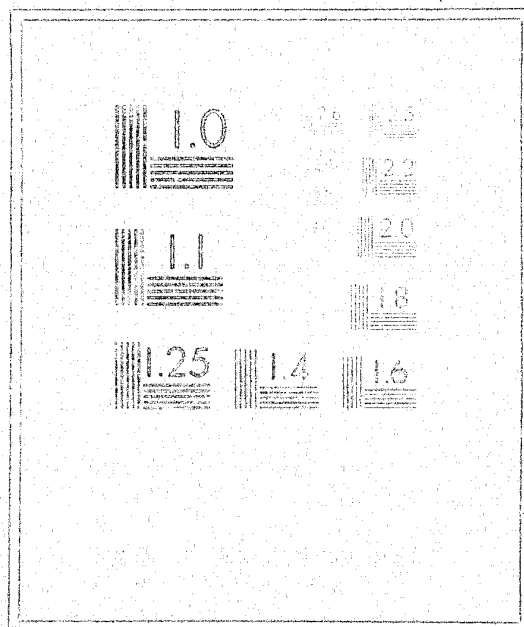


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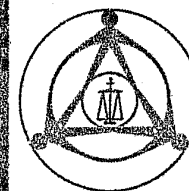
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PLANNING EVALUATION FOR
STUDY AND CONSTITUTIONAL
REORGANIZATION OF THE KANSAS STATE
COURT SYSTEM



THE AMERICAN UNIVERSITY

Criminal Courts Technical Assistance Project
Institute for Studies in Justice and Social Behavior
The American University Law School
Washington, D.C.

PLANNING EVALUATION FOR
STUDY AND CONSTITUTIONAL
REORGANIZATION OF THE KANSAS STATE
COURT SYSTEM

RECORDS

MAR 8 1977

ADDITIONS

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February 7, 1973

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I. INTRODUCTION

In November, 1972, the Kansas electorate adopted a new judicial article which provided essentially for the following:

- 1) creation of a unified court system, with one supreme court, district courts, and such other courts as the legislature might authorize;
- 2) vesting in the supreme court administrative authority over all courts in the state;
- 3) elimination of the constitutional reference to probate courts and justices of the peace;
- 4) provision for the discipline, supervision, removal, or retirement of judges for cause by means other than impeachment
- 5) requirement that the legislature establish procedures whereby the electors in each judicial district can approve or reject a system of nonpartisan selection of district judges within their district;*
- 6) elimination of the requirement that the clerk of the district court be a county elected office.

As preparation for implementing this new judicial article, the Kansas State Court Administrator requested the technical assistance of the Law Enforcement Assistance Administration. Specifically, the consultation objectives included the determination of formats for implementing the new constitutional provision for (1) the discipline and removal of judges and (2) the local option procedure for either partisan or nonpartisan selection of district judges, (3) a format for an in-depth study of the court system, including an implementation plan for the study and recommendations as to which individuals and/or groups should undertake such a study, and (4) recommendations concerning space needs and arrangements in the new supreme court building presently in the architectural planning stage.

This request was forwarded through LEAA channels to the American University Criminal Courts Technical Assistance Project which secured the

*In districts not adopting the nonpartisan plan, judges would continue to be elected by partisan ballot.

services of a team of judicial consultants who had specific expertise and experience in the requested areas of assistance. This consulting team consisted of Harry O. Lawson, Colorado State Court Administrator; Ernest C. Friesen, Director of the Institute of Court Management; and Edward B. McConnell, Administrative Director of the New Jersey Courts. The report and recommendations which follow reflect a field visit to Topeka, Kansas, conducted by the consultants on December 29, 1972, and their consultation with Chief Justice Harold R. Fatzer and Judicial Administrator James R. James of the State of Kansas.

Dr. Nicholas Kittrie, of the American University Law School, joined the team as an observer for the Criminal Courts Technical Assistance Project.

Mr. Russell K. Ash, deputy director for courts of the Kansas Governor's Committee on Criminal Justice Administration; and Miss Kathleen McCarthy, Kansas State Representative in the Region VII IEAA Office, assisted in coordinating the team's visit and participated in the ensuing on-site discussions.

II. ANALYSIS OF EXISTING SITUATION

The new Kansas judicial article provides the framework for improved judicial system organization and administration. Implementation of these new constitutional provisions and the transition to a unified court system will, of necessity, require several years if done properly. It is, therefore, important to establish priorities so that implementation can be carried out in an orderly way and the interest and involvement of the bench, bar, legislature, and general public (as expressed in the adoption of the new judicial article) does not become dissipated before the changes made possible by the new judicial article are accomplished.

