable cause affidavits are available for public examination only pursuant to a written order of the court. The statute does not indicate who has standing to request such an order or by what procedural mechanism it might be obtained. The law firm of which I am a member regularly represents media entities. In the 27 years since this subsection was enacted, we are aware of no situations in which an order of this nature has successfully been obtained, at least in Sedgwick County.

It is undisputed that probable cause affidavits supporting arrest warrants in federal courts are open to the public. In addition, my research and, that of others, has not uncovered a statute in any other state that makes closure of probable cause affidavits the rule rather than the exception as the Kansas statute does.

That doesn't mean that probable cause affidavits are universally and absolutely available in other states. But what you find when you start canvassing the landscape, is that most states, either by statute, court rule or case law, restrict the release of probable cause affidavits only until the warrant upon which the affidavit is based has been executed. An example is California Penal Code § 1534, which states that:

"The documents and records of the court relating to the warrant need not be open to the public until the execution and return of the warrant or the expiration of the 10-day period after issuance. Thereafter, if the warrant has been executed, the documents and records shall be open to the public as a judicial record."

The clear concern of this statute and provisions like it is that disclosure before execution will tip off the target of the arrest and allow them to flee or otherwise frustrate the purpose of the warrant. While our current statute restricts the availability of probable cause affidavits indefinitely, most other states recognize that once the warrant has been executed, there is no need to keep the supporting information confidential.

This distinction was highlighted by a Pennsylvania court in the case of *In re Public Information Concerning the Death of Jack Fuellhart*, 38 Pa. D. & C.4th 69, 78 (1997). The court there explained the need for a statute that prohibits the release of probable cause information until after the warrant had been executed. However, the court also said that there is a "chasmic distinction between pre-arrest secrecy and post-arrest secrecy." It went on to conclude: "It is unlikely that any Legislature will ever adopt a similar statute attempting to discourage disclosure after the suspect is arrested."

House Judiciary

Date 3-15-06
Attachment # 8

Yet, that is exactly what the Kansas Legislature did in 1979 when it enacted subsection (2) to K.S.A. 22-2302. It is worth exploring what prompted this unusual provision.

Kansas has long had a statute that makes it a crime to disclose the existence of an arrest warrant before the warrant is executed. Our current statute in this regard is K.S.A. 21-3827. However, prior to 1979, there was no statute prohibiting, in any way or at any time, the release of probable cause affidavits supporting arrest warrants. As such, members of the public, including the media, could obtain such information prior to a warrant being executed. There were constraints by the criminal statute, however, from disclosing the information to anyone else.

In 1977, Samuel Norwood was murdered in Douglas County. In the course of law enforcement's investigation of that murder, arrest warrants were issued for two individuals. A reporter from the Topeka Daily Capital became aware of the warrants through public records maintained by the Douglas County District Court. Despite the statute making it a crime to disclose the existence of a warrant prior to its execution, the Daily Capital published the names of the targets of the warrants. One of the targets was never found and the other was arrested several weeks later outside Kansas.

As a result of the Daily Capital's publication of the warrant information, criminal charges were brought against Stauffer Communications, Inc., the publisher of the newspaper, and a conviction was obtained. The publisher appealed to the Kansas Supreme Court, which overturned the conviction. In accordance with U.S. Supreme Court precedent, the Kansas Supreme Court held that the newspaper could not be criminally liable for printing information it had obtained from a public record.

It is interesting to note that the Supreme Court in Stauffer indicated that as a result of this episode, Douglas County had since restricted access to warrant information until such time as the warrants had been executed. The court endorsed this limited restriction, stating "this present practice of temporarily protecting the confidentiality of documents and records by restricting access may be justified for proper governmental reasons."

It is also worth noting that Justice Miller, in a concurring opinion, lamented the implementation of even this temporary restriction. In his opinion, "(t)his delay in the disclosure of those documents to reporters will result in delaying the accurate reporting of the news to the public."

The Stauffer case was decided in March of 1979, while the Legislature was in session. The Legislature immediately amended the omnibus crime bill that was then pending, and added the language that now appears in K.S.A. 22-2302(2) restricting access to probable cause affidavits. It appears that, in light of Stauffer, the Legislature decided that it had to prevent probable cause affidavits from being public records in order to give teeth to the statute that made it unlawful to disclose information contained in the affidavits prior to the execution of the warrants.

Unfortunately, the language employed by the Legislature was broader than the problem it attempted to address. Rather than simply limit the dissemination of information prior to a warrant's execution, the statute sealed the information for all time unless released pursuant to court order. Richard Gannon of the Kansas Press Association has spoken to David Heineman, who was chair of the House Judiciary Committee in 1979, about how this amendment came about. Mr. Heineman's research uncovered no committee minutes shedding light on this question. No hearings were held. Rather, it appears that the amendment may have been a last minute addition inserted by a late night conference committee.

Even after the restrictive language was added to K.S.A. 22-2302 in 1979, some courts continued to recognize that disclosure was more appropriately the rule, rather than the exception. In fact, in Shawnee County, the court adopted a standing administrative order granting the clerk authority to release probable cause affidavits on request. In *State v. Baker*, 249 Kan. 431 (1991), the Kansas Supreme Court held that rule did not comply with the statutory procedure; but the point is that probable cause affidavits have historically not been regarded in Kansas as the type of document that presents a threat to fair criminal proceedings once the warrant which they support has been executed.

The amendment before you seeks to restore openness and accountability to the arrest warrant process. Even so, the amendment makes information less available than it was in Kansas in 1979, less available than the Supreme Court endorsed in Stauffer and less available than it is in most other states. In an effort to build some consensus, the amendment before you also represents a significant compromise from what was originally proposed in this legislative session.

The proposed amendment provides that probable cause affidavits will generally be made public within 20 days after the execution of an arrest warrant. This is a compromise from the original proposal — and the law in most jurisdictions — which would have made the information public immediately after execution. The 20-day period generally tracks with the time period for a preliminary hearing contained in K.S.A. 22-2901 and 22-2902.

The proposed amendment allows for probable cause affidavits to be withheld or redacted to protect information such as the identity of confidential informants and undercover agents. Concerns about information such as this becoming public are often advanced in opposition to greater openness. However, since probable cause affidavits are, under present law, available to the defendant, it is doubtful that prosecutors and law enforcement officers routinely place such sensitive information in their affidavits.

The proposed amendment creates a procedure for challenging the withholding or redacting of information and provides for an award of attorneys fees to a successful challenging party. These provisions are necessary to ensure that affidavits will not be routinely sealed without justification. The attorneys' fees provision employs the same good faith standard presently contained in the Kansas Open Records Act.

Even though this proposed amendment may not go as far as some proponents of open government would like, it does represent a significant step forward in allowing the public to evaluate the fairness and effectiveness of those whom it employs.

Some of the criticisms that have been leveled at this proposed amendment should briefly be addressed.

The potential compromise of a defendant's right to a fair trial is commonly raised in opposition to the disclosure of any pretrial information. The argument is that probable cause affidavits often contain hearsay or other inadmissible information that might taint the jury pool. While concerns over defendants' rights are certainly legitimate, it should be noted that there has never been a criminal conviction overturned in Kansas based solely on pretrial publicity. The Kansas Supreme Court has also noted that any adverse publicity from information released early in a criminal proceeding is generally dissipated by the time of trial. (*State v. Boan*, 235 Kan. 805 (1984)).

It is also significant that K.S.A. 22-2902(3) requires the prosecution to prove at a publicly held preliminary hearing that there is probable cause to believe that the defendant committed the crime of which he or she is accused. This hearing reveals all, if not more, of the information used to obtain an arrest warrant.

It has been suggested that the approach to probable cause affidavits taken by other states should be disregarded because, unlike Kansas, most of those states use a secret grand jury procedure. This criticism has at least three flaws. First, even states that use a grand jury system also provide a procedure for arrests to be accomplished by way of warrants based upon probable cause evidence. None of these states has seen fit to seal affidavits in the way Kansas has.

Second, the use of a grand jury provides at least some measure of public involvement and oversight. There is no such opportunity when arrest warrants are issued based upon secret affidavits.

Finally, the indictment issued by a grand jury contains at least some information establishing the legitimacy of the charges assessed against the defendant. By contrast, a defendant in Kansas can be arrested without the public having even the slightest notion as to whether there is a reasonable basis for doing so.

It has also been suggested that the media are only interested in "big" cases and that probable cause affidavits are never sought in garden variety criminal proceedings. Even if true, it is hard to understand how this justifies the closure of information. In any event, the reason why the media does not routinely seek to obtain probable cause affidavits, at least in Sedgwick County, is quite simple. Because there is no mechanism in the statute for requesting the affidavits, it is always necessary for the media to hire an attorney who must first file a motion to intervene in the criminal proceeding and then file a motion for release of the affidavits. Based upon past experience, it is understood that any such motion will always be opposed by the district attorney's office. It is also understood that the chance of persuading a judge to release the affidavit in the face of such opposition is virtually nil. It is therefore only in the most significant cases that the media would find it worthwhile to pursue what is usually a futile act.

Bringing Kansas in line with the federal court system and other states would not, as has been suggested, compromise the rights of defendants or the ability of prosecutors and law enforcement to effectively do their jobs. What it would do is increase accountability and engender confidence in the criminal justice system. As the U.S. Supreme Court stated in *Richmond Newspapers v. Virginia*, 448 U.S. 555, 572 (1980): "People in an open society do not demand infallibility from their institutions, but it is difficult for them to accept what they are prohibited from observing."

I urge you to approve this amendment to K.S.A. 22-2302.

SENATE BILL No. 505

By Committee on Judiciary

2-2

10 AN ACT concerning records; relating to ~~electronic~~ access to court re-
11 cords; exemption from fees; amending K.S.A. 2005 Supp. 22-4504, 22-
12 4506; **and** 22-4507 ~~and 74-9304~~ and repealing the existing sections.

KSA 22-2302 and

13
14 *Be it enacted by the Legislature of the State of Kansas:*

15 Section 1. K.S.A. 2005 Supp. 22-4504 is hereby amended to read as
16 follows: 22-4504. (a) When any defendant who is entitled to have the
17 assistance of counsel, under the provisions of K.S.A. 22-4503, and amend-
18 ments thereto, claims to be financially unable to employ counsel, the
19 court shall require that the defendant file an affidavit containing such
20 information and in the form as prescribed by rules and regulations
21 adopted by the state board of indigents' defense services. The affidavit
22 filed by the defendant shall become a part of the permanent file of the
23 case. The court may interrogate the defendant under oath concerning the
24 contents of the affidavit and may direct the county or district attorney,
25 sheriff, marshal or other officer of the county to investigate and report
26 upon the financial condition of the defendant and may also require the
27 production of evidence upon the issue of the defendant's financial ina-
28 bility to employ counsel.

29 (b) Upon the basis of the defendant's affidavit, the defendant's state-
30 ments under oath, and such other competent evidence as may be brought
31 to the attention of the court, which shall be made part of the record in
32 the case, the court shall determine whether the defendant is financially
33 unable to employ counsel. In making such determination the court shall
34 consider the defendant's assets and income; the amount needed for the
35 payment of reasonable and necessary expenses incurred, or which must
36 be incurred to support the defendant and the defendant's immediate
37 family; the anticipated cost of effective representation by employed coun-
38 sel; and any property which may have been transferred or conveyed by
39 the defendant to any person without adequate monetary consideration
40 after the commission of the alleged crime. If the defendant's assets and
41 income are not sufficient to cover the anticipated cost of effective rep-
42 resentation by employed counsel when the length and complexity of the
43 anticipated proceedings are taken fully into account, the defendant shall

8-5

1 ~~associations, academic groups and institutions and individuals with~~
2 ~~knowledge of and interest in areas of networking, electronic mail, public~~
3 ~~information access, gateway services, add-on services and electronic filing~~
4 ~~of information; and~~

5 ~~—(3) develop charges for the services provided to subscribers, which~~
6 ~~include the actual costs of providing such services, except that INK shall~~
7 ~~not enter into any contract, lease or other form of agreement which may~~
8 ~~result in the charging of fees for electronic access to court records.~~

9 ~~—(b) All state agencies shall cooperate with INK in providing such as-~~
10 ~~sistance as may be requested for the achievement of its purpose. Agencies~~
11 ~~may recover actual costs incurred by providing such assistance. Services~~
12 ~~and information to be provided by any agency shall be specified pursuant~~
13 ~~to contract between INK and such agency and shall comply with the~~
14 ~~provisions of K.S.A. 45-215 et seq. and K.S.A. 2005 Supp. 45-230, and~~
15 ~~amendments thereto.~~

Sec. 4. K.S.A 22-2302. See attached.
[Renumber remaining sections accordingly]

16 Sec. ~~5~~ **4**. ~~K.S.A. 2005 Supp. 22-4504, 22-4506; and 22-4507 and 74-~~
17 ~~9304~~ are hereby repealed.

K.S.A. 22-2302 and

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

Sec. 4. K.S.A. 22-2302 is hereby amended to read as follows: 22-2302. (1) If the magistrate finds from the complaint, or from an affidavit or affidavits filed with the complaint or from other evidence, that there is probable cause to believe both that a crime has been committed and that the defendant has committed it, a warrant for the arrest of the defendant shall issue, except that a summons instead of a warrant may be issued if: (a) The prosecuting attorney so requests; or (b) in the case of a complaint alleging commission of a misdemeanor, the magistrate determines that a summons should be issued. More than one warrant or summons may issue on the same complaint. If a defendant fails to appear in response to the summons, a warrant shall issue.

(2) Affidavits or sworn testimony in support of the probable cause requirement of this section shall ~~not be made available for examination without a written order of the court, except that such affidavits or testimony when requested shall be made available to the defendant or the defendant's counsel for such disposition as either may desire.~~ open to the public and considered a public court record 20 days after the warrant or summons has been executed or issued, or immediately following the defendant's arraignment, which ever occurs first. At such time the affidavit or testimony shall be place in the court file and be available to the public except as provided in subsection (3).

(3) (a) The prosecuting attorney may exclude all or any part of the affidavit or sworn testimony from the court file if the prosecuting attorney determines that public access would:

- (i) Interfere with any prospective law enforcement action;
- (ii) reveal the identity of any confidential source or undercover agent;
- (iii) reveal confidential investigative techniques or procedures not known to the general public;
- (iv) endanger the life or physical safety of any person; and
- (v) reveal the name, address, phone number or any other information which specifically and individually identifies the victim of any sexual offense in article 35 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto.

(b) In the event the prosecuting attorney makes such a determination, the prosecuting attorney shall cause to be placed in the court file a notice stating the statutory basis for the exclusion of the affidavit or testimony. If the prosecuting attorney determines that only a portion of the affidavit or testimony falls within one or more of paragraphs (a) through (e), the prosecuting attorney shall file a redacted version of the affidavit or testimony along with a notice stating the statutory basis for the redactions.

(4) A person seeking access to an affidavit or testimony that has been excluded in whole or in part from the court file as provided in subsection (3), may obtain review by the district court of the prosecuting attorney's determination regarding exclusion. Such review may be obtained by filing a motion in the criminal action or, if no such action is pending, by filing a petition for mandamus requesting that the prosecuting attorney be directed to place the excluded affidavit or testimony, or the excluded portions thereof, in the court file. In connection with such review, the district court shall examine the affidavit or testimony *in camera* and allow both parties to be heard. Proceedings arising under this subsection shall be assigned for hearing at the earliest practical date and the burden of proof shall be on the party seeking to uphold the exclusion. If the court finds that the exclusion is not justified, the court shall order the excluded materials placed in the court file. If the court further finds that the exclusion was not made in good faith or was made without reasonable basis in fact or law, the court shall award the movant or plaintiff attorney fees incurred in seeking review.

MICHAEL W. MERRIAM

LAWYER

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merriam@merriamlaw.net

March 15, 2006

House Judiciary Committee
Kansas Statehouse

TESTIMONY IN SUPPORT OF AN AMENDMENT TO SB 505

Members of the Committee:

I appreciate the opportunity to speak to you in support of this measure to reopen affidavits in support of arrest warrants in limited circumstances. I appear in a dual capacity because I am sponsoring the written testimony of Lyndon Vix, which you have before you, and my own remarks as general counsel to the Kansas Press Association.

In Lyndon's statement, my colleague explains the history of changes to K.S.A. 22-2302, including the *State v. Stauffer* case from 1979, in which it was my privilege to represent the newspaper and be able to prevail. Lyndon posits that *Stauffer* may have triggered the statutory closing of arrest warrant affidavits, although the legislative intent was never recorded. Today I would like to bring into focus the ongoing problems that secret affidavits continue to pose; problems of the most serious consequences and at the "highest level of law enforcement."

Those words were written by Judge Eric Rosen (now Justice Rosen) when he sentenced former Topeka Police Officer Thomas Pfortmiller on 50 criminal charges in 2005, including numerous counts of perjury arising from the submission of knowingly false charging affidavits, which led to the filing of criminal cases and issuance of arrest warrants. As a result of such lies, numerous criminal cases were dismissed as both unprovable, and in violation of the defendants' constitutional rights.

Just last year, Shawnee County District Attorney Bob Hecht initiated an investigation into the Topeka Police Narcotics Unit with the aid of the Kansas Bureau of Investigation. It was prompted, in part, by the flimsy nature of the affidavits being submitted by some of the officers, and in his resulting 128 page report, Hecht concluded that he must refuse to accept submissions from these officers, and others until the police department reformed its procedures. While Pfortmiller's case was prominent in the report, another officer, Bruce Voigt, has since been charged with similar conduct.

House Judiciary

Date 3-15-06

Attachment # 9

Voigt had previously gained notoriety as the police officer found by the Kansas Court of Appeals to have engaged in "deliberate misrepresentation" in order to obtain a warrant in the 2000 appeal by Stephen Shively of his conviction of aggravated assault that resulted in the death of a police officer during the commando-type tactics they employed to execute the improperly obtained warrant.

In 1987, Detective Randy Listrom was found by the Kansas Court of Appeals to have intentionally and in bad faith misled the court into issuing a warrant, again on the basis of the affidavit, which was set out in full in the court's opinion.

In 1998 the KBI was called in to investigate the Shawnee County Sheriff's office on a variety of issues, including falsifying evidence and perjury (Sheriff Meneley was later ousted from office for his part in the coverup). As a result of false affidavits, numerous criminal cases were dismissed, including some in which sentences were already being served.

I agree with almost everyone who looks at these facts, that almost all law enforcement officers are honest and dedicated professionals to whom false charging affidavits would never even occur. But they do happen. Judges are misled, and the justice system is perverted to the intentions of those who are willing to lie or mislead to exert their power. The routine and automatic sealing of these affidavits provides a refuge from the governing power of the people that ensures our system of constitutional justice proceeds fairly, equally, and responsibly. When affidavits never see the light of day, there is no accountability. The only hurdle is in convincing a judge who is not disposed to disbelieve an officer's statements, but rather determines whether, if true, those statements amount to probable cause. The awesome power of law enforcement must not be limited solely by an officer's inability to mislead a judge. Public scrutiny is not only effective to effect responsible law enforcement, it is also the right of the people.

This proposed amendment to SB 505 is not an over-reaction to such abuses. It is a careful and reasoned approach that gives due consideration to legitimate police concerns for protecting techniques, sources or agents; avoiding endangerment of persons; protecting the privacy of victims; and avoiding interference with prospective law enforcement actions. With these protections in mind, had such affidavits been always open to the public, it seems highly unlikely that police officers would have tried to mislead the courts in this disreputable and illegal manner. Adoption of this amendment to SB 505 will foster improved criminal justice.

Respectfully submitted,



Michael W. Merriam



J.I.M.S.

Justice Information Management Systems

100 North Kansas Avenue, Suite 603

Olathe, Kansas 66061

Phone: 913-715-4050 E-mail: timothy.mulcahy@jocogov.org Fax: 913-715-4065

Testimony Regarding Senate Bill 337 Senate Judiciary Committee

Tim Mulcahy, Director of JIMS - Tenth Judicial District
March 15, 2006

Mr. Chairman and Committee members, thank you for the opportunity to speak to you today in support of Senate Bill 337. I am Tim Mulcahy. I serve as the Director for the Johnson County Justice Information Management System and have been involved with the development of JIMS since 1993.

In the Twenty-first Century, access to courts will increasingly be provided electronically. Consistent with both that emerging reality and the longstanding Kansas priority of providing good local access to the courts, the Johnson County District Court and Johnson County government have worked for many years to develop Justice Information Management Systems (JIMS) that would provide comprehensive access to court records for both the court and the public.

JIMS is a fully-integrated case-management system, integrating operations of the courts, the sheriff's office, the district attorney's office, and community corrections into a single system.

The JIMS program was established in 1993, with staged integration of the entire court system into that system. Traffic cases were the first to be included in 1995; civil cases were the last to go fully online with JIMS in late 1999. Over a period of several years, imaging was added to the system, again working incrementally through the court system. Once the system was up and fully operational for internal court users, we turned to the task of making court information easily available to the public. In June 2004, the county added a real-time public-records search capability to the court's website, which had been started in 1998.

The public-record search function has been a great success since it went online in June 2004. The easy access provided to court records in Johnson County has been heavily used by the public: between 250,000 and 270,000 "hits" now occur per month on the public-record search page of the Johnson County District Court website. We can only provide an overview of the significance of this resource to its users—or of the unintended negative consequences that may result from its demise.

Some of the regular users of the public-access website include:

- School resource officers;
- Safehome, a domestic-violence shelter, and Sunflower House, a nonprofit organization providing help to child victims

House Judiciary

Date 3-15-06

Attachment # 10



J.I.M.S.

Justice Information Management Systems

100 North Kansas Avenue, Suite 603
Olathe, Kansas 66061

Phone: 913-715-4050 E-mail: timothy.mulcahy@jocogov.org Fax: 913-715-4065

- Law-enforcement agencies;
- Probation officers;
- Workers at Johnson County Mental Health Center; and
- Individual litigants

Through the County's service, citizens do not have to call or drive to the courthouse to obtain basic information, which reduces the phone calls and foot traffic not only at the courthouse, but also in the DA's office, Sheriff's office, and other County departments.

The Johnson County District Court Clerk's office, which manages the district court records has only 55 staff members, an increase of just 2 new positions over the last 10 years to deal with over 500,000 residents and hundreds of thousands of records. The residents of Johnson County depend upon local government for the efficient administration of justice. The JIMS website has helped the Clerk's office, as well as, the District Attorney's Office in coping with the requests for information.

The staff support for that office is primarily provided by the county: as of January 1, 2006, JIMS has two state employees and 18 county employees. In addition, all of the hardware and infrastructure costs of the system have been paid for by the county.

Because of the significant service provided to the citizens of Johnson County and elsewhere, the Johnson County District Court has recommended to the Kansas Supreme Court that these locally provided services remain available free of charge. Other revenue sources, whether through appropriations or an increase in the portion of the court filing fee allocated to technology, would be a better way to fund court technology needs statewide than forbidding local courts and counties from providing easy access to the public for public court records.

In the near future, if we are allowed to continue improving our services to the public, users will have the ability to do electronic filing through the website and even view the full file in child-in-need-of-care cases for the attorneys of record. All of these enhancements will benefit both the public and help the short staffed Clerk's office and District Attorney's Office to better serve the public.

If this bill is passed it will allow counties the ability to be innovative and resourceful in meeting the needs of their citizens, by having a user-friendly system, and the ability to customize the site to fit the users' needs. Thank you for your time.



OFFICE OF THE
Johnson County Sheriff

Courthouse
125 N. Cherry
Olathe, Kansas 66061

Frank Denning
Sheriff

Telephone
913-791-5800

Fax
913-791-5806

David Burger
Undersheriff

Kevin Cavanaugh
Undersheriff

To: Chairperson O'Neal, Vice-chairperson Kinzer, and distinguished members of the House Judiciary Committee.

From: Frank P. Denning, Sheriff

Date: March 15th, 2006

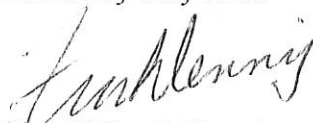
Chairperson O'Neal and Committee Members,

My name is Frank Denning and I am the Sheriff of Johnson County Kansas. I am submitting written testimony in support of Senate Bill No. 337. Thank you for allowing me the opportunity to offer testimony on this important bill before you.

The Justice Information Management System (JIMS) is the central computer repository for district court records that are publicly available. The Sheriff's Office places criminal warrant, civil process, and protection from abuse information in JIMS. Currently, this information is available at no cost to those who access the system electronically. The creation of a mandatory \$75.00 registration fee followed by \$2.00 per-search fees would have an immediate negative impact on the daily operations of the Sheriff's Office.

In 2005, The Sheriff's Office held 886 Foreclosure Sales, handled over 2800 evictions, and received 49,051 civil papers for service. The JIMS website currently experiences over 250,000 hits per month from victims, witnesses, prosecutors, defense attorneys, and abuse shelters, just to name a few. The loss of the JIMS website in its present form would require increased staffing levels in the Civil and Warrant Divisions to handle the large influx of telephone calls and visitors seeking information on criminal and civil matters.

The existence of the JIMS website allows the Sheriff's Office to efficiently deliver important criminal justice information that directly contributes to the effective operation of our court system. Altering JIMS will erode the significant efficiencies that have been gained, and represents a step backwards in the delivery of Sheriff's Office services. I urge you to support Senate Bill No. 337 and am available to answer any questions my testimony may raise.


Sheriff Frank Denning

House Judiciary

Date 3-15-06

Attachment # 11

Good afternoon, my name is Ed Peterson, Commissioner of the Johnson County Board of County Commissioners. I appear here today on behalf of the Board of County Commissioners. I appreciate the opportunity to appear before the Committee and to present testimony in support of Senate Bill 337, as amended.

If enacted, S.B. 337 will ensure that county governments are able to provide efficient electronic access to public information contained in local court records. Johnson County – as a direct service to the citizens – currently provides open, electronic access to public information contained in the local district court records. The Board of County Commissioners intends to continue that service because it is widely used and it has become one of our most appreciated services.

We are aware that the Kansas Supreme Court and its Office of Judicial Administration are seeking to implement a uniform, statewide, electronic record access program for the Court system. We in Johnson County applaud that effort and will provide the state court system our continued support. However, we understand that the program as initially proposed by the Judicial Branch would force a closure of the County website, and we do not believe it is wise or in the best interests of the public to implement the state court system at the expense of closing off the local county system. The Board of County Commissioners supports S.B. 337 since Section 1, as amended, would protect County programs in order to expand ways for citizens to access public information, not limit them.

Johnson County initiated its electronic records program entitled JIMS (Justice Information Management Systems), in 1992. The initial cost to set up the system, which included the local district court, the District Attorney, and the Sheriff, was nearly \$4,000,000, and its current annual operating cost is nearly \$2,000,000. Essentially, all of those funds were county funds. The JIMS network was implemented with full support from the judiciary, and it is the district court's basic records management system. JIMS connects electronically our courts, judges, District Attorney, Sheriff, Corrections, and Court Services.

This past year, at a cost of over \$400,000, the County established the local JIMS website, which provides direct, no cost, access to basic, critical information in the local court system – information commonly referred to as the Docket Sheet. Access to that information by electronic access has proven to be invaluable for many citizens of the County, including witnesses, victims and others involved in the court system. It can be stated conservatively that the JIMS system provides an essential link internally to hundreds of employees and externally to thousands of residents.

In implementing JIMS, it was the intent of the County to make access to the courthouse available through the internet and not just by means of telephone or automobile. That access is provided to information which is open and which is required to be available to the public at the Courthouse under current statutory provisions. (See K.S.A. 60-2601a). To restrict that access would be a disservice to the citizens. Moreover, for the County Government, it is a beneficial service that enhances efficiency and, frankly, saves money. Electronic access to this public information means less staff and less accommodation that must be provided to respond to inquiries of residents. It enables the citizens to more easily obtain the information they need.

House Judiciary

Date 3-15-06

Attachment # 12

The current form of SB 337 authorizes an increase in court fees to help fund the statewide electronic court records program. We support this approach and strongly discourage a "user fee" for computer access to records. Too many people today believe that internet access to information is a way of life. They do not expect to pay for simple, basic information. More importantly, most of the people who access this local court information will not pay even nominal charges. Instead, they will go back to the telephone call, which is perhaps less convenient, but does not cost them extra. Please understand though that those calls will cost the Court and County substantial time and money that can be better spent elsewhere.

We also discourage consideration of user fees coupled with exemptions. Exemptions would increase the administrative burden and cost of a statewide system, yet exemptions would not cure the basic problem that user fees will undermine access to the system by those who need it most.

Finally, we are aware that this bill affects the Courts and may be perceived as crossing that line for the separation of powers between branches of government. We, at the County level, greatly respect the Court, and are confident that this bill does not violate the separation doctrine. The bill does not legislate about or in any way affect judicial functions. It affects the courts only with regard to their administrative responsibilities for public records, which are subject to regulation by the Legislature, and does so only to the extent that it enables counties to open the Courthouse doors through electronic means. The counties are responsible for many support functions of the court at the local level, and this bill would aid the counties in performing those functions.

We urge this Committee to strongly support S.B. 337 and urge its passage by the Legislature. Funding of a statewide system can be achieved through means other than restricting the ability of local county government providing beneficial services to local residents who need access to local, public information.

We thank you for your time.



KANSAS BAR
ASSOCIATION

Testimony in Support of

SENATE BILL NO. 337

Presented to the House Judiciary Committee
March 15, 2006

The Kansas Bar Association is a voluntary, professional association of over 6,700 members, dedicated to serving Kansas lawyers, their clients and the people of Kansas.

The Kansas Bar Association appears in support of the amended **SB 337** because it allows counties to provide, or to continue to provide, free electronic access to court records. As the Committee members may be aware, Shawnee and Johnson County had previously taken the initiative, and made the investment, to provide free electronic access to its court records. The public, police, and legal and other professionals have taken advantage of such systems and incorporated them into their daily operations. In an apparent effort to raise funding for a statewide electronic access system, the Kansas Supreme Court promulgated Rule 196, which, among other things, prohibits counties from providing free access to court records. New Section 1 of **SB 337** preserves and promotes counties providing free electronic access to court records for their citizens.

On the other hand, KBA legislative policy also opposes imposition of additional docket fees unrelated to operations of the courts. **SB 337** establishes the laudable goal of establishing and maintaining a state wide system of electronic access to court records, a function not necessarily related to operations of the courts, but a function that provides improved information on court records both to legal practitioners as well as the general public. Unfortunately, the bill imposes a substantial increase in docket fees across the board to fund the system. Inasmuch as the benefit of such a system is to the general public, it would appear that the general public should also bear the costs of such a system. The reliance on docket fee funding seems to be imposing an unfair burden on a small portion of the general public, often including those least able to pay. KBA would urge the Legislature and the Supreme Court to consider alternative sources of funding before further steps are taken to implement a state-wide system of electronic access to court records.

James W. Clark
KBA Legislative Counsel
785-234-5696

* * *

House Judiciary

Date 3-15-06

Attachment # 13

**KANSAS CREDIT ATTORNEY ASSOCIATION
SENATE BILL NO. 337
HOUSE COMMITTEE ON JUDICIARY**

March 15, 2006

Chairman O'Neal and Members of the House Committee on Judiciary:

I appreciate this opportunity to present remarks to you on behalf of the Kansas Credit Attorney Association. The Association is comprised of approximately 50 attorneys and firms throughout the state representing mostly small and medium-sized local businesses.

Docket fees, court costs and the efficient functioning of the courts are of perennial interest to our Association and our clients.

Senate Bill No. 337 would increase docket fees for the purpose of establishing a free statewide system of electronic remote access to court records. New money collected from the increased docket fees would be credited to the Judiciary Technology Fund and would be used to pay for the implementation, operation and maintenance of this records system.

While our Association has generally opposed increases to the current docket fees, we do see a measurable benefit for increase contemplated in Senate Bill No. 337. In an era of ever increasing reliance on computer technology it makes sense to expand the availability of electronic courts records to all jurisdictions.

However, we are concerned that Senate Bill No. 337 as drafted provides no timeline for the implementation for the system, nor is there a requirement for the Court to report progress back to the Legislature as the system develops. The proposed increase to the docket fee will generate an estimated \$3.2 million annually. We believe that once the system is in place and operating, the legislature may want to reduce the transfer of docket fees to the Judiciary Technology Fund, since operation and maintenance should cost less on an annual basis than the initial development of the records system.

Thank you for your time and consideration.

Presented by Douglas E. Smith for the Kansas Credit Attorneys Association

House Judiciary

Date 3-15-06

Attachment # 14

Testimony Regarding Senate Bill 337

House Judiciary Committee

Paul J. Morrison, District Attorney - Tenth Judicial District
March 15, 2006

I am here today to offer testimony in support of Senate Bill 337. Twelve years ago Johnson County government embarked upon a strategic effort to ultimately allow electronic access to our District Court records. One of the main objectives was to ultimately allow the public, especially crime victims, easy access to information pertinent to their cases. These efforts have culminated in the development of the *Justice Information Management System* (JIMS) website, which is accessible to the public at no charge. This website is so successful it receives between 250,000 and 270,000 “hits” a month. Many folks who access the website are employed by other criminal justice or public entities such as the school districts, SRS, probation and parole, etc., who have a vital need for this information. Even more important, many who access the website are crime victims seeking immediate information (such as bond modifications, etc.) that can absolutely affect their immediate safety. This website has been so successful that it has cut down on foot and phone traffic to the Johnson County District Attorney’s Office by one-half. The County has invested approximately \$400,000 in this website.

In my opinion, to require payment to access this website would severely harm those folks who need it the most: crime victims and witnesses who need easy, free access to this information. It’s the right thing to do. It is also a public safety issue. I support this bill in that it ensures any county’s ability to provide this vital information to the public at no cost.

House Judiciary

Date 3-15-06

Attachment # 15



Supreme Court of Kansas

KAY MCFARLAND
Chief Justice

Kansas Judicial Center
Topeka, Kansas 66612-1507

(785) 296-5322

House Judiciary Committee

Wednesday, March 15, 2006

Testimony In Opposition to SB 337

2006 SB 337 was introduced by the Interim Special Committee on Judiciary and would have provided a \$9,000 salary increase for district judges and district magistrate judges, to be funded from increases to certain docket fees. Representatives of the Kansas District Judges Association and the Kansas District Magistrate Judges Association have presented testimony regarding this salary increase, and the Kansas Supreme Court supports the salary increase proposal for all Kansas judges. When SB 337 was worked by the Senate Judiciary Committee, it was amended to delete the section that would have provided the salary increase and instead now would place the \$3.2 million in new revenue to be generated from docket fee increases into the Judiciary Technology Fund.

The Supreme Court welcomes exploration of sensible funding mechanisms to maintain and expand uses of technology to improve the judiciary and its delivery of services to the citizens of this state. However, this effort needs to be pursued separately from proposals regarding judicial salaries. In relation to SB 337's provision regarding electronic access to district court records for individual counties, the Court refers this Committee to its February 13, 2006, testimony before the Senate Judiciary Committee on SB 353. In particular, the Court opposes New Section 1 of SB 337, which permits individual counties to set up nonuniform, user-fee funded systems.

Thank you for your consideration of this issue.

House Judiciary

Date 3-15-06

Attachment # 16



Supreme Court of Kansas

KAY MCFARLAND
Chief Justice

Kansas Judicial Center
Topeka, Kansas 66612-1507

(785) 296-5322

Senate Judiciary Committee

Monday, February 13, 2006

Kansas Supreme Court Testimony in Opposition to 2006 SB 353

The Kansas Supreme Court is firmly committed to the philosophy of maximizing free public access to court information. The Court is equally committed to carrying out its administrative authority over our unified court system, a responsibility entrusted to it by the people of Kansas through the state Constitution and laws enacted by this Legislature.

The enactment of 2006 SB 353 would undercut both of these essential precepts.

First, SB 353 purports to empower any of Kansas' 105 counties to provide electronic access, for a fee, to county district court records. Each county would control access to court records and would determine independently whether fees would be charged, the amounts of any fees, and what would be done with resulting revenue.

Second, SB 353 threatens the Court's ongoing effort to establish convenient and uniform electronic access to statewide court records, access that would be available to all of Kansas' citizens as well as anyone with access to the Internet.

There has been a great deal of incorrect and incomplete information circulated about the Supreme Court's plans for electronic access to statewide court records. The following should be helpful to legislators attempting to separate fact from fiction.

In the 1970s, the Legislature ordered statewide unification of the court system. Both the Kansas Constitution and numerous enactments of the Legislature confirm that the Supreme Court is the administrator of that system. Because of the legislatively-created dual funding system, the Court, as administrator, annually submits a budget to the Legislature for State General Fund money to support personnel serving in the Judicial Branch throughout the state. The system requires many other operating expenses for district courts to come from the counties they serve.

In addition, certain operations of the Judicial Branch are supported by filing fees or "user fees." Since 1993, a small percentage of filing fee revenue has gone to the judiciary's technology fund, which supports certain information technology staff, hardware, and software at the Judicial Center in Topeka and, in part through a grant system, in the state's 31 judicial districts.

In 2002, the Court received federal grant money to support the installation of FullCourt, an electronic case management and accounting system now installed in all but Johnson and Shawnee counties. The district courts in Johnson and Shawnee counties decided not to install FullCourt because their greater county resources had earlier enabled them to adopt different systems. The federal grant serving the rest of the state required matching dollars from the technology fund during FY 2002, 2003, 2004, and 2005. The total investment in installation of FullCourt, including federal and technology fund dollars, was approximately \$5.5 million. Of course, these developments have been detailed in the Chief Justice's annual reports to the Legislature.

FullCourt enhances uniformity and equity. It has alleviated some of the "haves-and-have-nots" situation created by the dual State General Fund/county funding of our district courts. It has also given the vast majority of counties a state-of-the art case management and accounting system that they could not otherwise afford. Now all of the state's clerks, judges, and court services officers can deal effectively and efficiently with ever-increasing caseloads, growing demands for information sharing, and additional statutory requirements for notices, hearings, and other court functions – regardless of whether they have the good fortune to live and work in a wealthy county.

It is no surprise that FullCourt has been very popular with users within the court system. It also enhances the Court's ability to provide information electronically to the Kansas Bureau of Investigation, the Kansas Department of Revenue, the Kansas Department of Health and Environment, the Juvenile Justice Authority, and law enforcement.

FullCourt made court information digital. However, Internet access to that court information is currently available in only eight of the 105 Kansas counties – and only to that particular county's records. Of those eight counties, Shawnee County provides entirely free electronic public access; six counties provide access to limited court records for a fee through the Information Network of Kansas (INK); Johnson County provides access both for a fee through INK and free public access. Those counties that provide access through INK retain a portion of any fee charged by INK. There is no ability to perform searches of statewide district court records in these counties or anywhere.

The Court is therefore investigating a workable plan for court technology and public access advancement. The Court wants to capitalize on the capabilities of FullCourt to enhance electronic public access to local court information and to create electronic public access to statewide court information. The Court has been negotiating with- INK to provide such access. Those negotiations are continuing.

Pursuant to a current draft contract for Internet access through INK, if the case number is known, a \$1 fee to view the records would be charged. If the case number is not known, the fee will be \$1 to search and \$1 to view the records. A search for either all civil or all criminal records statewide would cost \$17.50, the same amount currently charged by the KBI for a similar search. It is also important to remember that no INK contract would impair or reduce free public access to all digital district court records through computer terminals located in every courthouse across the state.

Throughout the negotiations conducted with INK during the last several months, the Court has consistently emphasized that, for many users, free access must be maintained in the counties and created statewide. These users would include law enforcement and prosecutors, crime victims and their advocates, children's advocates such as CASA and others, indigent litigants, and those lawyers representing indigent litigants. The Court would ask all 31 judicial districts to identify persons and entities whose needs support free access. The Court made such a request of the district court in Johnson County weeks ago and has never received its response. SB 353's fee provision makes no allowance for such individuals or organizations.

The Court has not ordered either Johnson County or Shawnee County to shut down their websites. In fact, for many months, the Court has been attempting to work with the counties to integrate their systems into the new model in a way beneficial to all. Two members of the Court will meet with representatives of those counties on Friday, February 17, to continue that effort.

Any revenue coming to the Judicial Branch from an INK contract would be used to fund the ongoing FullCourt maintenance cost, estimated at \$500,000 annually. To the extent revenues exceed that amount, they would be used to move all courts toward electronic imaging and electronic case filing, taking the Kansas Judicial Branch from the cumbersome paper flow of the 19th century into the digital data flow of the 21st century.

Another point also bears mention: The Court has taken an active role during the last two years to ensure the privacy and safety of court users by limiting access to certain highly sensitive private information such as Social Security numbers, dates of birth, and children's names and ages. The Court has been particularly concerned about "data miners," companies or persons who scour public records, particularly computer records,

for information about a person's criminal records, bad debts, and other information for resale to credit companies, health and life insurance companies, and others. Rejection of SB 353 would reinforce the Supreme Court's role as sole administrator of court records, ensuring that its efforts to protect privacy and safety will be enhanced rather than thwarted.

Since court unification, legislative leaders have repeatedly informed the Supreme Court that it must look to increased user fees, rather than the State General Fund, for any future enhancements. The Court's consideration of an INK contract explores a "user fee" route to respond to the Judicial Branch's budget needs and follows the Legislature's directive that all state entities should choose INK as a partner to distribute their electronic data. Stated frankly, the goal of "free public access to court information" cannot be achieved at no cost to those providing it. If the Legislature agrees with the Court's philosophy on free public access, the Legislature may wish to step forward with money from the State General Fund. The Court would welcome any such initiative.

In conclusion, the enactment of SB 353 would do violence to the Supreme Court's coordinated effort to enhance statewide equity, uniformity, efficiency, and effectiveness in the Judicial Branch and would jeopardize achievement of the goal of maximizing free public access to court information. Accordingly, the Court urges this committee to reject SB 353.

THE HONORABLE MICHAEL O'NEAL, CHAIRMAN

HOUSE JUDICIARY COMMITTEE
STATEHOUSE, TOPEKA, KANSAS

On behalf of the Kansas District Judge Association I am here to testify in opposition to SB 337 in its current form. Approximately two years ago our Association proposed a pay increase for our members. Judge Richard Smith and I have appeared and testified numerous times in front of various committees and some members of this committee in reference to this goal. In recognition of the many demands placed upon the States general fund, our association with the approval of the Supreme Court proposed a bill which funded the salary increase. This bill (SB337 and HB 296) provided for a small increase to court cost. This bill was approved by the Senate 30-9 and referred to the House. Last October we once again appeared in front of a joint House and Senate interim committee which was studying this issue. SB 337 was the result of this interim committees report. Somewhere along the line this bill was amended to omit judge's salaries and substituted a judicial technology fund.

We as an association believe that each request i.e. judicial salaries and judicial technology fund should stand on its own merits. The White paper sets forth with great detail our justification for a judicial pay increase.

- Since 1989 a period of 16 years Kansas judges have received one raise of \$3,218 in FY 2000.

House Judiciary

Date 3-15-06

Attachment # 17

- Judges in forty-one (41) states are paid higher salaries than Kansas Judges
- Kansas per capita income ranks 26th nationally
- Of all the nearby states, Kansas judges are paid less than all except Oklahoma: at the same time Kansas' per capita income is higher than all those state except Colorado and Nebraska.
- Kansas judges earn \$13,325 less than the national average.
- The average attorney in Kansas with 15-19 years of experience earns about \$10,000 more per year than a district judge
- The City Attorney for Overland Park is paid \$13,600 more in salary than the Chief Justice of the Kansas Supreme Court and \$31,600 more than a District Court Judge.
- KU Law School professors teaching salaries average \$9,000 more than the Chief Justice of the Kansas Supreme Court and \$27,000 more than a Kansas District Court Judge.
- The Dean of the KU Law School earned \$87,000 more in salary than the Chief Justice of the Kansas Supreme

Court and \$105,000 more in salary than a District Court Judge.

To provide a quality justice system for Kansas citizens, judicial compensation must be set at a level that able and experienced attorneys will be attracted to the bench and competent experienced judges will be retained.

Our association respectfully requests that SB 337 be amended to its original form including all judges or substituted by an updated version of HB 296.

Respectfully submitted
Meryl Wilson District Judge
21st Judicial District
100 Courthouse Plaza
Manhattan, Ks

House Judiciary Committee
Honorable Michael O'Neal, Chairman

Testimony on behalf of the
Kansas District Magistrate Judges'
Association

Honorable Timarie Walters
Stafford County District Court
P.O. Box 365
St. John, Ks 67576
t_walters@earthlink.net

House Judiciary

Date 3-15-06

Attachment # 18

Representative O’Neal , members of the House Judiciary Committee and guests.

Thank you for the opportunity to speak to you today. I am Timarie Walters, District Magistrate Judge from Stafford County. I am here representing the Kansas District Magistrate Judges’ Association. I serve as President.

Before I begin my testimony I first want to say that I concur with the testimony of Judge Meryl Wilson and Judge Dick Smith.

I will first begin my testimony by explaining district magistrate judge’s jurisdiction as it is in present time. I will then compare Kansas district magistrate judges jurisdiction and salary to that of magistrate judges and courts of limited or similar jurisdiction through out our nation. Lastly, I will compare Kansas district magistrate judges salary to Kansas district court employees.

The statute that governs district magistrate judges, a court of limited jurisdiction, is KSA 20-302b which came into existence as a new statute in 1976, the beginning of court unification.

KSA 20-302b states, a district magistrate judge shall have the jurisdiction and power, in any case in which a violation of the laws of the state is charged, to conduct the trial of traffic infractions, cigarette or tobacco infractions, all misdemeanor charges, to conduct the preliminary examination of felony charges and to hear felony arraignments.

In civil cases, a district magistrate judge shall have jurisdiction over actions filed under the Code of Civil Procedure for Limited Actions, which includes Small Claims, and shall have concurrent jurisdiction, powers and duties with a district judge in which the amount of controversy, exclusive of interest and costs do not exceed \$25,000 for limited actions cases or \$4,000 for small claims cases.

Nothing under this statute shall be construed as limiting the power of a district magistrate judge to hear any action pursuant to the Kansas Probate Code which not only includes estate cases but adoptions, treatment of the mentally ill, substance abuse, and guardian and conservatorship cases; to hear any action pursuant to the Kansas Code for Care of Children or the Kansas Juvenile

Justice Code; to establish, modify or enforce orders of support, including, but not limited to, orders of support pursuant to the Kansas Parentage Act, or to enforce orders granting visitation rights or parenting time.

In the absence, disability or disqualification of a district judge, a district magistrate judge may grant restraining orders, appoint a receiver or make any order authorized by KSA 60-1607, interlocutory orders.

District magistrate judges also have jurisdiction to hear Protection from Abuse and Protection from Stalking cases, fish and game violations and authorize search warrants.

It is interesting to note that the district magistrate judge jurisdictional limit in Chapter 61 civil cases is \$25,000. However, in actions of replevin, the affidavit in replevin or the verified petition fixing the value of property shall govern the jurisdiction. In an action for forcible detainer or eviction, the verified petition fixing the amount prayed for shall govern the jurisdiction. Simply put, district magistrate judges have jurisdiction to hear these types of cases even if the amount in the petition exceeds the jurisdictional limit of \$25,000.

There is no jurisdictional limit in probate cases filed. There are many million-dollar estates, however, not many million-dollar lawsuits.

Since 1976 our jurisdiction has increased significantly. Specifically, civil jurisdiction (Chapter 61) has increased from \$2,000 to \$25,000. Criminal jurisdiction now includes felony arraignments.

Now that I have explained the jurisdiction of district magistrate judges it would almost be easier to list the types of cases that are not included in a district magistrate judge jurisdiction. District magistrate judges have concurrent jurisdiction, power and duties with a district judge in every division of district court except for Chapter 60 civil cases. Even then we have limited jurisdiction as I have just explained.

87% of the cases filed in district court fall within the district magistrate judge jurisdiction, only 32% of the state court judges are magistrates. The interesting fact about the jurisdiction of a district magistrate judge is that it covers all of the high volume cases, which in many instances result in mass dockets. The majority of district magistrate judges are not specialized in just one area of jurisdiction. We have to be knowledgeable in all aspects of our extensive jurisdiction. There are days when a district magistrate judge may touch on many of these areas.

In the 2002 State of the Judiciary Report, Chief Justice McFarland said, *“Adding district magistrate judges has proved to be a cost-effective way to manage increasing caseloads. A district magistrate judge is able to manage many of the less complex cases, leaving the district judge to handle the more complex caseloads. The lower salary of a district magistrate*

judge coupled with less support staff makes this a cost-effective caseload management tool.”

I can tell you that there are only five district magistrate judges that I know of that have a secretary or administrative assistant. These positions are paid by the counties not the state. The majority of district magistrate judges do not have support staff.

When you compare the jurisdiction of magistrate judges across the nation, Kansas district magistrate judges have far more jurisdiction.

When you compare salaries of magistrate judges across the nation, Kansas district magistrate judges are well below the national median.

The national median salary for a magistrate judge is \$99,000. Kansas district magistrate judges salary is \$50,000 \$49,000 below the national median.

To support my findings I used statistical information from the National Center for State Courts (NCSC). The October 2004 State Court Structure Chart and the Survey of Judicial Salaries were used to compare Kansas district magistrate judges jurisdiction and salary to magistrate judges or courts of limited or similar jurisdiction across the nation. Information from courts of limited jurisdiction was used for this comparison; general jurisdiction information was not considered.

It is important to note that not every state has magistrate judge positions but may have a position similar to that of a magistrate judge, i.e. Justice of the Peace, County Court or Probate Court. I compared jurisdiction across the nation to that of Kansas district magistrate judges regardless of the title of the position. I then compared the salary of that position to the salary of Kansas district magistrate judges. Again, information from courts of limited jurisdiction was used; general jurisdiction information was not considered.

For instance, if you look at Table A you will see that the jurisdiction of the Kansas district magistrate judge is the controlling factor. I then listed every state in the United States and compared that states limited jurisdiction court to that of Kansas district magistrate judges. Listed under the state is the title of the position or level of a limited court jurisdiction that was comparable to Kansas district magistrate judges.

If you look at the State of Alabama you will find that the court jurisdiction similar to the Kansas district magistrate judge jurisdiction is called district court. When reviewing the State Court Structure Chart for the State of Alabama it shows that there are three levels of limited jurisdiction courts, district court, probate court and municipal court. District court jurisdiction was the most comparable to that of Kansas district magistrate judges.

I than compared the salary of Alabama district court to the Kansas district magistrate judge salary. As you can see the difference in salary is \$60,941. The table clearly indicates that

Kansas district magistrate judges have more jurisdiction than Alabama's district court.

40 out of 50 states have courts of limited jurisdiction. Six of these states do not list salary amounts. Only 34 state salaries were considered. Out of 34 states, Kansas district magistrate judges rank 31st in salary. Out of 40 states, Kansas ranks 1st in jurisdiction.

I will now compare Kansas district magistrate judges salary to that of Kansas District Court Employees. If you look at Table B you will see a comparison table of salaries.

Listed are the salaries of the Kansas judiciary and the salaries of Kansas district court employees. I was greatly disturbed at the comparison of **all** salaries compared to the salary of a DMJ.

For instance, an entry level position, Step A, of a Court Administrator I is \$52,869. That is \$2,810 more than a district magistrate judge's salary. On Step B the difference is \$4,123; on Step C the difference is \$8,241; on Step D the difference is \$12,653; on Step E the difference is \$17,404.

I would guess that most of the district court positions across the state of Kansas are not at Step A. With the opportunity to progress across the pay matrix long-term employees in most positions would quickly surpass the salary of a district magistrate judge.

I have indicated in bold print the salaries of district court employees as they near or surpass the district magistrate judge's salary. I certainly am not opposed to state employees receiving more money but any pay increase be it a COLA or an across the board salary increase will only continue to show the disparity between state employees salaries and district magistrate judges salaries.

I believe that Senator Vratil said it best during the debate on SB 296 in the 2005 Legislative Session. *“District magistrate judges are grossly underpaid. They could be earning more in private practice or public sector; they do their work as public service at a sacrifice.”*

In summary, to clarify my position on this issue I would simply say that considering the jurisdiction and salary of Kansas district magistrate judges compared to that of magistrate judges or court of limited and similar jurisdiction across the United States, Kansas district magistrate judges have far more jurisdiction and are far below the national median salary range. In most instances limited jurisdiction courts across the nation have far less jurisdiction than Kansas district magistrate judges and their salaries are more than that of a Kansas district judge.

We can look in our own back yard and find the disparity between salaries of Kansas district court employees and the salaries of a district magistrate judge. SB 296 offers a solution, a source of revenue to compensate judicial salaries.

On behalf of the Kansas District Magistrate Judges' Association, our hope is that you as a committee will share our vision to think outside the box and support passage of SB 296.

This concludes my testimony.

DMJ
Salary Initiative

Jurisdiction

Revised 12/05

State	No. Judge	Salary	Limited Civil	Small Claims	Civil Domestic CS Enforce Temp Orders PFA/PFS/DV	Criminal Misd/Felony PE/Plea	Traffic Infract/Misd Felony DWS/DUI	Probate Adopt GC/CT	Juvenile CINC/JV	JT
Kansas DMJ	76	50,059	25,000	4,000	X	X Felony Plea	X	X	X	Y
Alabama District Court	102	111,000	3,000 - 10,000	3,000	X	X	Misc Traffic/ DUI	No	X	N
Alaska DMJ	60	101,000	50,000	7,500	DV	X No Felony Plea	X	No	Emergency	Y
Arizona Justice of Peace	82	85,000	5,000 - 10,000	2,500	DV	X No Felony Plea	X	No	No	Y
Arkansas District Court	112	123,000	5,000	5,000	No	Misd/PE No Felony Plea	X	No	No	N
California	None	---	---	---	---	---	---	---	---	---
Colorado County Court	102	124,000	15,000	7,500	No	Misd/PE No Felony Plea	X	No	No	Y
Connecticut Probate Court	133	94,000	Misc Civil	No	X	No	No	X	X	N
Delaware JP/Magistrate	82	113,000	15,000	15,000	X	Misd No Felony Plea	X No Felony	No	X	Y
Dist Columbia	None	---	---	---	---	---	---	---	---	---
Florida County Court	280	121,000	15,000	5,000	No	Misd/PE No Felony Plea	X	No	No	Y
Georgia DMJ	505	113,000	15,000	15,000	No	Misd/PE No Felony Plea	No	No	No	N
Hawaii District Court	20	101,000	20,000	3,500	No	Misd/PE No Felony Plea	X	No	No	N
Idaho DMJ	83	93,000	10,000	4,000	X	Misd/PE No Felony Plea	X	No	X	N
Illinois	None	---	---	---	---	---	---	---	---	---
Indiana County Court	4	95,000	10,000	3,000	DV	Misd/PE No Felony Plea	X	CT	No	Y
Iowa	None	---	---	---	---	---	---	---	---	---
Kentucky District Court	87	106,000	4,000	1,500	X	Misd/PE No Felony Plea	X	X	X	Y
Louisiana	390	106,000	2,000	2,000	No	No	X	No	No	N

Justice of Peace State	No. Judge	Salary	Limited Civil	Small Claims	Civil Domestic CS Enforce Temp Orders PFA/PFS/DV	Criminal Misd/Felony PE/Plea	Traffic Infract/Misd Felony DWS/DUI	Probate Adopt GC/CT	Juvenile CINC/JV	JT
Maine District Court	33	103,000	No Limit	4,500	X	Misd/PE No Felony Plea	X	X	X	N
Maryland District Court	107	125,000	25,000	2,500	X	Misd/PE No Felony Plea	X	No	No	N
Massachusetts District Court	177	117,000	No Limit	2,000	X	Misd/PE No Felony Plea	X	X	X	Y
Michigan District Court	285	138,000	25,000	3,000	No	Misd/PE No Felony Plea	X	No	No	Y
Minnesota	None	---	---	---	---	---	---	---	---	---
Mississippi Justice Court	191	Set Locally	2,500	No	No	Misd/PE No Felony Plea	No	No	No	Y
Missouri	None	---	---	---	---	---	---	---	---	---
Montana Justice of Peace	31	Set Locally	7,000	3,000	DV	Misd/PE No Felony Plea	X	No	No	Y
Nebraska County Court	59	107,000	15,000	2,100	No	Misd/PE No Felony Plea	X	Estates Adoptions	X	Y
Nevada Justice Court	68	154,000	7,500	5,000	No	Misd/PE No Felony Plea	X	No	No	Y
New Hampshire District Court	20	106,000	25,000	5,000	No	Misd/PE No Felony Plea	X	No	X	Y
New Jersey	None	---	---	---	---	---	---	---	---	---
New Mexico Magistrate Court	62	64,000	10,000	No	No	Misd/PE No Felony Plea	X	No	No	Y
New York District Court	50	127,000	15,000	3,000	No	Misd/PE No Felony Plea	X	No	No	Y
North Carolina District Court	721	97,000	10,000	4,000	X	Misd/PE No Felony Plea	X	No	X	Y
North Dakota	None	---	---	---	---	---	---	---	---	---
Ohio County Court	52	103,000	15,000	2,000	No	Misd/PE No Felony Plea	X	No	No	Y
Oklahoma	None	---	---	---	---	---	---	---	---	---
Oregon Justice Court	30	Set Locally	No	2,500	No	Misd/PE No Felony Plea	X	No	No	Y
Pennsylvania District Justice Court	550	61,000	8,000	No	No	Misd/PE No Felony Plea	X	No	No	N
Rhode Island District court	2	112,000	10,000	1,500	No	Misd/PE No Felony Plea	X	X	No	N

State	No. Judge	Salary	Limited Civil	Small Claims	Civil Domestic CS Enforce Temp Orders PFA/PFS/DV	Criminal Misd/Felony PE/Plea	Traffic Infract/Misd Felony DWS/DUI	Probate Adopt GC/CT	Juvenile CINC/JV	JT
South Carolina Magistrate Court	300	Set Locally	7,500	7,500	No	Misd/PE No Felony Plea	X	No	No	Y
South Dakota	None	---	---	---	---	---	---	---	---	---
Tennessee General Sessions Court	154	Set Locally	Varies	25,000	X	Misd/PE No Felony Plea	X	No	X	N
Texas Justice of Peace	834	Set Locally	5,000	5,000	No	Misd/PE No Felony Plea	X	No	No	Y
Utah Justice Court	120	89,000	5,000	5,000	No	Misd/PE No Felony Plea	X	No	No	Y
Vermont Probate Court	18	26,000	Misc Civil	No	X	No	No	X	No	N
Virginia District Court	234	113,000	15,000	No	X	Misd/PE No Felony Plea	X	No	X	N
Washington District Court	113	118,000	50,000	4,000	DV	Misd/PE No Felony Plea	X	No	No	Y
West Virginia Magistrate Court	158	40,000	5,000	No	No	Misd/PE No Felony Plea	X	No	No	Y
Wisconsin	None	---	---	---	---	---	---	---	---	---
Wyoming Justice of Peace	7	33,000	3,000	3,000	No	Misd/PE No Felony Plea	X	No	No	Y

CINC	Child in Need of Care
CS Enforce	Child Support enforcement
CT	Care and Treatment
DMJ	District Magistrate Judge
DUI	Drive While Under the Influence
DV	Domestic Violence
DWS	Drive While Suspended
GC	Guardianship and Conservatorship
Infract	Infraction
JP	Justice of the Peace
JV	Juvenile Offender
Misd	Misdemeanor
PE	Preliminary Examination
PFA	Protection from Abuse
PFS	Protection from Stalking
Temp Orders	Temporary Orders

Judiciary Annual Salary					
		Effective 6-5-05	Effective 12-4-05		
Chief Justice – Supreme Court	121,389	122,906	124,424		
Justice – Supreme Court	118,212	119,690	121,167		
Chief Court of Appeals	117,134	118,598	120,062		
Court of Appeals	114,118	115,544	116,971		
Chief District Judge	104,368	105,673	106,977		
District Judge	103,232	104,522	105,813		
District Magistrate Judge	48,838	49,448	50,059		
District Court Employee Annual Salary Effective 12-4-05					
Position	Step A	Step B	Step C	Step D	Step E
Court Administrator I	52,869	54,182	58,300	62,712	67,463
Court Administrator II	58,300	59,704	64,249	69,135	74,362
Court Administrator III	64,249	65,857	70,812	76,217	82,033
Clerk of Court I	29,432	30,179	32,488	34,932	37,577
Clerk of Court II	32,488	33,280	35,768	38,482	41,375
Clerk of Court III	39,458	40,427	43,460	46,831	50,315
Clerk of Court IV	47,961	49,161	52,869	56,876	61,198
Court Service Adm Officer	47,961	49,161	52,869	56,876	61,198
Court Service Officer I	32,488	33,280	35,768	38,482	41,375
Court Services Officer II	35,768	36,672	39,458	42,442	45,677
Court Services Officer III	39,458	40,427	43,460	46,831	50,315
Managing Ct Reporter	38,458	40,427	43,460	46,831	50,315
Official Ct Reporter	37,577	38,482	41,375	44,545	47,961
Administrative Assistant	25,451	26,062	28,032	30,179	32,488

1.25 % COLA Effective 6-5-05

1.25 % COLA Effective 12-4-05

FUNDING THE JUDICIAL SALARY INITIATIVE

Thank you, Honorable Chairman and distinguished members of the Committee for allowing me the opportunity to make this address.

Judge Wilson has addressed the rationale justifying the judicial salary initiative and it is my task to address the fashion in which it might be funded. We are mindful of the fiscal state of affairs. Many of our members are fiscal conservatives and would not approve of this initiative, even for their own benefit, if it would require a tax increase. Mindful of the stressors on and limitations of the State General Fund we are proposing, what might be described as a “user fee” funding mechanism. This would be in the nature of a docket fee increase.

The projected cost of the proposal is \$2,970,297. After thorough analysis of such factors as citizen access to justice, comparable fees in neighboring states, projected revenue, and the relevant burden or effect of cases on the judicial system, we considered four final scenarios or plans. After consideration of those factors relative to each plan we at one final recommendation. A chart is attached to my testimony outlining all the current fees, the proposed increases and the results. It would provide for the following increases. Chapter 60 civil cases usually referred to as “Big Civil” would increase \$39, as would domestic relations (divorce) cases. Chapter 61 cases of less than \$500 and from \$500 to less than \$5,000 in controversy would increase \$2, and Chapter 61 cases making

House Judiciary

Date 3-15-06

Attachment # 19

claim for greater than \$5,000 would increase \$16. Small Claims would increase \$2. Criminal cases, both felony and misdemeanor, would increase \$8, and traffic cases would increase \$4.

This proposal would net a projected \$3,197,417. This is more than \$200,000 over and above the cost of the initiative.

Under our proposal there would be no new court costs and under our proposed plan there would be no increased costs to probate, lien filings, performance bonds or tax warrants.

Increases in the docket fees (assuming the continuation of the surcharge) would maintain relative parity with other costs charged by the Federal Courts and our sister states. The Federal Court filing fee for “Big Civil” has been increased to \$250.

Admittedly, it is somewhat difficult if not impossible to do an exact “across the board” comparison with other states. The nature and types of filing fees differs drastically from state to state. Missouri, for example, does not have uniform state wide filing fees, they differ between circuit courts. Generally, Missouri requires \$150 for regular civil actions but there are a host of surcharges that may apply depending on the nature of the case and the court in which the action is filed. Colorado charges a filing fee of \$136, but also charges an answer fee of \$70 and an additional \$150 if demand for jury is made. Domestic fees are \$153 in Missouri and \$184 in Colorado and again Colorado charges the respondent \$70 to file a response. Oklahoma’s filing fees are less,

\$83 but there are a host of ancillary fees we do not require in Kansas such as \$61 for requesting a jury trial, \$35 for each attempt at service for each defendant. By comparison, in a simple car wreck case with one defendant and successful service on the first attempt, jury trial requested, Oklahoma fees would total \$179. This would compare to \$ 150 under our proposal. Court costs for the majority of traffic infractions in Oklahoma are \$73. Under our proposal, they would be \$64. More detailed information can be provided regarding small claims and limited action cases if this committee would so desire.

After the suggested docket fee increase our fees would generally be equivalent to and in most cases less than those charged in or neighboring states.

Last February the Kansas Supreme Court issued a statement expressing their support of a judicial salary enhancement proposal. The statement explained that the KDJA had convinced them that an increase in judicial salaries was justified. Further after consideration of the KDJA's docket fee proposal they were not opposed to funding the salary initiative in part or in whole by an increase in docket fees. The primary concern of the Supreme Court and the trial court judges as well is that docket fees never reach a level that would deny citizens access to the court system. The specific proposal before you was drafted in light of that overriding concern. The increases in fees are minimized in the areas of limited actions and small claims. Those cases have a mere \$ 2

increase. Nothing is done in this proposal to limit the ability of an indigent person to obtain a waiver of costs. It may be difficult if not impossible to measure “access to the courts” since that is a philosophical goal with no particular mathematical formula. That is why we looked to the surrounding states where the general costs of living might be relatively similar. If our proposal were adopted, most of our “filing fees” and court costs would be nearly equal to if not a little less than those charged in the rest of this geographic region. We truly believe this proposal will continue to guarantee reasonable access to justice while funding an initiative that will help to ensure a competent dedicated judiciary.

We understand the General Fund has been stretched to the max. We appreciate the reluctance to consider any tax increase and its resultant burden on Kansas taxpayers. That is why we are proposing this increase in “user fees” to fund this necessary initiative. We believe that this docket or filing fee proposal would accomplish the goals of insuring quality in the judiciary while not denying any citizen reasonable access to our courts.

Respectfully submitted,
Richard M. Smith, Chief Judge
Sixth Judicial District

Maximize Chapter 60 and Minimize Traffic and Limited Actions

(minimize limited actions more)

Type of Fee	Filings or Terminations	% of Cases Docket Fees Collected	Adjusted Filings or Terminations	Current Fee	Proposed Increase	Proposed Total	Incl Fro... Proposal
Civil							
Chapter 60	25,684	98%	25,170	\$111.00	\$39.00	\$150.00	\$981,630
Limited Action (61)	152,878	98%	117,983				
<=\$500		55%	64,891	\$31.00	\$2.00	\$33.00	\$129,782
>\$500 or <=\$5,000		40%	47,193	\$51.00	\$2.00	\$53.00	\$94,386
>\$5,000 or <=\$10,000		5%	5,899	\$81.00	\$16.00	\$97.00	\$94,384
Small Claims	9,816	98%	9,620				
		55%	5,291	\$31.00	\$2.00	\$33.00	\$10,582
		45%	4,329	\$51.00	\$2.00	\$53.00	\$8,658
Domestic Relations	37,222	75%	27,917	\$111.00	\$39.00	\$150.00	\$1,088,763
Criminal*							
Felony	19,087	16%	3,054	\$152.00	\$8.00	\$160.00	\$18,324
Misdemeanor	19,813	38%	7,529	\$117.00	\$8.00	\$125.00	\$45,174
Expungements	500	100%	500	\$50.00	\$100.00	\$150.00	\$50,000
Probate							
Treatment of Mentally Ill							
Treatment of Alcohol or Drug	2,427	25%	607	\$30.50	\$0.00	\$30.50	\$0
Determination of Descent	1,263	98%	1,238	\$45.50	\$0.00	\$45.50	\$0
Guardianship	657	40%	263	\$65.50	\$0.00	\$65.50	\$0
Conservatorship	317	60%	190	\$65.50	\$0.00	\$65.50	\$0
Guardianship and Conservatorship	915	50%	458	\$65.50	\$0.00	\$65.50	\$0
Annual Reports	7,800	100%	7,800	\$5.00	\$0.00	\$5.00	\$0
Annual Accounting of Conservatorship over \$10,000	3,500	30%	1,050	\$5.00	\$0.00	\$5.00	\$0
Closing Conservatorship							
under \$10,000	1,000	100%	1,000	\$5.00	\$0.00	\$5.00	\$0
over \$10,000	1,000	100%	1,000	\$5.00	\$0.00	\$5.00	\$0
Trusteeship	128	98%	125	\$65.50	\$0.00	\$65.50	\$0
Probate of an Estate or a Will	3,923	100%	3,923	\$105.50	\$0.00	\$105.50	\$0
Other Costs and Fees							
Performance Bonds							
Delinquent Personal Property Tax							
Hospital Lien							
Intent to Perform							
Mechanic's Lien							
Oil and Gas Mechanic's Lien							
Pending Action Lien							
Total	3,435	100%	3,435	\$10.00	\$0.00	\$10.00	\$0
Employment Security Tax Warrant							
Sales and Compensating Tax Warrant							
State Tax Warrant							
Motor Carrier Lien							
Total	4,812	100%	4,812	\$20.00	\$0.00	\$20.00	\$0
Marriage License	19,121	100%	19,121	\$75.00	\$0.00	\$75.00	\$0
Driver's License Reinstatements	15,759	100%	15,759	\$55.00	\$0.00	\$55.00	\$0
Traffic**	203,236	92%	186,977	\$60.00	\$4.00	\$64.00	\$665,638
Fish and Game**	3,417	83%	2,836	\$60.00	\$4.00	\$64.00	\$10,096
TOTAL FEES COLLECTED							\$3,197,417

* Criminal fees are adjusted by 25% to reflect delayed collection

** Traffic and Fish and Game fees are adjusted by 11% to reflect delayed collection

SB 296 DOCKET FEE INCREASES

<u>Case Type</u>	<u>Increase</u>
Chapter 60	\$ 39.00
Limited Actions < 500	\$ 2.00
> 500 < 5000	\$ 2.00
>5000 < 10,000	\$ 16.00
Domestic Relations	\$ 39.00
Criminal - Felony	\$ 8.00
Criminal - Misdemeanor	\$ 8.00
Expungements	\$ 100.00
Probate (all filings)	\$.00
Liens (all types)	\$.00
Marriage Licenses	\$.00
Tax Warrants	\$.00
Traffic	\$ 4.00
Fish & Game	\$ 4.00
 REVENUE PRODUCED	 \$3,197,417
 ANNUAL COST OF INITIATIVE	 \$2,970,297

Total Cost of Initiative.....\$2,970,297

Revenue raised by fee proposal \$3,197,417

Fiscal impact (Positive) \$227,120

KANSAS JUDICIAL SALARIES

**A Report prepared by the Kansas District Judge Association
Committee on Compensation and Retirement**

Summary of

Report on Kansas Judicial Salaries

It would hardly seem debatable that there is a direct relationship between the level of judicial salaries and the competence of attorneys attracted to the judiciary. To provide a quality justice system for Kansas citizens, judicial compensation must be set at a level that able and experienced attorneys will be attracted to the bench, and competent, experienced judges will be retained.

Judicial Salaries-National and Regional:

- Judges in forty-one states are paid higher salaries than Kansas judges.
- Kansas judges are paid \$14,096 less than the national mean salary for trial court judges.
- Kansas judges are paid lower salaries than judges in any nearby states, including Missouri, Nebraska, Colorado, Iowa, and Arkansas.
- Kansas judges receive \$17,400 per year less than the highest salary (Arkansas) and \$9,400 per year less than the average of salaries paid to judges in the six nearby states.

Kansas Attorneys' Income:

- In 1996, the average income of Kansas attorneys with 15-19 years experience was \$92,820. Adjusted for inflation, this equates to a 2003 salary of \$110,085, or \$9,860 more than the comparable district judge salary.
- The median income of Kansas attorneys with twenty or more years of experience was \$98,500 and the average income was \$109,867. This equates to a 2003 median income of \$116,821 (\$16,596 more than the district judge salary) and a 2003 average income of \$130,302 (\$30,077 more than the district judge salary).
- The city attorney of Overland Park, Kansas is paid \$13,600 more than the Chief Justice of the Kansas Supreme Court and approximately \$31,700 more than a Johnson County District Judge.

Per Capita Income/Judicial Salaries-Kansas and Other States:

- Kansas 2004 per capita income ranked 26th nationally; Kansas judicial salaries ranked 42nd nationally.
- Of nearby states, only Colorado and Nebraska had a higher per capita income than Kansas; Kansas judges are paid less than judges in all of those states, except Oklahoma.
- From 1996 through 2003, Kansas per capita income increased 33.8%; Kansas judges salaries increased 20.76%.
- Of ten states having a comparable per capita income to Kansas, Kansas judges are paid less than judges in any of those ten states, with the exception of Oregon and South Dakota.
- In 2005, the average salary for judges in the ten states having a comparable per capita income was \$112,835.

KANSAS JUDICIAL SALARIES

A Report prepared by the Kansas District Judges Association Committee in Compensation and Retirement

Introduction

Each year, increasing numbers of Kansans are seeking quality justice in the courts of our state. We think the question can fairly be asked whether the present salary level of the Kansas judges, without significant adjustments, is adequate to ensure Kansans that their case will be presented to qualified, competent, and experienced judges.

For many years Kansas judges have actively lobbied the Kansas legislative for an increase in judicial compensation that would bring the salaries of Kansas judges to the national median. For the first time since 1999, judges seek a salary increase that would place the Kansas compensation level at or near the national median. In FY 1988 and FY 1989 judges received 7% salary increases, a legislative effort to bring Kansas judges to the national median. In subsequent years, Kansas judicial salaries began to drop further below the national median, until a FY 2000 salary increase helped to some extent. However, since FY 2000, judges have received cost of living adjustments, but nothing more. In FY 2003, judges did not even receive a cost of living adjustment. Since 1989, a period of 16 years, Kansas judges have received one raise of \$3,218 in FY 2000.

Whether Kansas judges are being fairly compensated is a matter that can be, and has been, the subject of debate between individual judges and legislators. Unfortunately, that debate may have clouded an issue of greater concern than the personal gain of judges or the political concerns of legislators—the issue of the public’s interest in having a quality judicial system. Providing the citizens of Kansas with a quality judicial system is the responsibility not only of the Judicial Branch, but also the Legislative and Executive branches of our state government.

It would hardly seem debatable that there is a direct relationship between the level of judicial salaries and the competence of attorneys attracted to the judiciary. To provide a quality justice system,

judicial compensation must be set at a level to attract able and experienced attorneys to the bench and to retain competent, experienced judges. The Kansas Judicial Branch cannot continue to provide quality justice to the citizens of Kansas without the Legislative and Executive branches providing fair and adequate compensation to Kansas judges.

We would be less than candid if we suggested that the level of salaries is the sole criteria by which attorneys decide whether to seek a judicial position. Perhaps the question of concern can be better stated by asking at what level of compensation are competent, qualified, and experienced attorneys dissuaded from seeking judicial appointment or election.

Salary Comparison – Judges Other States

As of July 1, 2005, Kansas trial judges received an annual salary of \$104,522.. Forty-one states paid their judges higher salaries than the salaries received by Kansas judges¹. Kansas trial judges received approximately \$13,000 less than the national mean salary of \$117,328. Nationally, the range of annual salaries of general jurisdiction trial court judges varied from a high of \$163,850 in District of Columbia to a low of \$88,164 in Montana.²

The justices of the Kansas Supreme Court have fared no better than the trial judges. The Supreme Court justices' salary for 2005 was \$119,690, which was still \$10,638 less than the 2005 national mean of \$130,328.

The average salary paid to the trial judges in the states shown in Table 1 was \$110,000. Kansas trial judges were paid \$17,400 less than the highest paid (Arkansas), less than \$1,000 above the lowest salary (Oklahoma).

¹ *Survey of Judicial Salaries*, National Center for State Courts, Vol. 30, Number 1 April 1, 2005

² *id.*

Table 1
Judicial Salaries – Central States
Trial Courts, Intermediate Appellate Courts and Highest Appellate Court
(as of April 1, 2005)

	Kansas	Missouri	Iowa	Nebraska	Colorado	Oklahoma	Arkansas
Trial	\$103,232	\$108,000	\$117,040	\$110,330	\$107,044	\$102,529	\$120,632
Intermediate Appellate Court	\$114,118	\$115,000	\$123,120	\$113,312	\$111,647	\$108,336	\$124,652
Highest Appellate Court	\$118,212	\$123,000	\$128,000	\$119,276	\$116,251	\$113,531	\$128,669

Judicial Salaries – Attorney Income

Presumably, the state of Kansas expects its judges to possess above average levels of legal skills and experience. Assuming that an attorney's income is an indicator of that attorney's legal skills and experience, we can compare judicial salaries with the income of above average attorneys. A 1997 Kansas Bar Association study of attorneys' income in Kansas provides the basis for a comparison of judicial salaries and attorneys' incomes.³

In 2003, attorneys with fifteen to nineteen years of experience had an average income of \$110,085, based on a 1996 Kansas Bar Association survey, as adjusted for inflation using the Consumer Price Index [CPI]. Attorneys in the top 25% of that range of experience have incomes of approximately \$142,320, as adjusted for inflation. The median income of attorneys with twenty or more years of experience was \$116,821 and their average income was \$130,302, as adjusted for inflation. This compares with the 2003 salary of district judges of slightly more than \$100,000. Based on this data, Kansas cannot expect to attract an above average attorney to the trial bench unless that attorney has less than fifteen years experience. To attract an attorney from the 75th percentile group, that attorney will likely have less than ten years experience. In 1998 the Kansas Citizens Justice

³ 1997 *Economic Survey of Kansas Lawyers*, Journal of the Kansas Bar Association, December 1997, Vol. 66, No. 10

Initiative Committee issued its final report. On the issues of compensation of judges the committee stated “ We believe that, to hire from among the best Kansas lawyers, the State should attempt to provide judicial salaries at least approaching the 75th percentile in the experience level from which judges are most likely to be recruited. I.e., those lawyers with from 10 to 20 years of experience.”. Recommendation number six of the report was to increase the salaries an additional \$15,000 beyond current salaries, in addition to any cost of living increases. In the opinion of the committee, this was the amount necessary to bring district judges salaries roughly to the median income statewide for attorneys with 20 to 29 years of experience. Five years later this gap has increased to \$16,596.

In Johnson county, the city attorney of Overland Park is paid an annual salary approximately \$135,000, or approximately \$31,800 more than the annual salary of a Johnson County district judge, and approximately \$13,600 more than the salary paid to the Chief Justice of the Kansas Supreme Court. At least three law firms in Kansas City have announced a \$95,000 base salary for incoming associates in September 2006 (i.e., this year’s third –year law student).

The average income of male attorneys⁴ categorized by the number of years in the practice of law is shown in Table 2:

Table 2
Kansas Attorneys’ Income by Years in Practice

Years in Practice	Percentile 25	Percentile 25 Adjusted to 2003	Median	Median Adjusted to 2003	Mean	Mean Adjusted to 2003	Percentile 75	Percentile 75 Adjusted to 2003
<5	31,750	37,656	38,500	45,661	41,244	48,915	49,250	58,411
5-9	40,000	47,440	52,000	61,672	51,989	68,775	70,000	83,020
10-14	50,000	59,300	74,000	87,764	84,338	100,025	114,250	135,501
15-19	50,000	59,300	80,000	94,880	92,820	110,085	120,000	142,320
20-29	65,000	77,090	98,500	116,821	109,867	130,302	134,500	159,517

⁴ The study provided statistical data showing the net income of Kansas attorneys by gender and number of years in practice. The net income of female attorneys was shown to be lower than that of male attorneys.

Judicial Salaries – Per Capita Income

The 2004 per capita income of Kansas ranked 26th in the nation.⁵ The 2004 per capita incomes and the national rankings for Kansas and nearby states are shown in Table 3. Of the surrounding states, only Colorado and Nebraska had a higher per capita income than Kansas.

Table 3
Central States
Per Capita Income, National Ranking

	Kansas	Missouri	Iowa	Nebraska	Colorado	Oklahoma	Arkansas
Income	31,003	30,516	30,970	32,276	36,109	27,819	25,724
US Rank	26	31	27	21	9	39	48

While Kansas citizens enjoyed the third-highest per capita income in the seven states, Kansas judges were paid less than the judges in any of our neighboring states, with the exception of Oklahoma. From 1996 to 2003, Kansas per capita income rose from \$23,165 to \$31,003, an increase of 33.8%. In the same time period, salaries of district judges increased 20.76%. A comparison of the per capita income rankings of the states and the ranking for salaries paid to general trial judges is shown in Table 4.

⁵ Bureau of Economic Analysis, US Department of Commerce, September 28, 2005 news releases.

Table 4
2005 National Ranking – Per Capita Income and Judicial Salaries

	Kansas	Missouri	Iowa	Nebraska	Colorado	Oklahoma	Arkansas
US Rank-Judges	42	35	20	26	37	44	16
US Rank-Per Capita Income	26	31	27	21	9	39	48

Table 5 provides a comparison of April 1, 2005, judicial salaries in those states having a 2004 per capita income comparable to the Kansas per capita income. For purposes of this comparison, ten states were selected: the five states ranking nationally twenty-first through twenty-fifth and the five states ranking nationally twenty-seventh through thirty-first. With two exceptions, Oregon and South Dakota, trial judges in these states were paid more than Kansas trial judges. The average salary for the eleven states was \$112,414.

Table 5
2004 Per Capita Income and Judicial Salaries Ranking

State	Per Capita Income	National Rank (PCI)	Judge Salary	National Rank (Judge \$)
Nebraska	32,276	21	110,330	31
Vermont	31,737	23	104,700	34
Florida	31,460	24	134,650	9
Michigan	32,052	22	139,919	7
Ohio	31,135	25	110,050	27
<i>Kansas</i>	<i>31,003</i>	<i>26</i>	<i>103,232</i>	<i>42</i>
Iowa	30,970	27	117,040	20
Texas	30,697	28	111,700	29
South Dakota	30,617	29	98,787	45
Oregon	30,584	30	95,800	49
Missouri	30,516	31	108,000	35

Judicial Salaries – Other State Officials and Employees

The twenty-four (25) full professors at KU (excluding the Dean) who are on a nine (9) month term, average \$136,548. Because some of the professors are “distinguished professors,” a modest amount of some salaries come from sources outside the normal channels. Of these 25 full professors only nine (9) make less the Chief Justice and only two make less than a district judge. The Dean of the Law School, who is on a twelve (12) month appointment, earns \$86,094 more than the Chief Justice of the Kansas Supreme Court.

Table 6
Salaries of State Officials and Employees

Position Title	FY 2005 Salary
Chairman of dept. KU Law School	\$209,000
KU Law School Professor	\$174,082
KU Law Professor	\$172,509
KU Law Professor	\$172,217
KU Law Professors average	\$136,548
Chief Justice – Supreme Court	\$ 122,906
Justice – Supreme Court	\$ 119,690
Chief Judge – Court of Appeals	\$ 117,134
Judge – Court of Appeals	\$ 115,544
Chief District Judge	\$105,673
District Judge	\$104,522

Fiscal Note

The estimated fiscal note to increase the salaries of Kansas judges by 10% to the national median is \$3,054,249. FY 2007 cost of 10% across-the board (plus \$2,000 for chief judges) is \$3,054,249. FY 2007 cost of \$9,000 across-the board (SB296) (does not include \$2,000 for chief judges) is \$2,970,297.

KANSAS DISTRICT JUDGES ASSOCIATION
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