A. MATTERS FOR IMMEDIATE CONSIDERATION

Four matters merit immediate consideration:

- 1) implementation of the constitutional provision for discipline and removal of judges;
- 2) implementation of the local option provision for discipline and removal of judges;
- 3) review of existing statutes and court rules to determine what changes are required to promote conformity with the new judicial article, and;
- 4) determination of the extent to which outside consultants should be used in the proposed judicial system study and in what subject areas.

B. MATTERS FOR LONG RANGE CONSIDERATION

Implementation of the proposed judicial system study will require an ongoing effort aimed at bringing about improvement in the system on a continuing basis. Two matters appear particularly significant.

First, an improved and more integrated minor court system must be developed. Presently, there are several special and minor courts. Three counties (the largest in the state) have separate juvenile courts. There is a county magistrate which has jurisdiction in limited civil matters and probate matters as well as over preliminary hearings in felony cases, misdemeanors (including traffic), and juvenile matters (except for the three counties with juvenile courts). This minor court system does include municipal police courts which have jurisdiction over municipal ordinance violations.

Second, attention must be focused on the new supreme court building which has been authorized and for which architectural plans are presently nearing completion. A reevaluation of space needs and location is advisable in light of the new judicial article and its provisions for greater administrative authority vested in the supreme court.

III. RECOMMENDATIONS

The recommendations submitted below are an outgrowth of discussion between the consultants and Chief Justice Fatzer and the state judicial administrator.

A. JUDICIAL DISCIPLINE AND REMOVAL

The Court Should Act As Quickly As Possible in Setting Up a Disciplinary Body and Procedures.

The new judicial article empowers the supreme court to establish procedures for discipline and removal by court rule. Various methods now in effect in other states were discussed and material on these has been sent to Chief Justice Fatzer and Judicial Administrator James. While no plan was favored unanimously, some preference was expressed by at least one consultant for the California Qualifications Commission approach which has been adopted by several states, including Colorado.

B. JUDICIAL SELECTION AND TENURE

Legislation Should Be Prepared for the 1974 Session Which Would Permit Voters in Each Judicial District to Determine Whether They Want to Change the Present Bipartisan Election Method of Selecting District Judges.

This legislation should provide for:

- 1) a district-by-district vote in 1974.
- 2) a method of resubmission of the question in any district where it is defeated, and

- 3) a method for doing away with the new selection scheme in any judicial district which adopts it.

This legislation was recommended for 1974 rather than 1973 to allow sufficient time for its preparation in view of the numerous complexities involved. Furthermore, the question would have to be put to vote in a general election which will not occur again until 1974. Thus, even if the legislation were adopted in 1973, it could not be considered until 1974 without a special election authorized by the legislature -- an action which is highly unlikely.

There was some discussion of the alternate plan for judicial selection which could be offered. Some preference was expressed for a form of the so-called Missouri Plan, which already used in Kansas for the selection of supreme court justices.

C. JUDICIAL SYSTEM STUDY

The recommendations concerning the proposed judicial system study fall into four categories: 1) study phases, 2) overall study responsibility, 3) study scope and content, and 4) study staffing requirements.

1. Study Phases

The Study Should be Conducted in Three Phases.

- a. Limited technical study. This phase should include a review of existing statutes and rules to determine whether any amending or repealing action is necessary to conform with the new judicial article. This study could be conducted by

a legislative-judicial study commission, either as part of the overall study or separate from it. As many required changes as possible should be presented to the legislature by 1973 for consideration, with the remaining changes presented to the 1974 session.

b. Determination of short-term changes. This phase should involve the identification of those areas of fundamental change upon which there is general agreement and which can be accomplished while the overall study is still in progress. For example, development could be undertaken of necessary court rules or legislation defining supreme court administrative authority over other courts, thus implementing this provision of the new judicial article.

c. Long-range study. This phase would include the overall judicial system study, including inventory and analysis of the existing system and recommendations for change and implementation, as well as planning and development for the system's future needs. This study phase would be considered ongoing.

2. Overall Study Responsibility

Overall study responsibility should be placed in a body designated as the Judicial System Development Commission. The chief justice should play an active role on the Commission and its membership

should be broad based and should be distributed in both the statewide office and regional offices to be established.

This membership should include representatives from the legislature, the bench and bar, prosecutors and defense counsel, representatives of public agencies involved with the courts (including local government), representatives of minority groups, representatives of the press, and others active in public affairs. The statewide and regional commissions should cooperate with the judicial council and staff, the judicial administrator, the legislature, and the state bar association in carrying out the functions of the Commission.

The Commission should be an ongoing, semi-permanent body continually reviewing and studying the judicial system so that improvement and change can take place on a continuing basis in an orderly way. The first task of the Commission should be to establish a list of priorities and the scope of its efforts over the next several years. Special task forces should be created as needed to study designated subjects, as determined by the Commission. These task forces should be temporary bodies comprising commission members and should disband upon completion of their assignments. From time to time the Commission should hold regional meetings in conjunction with the regional commission offices. These meetings would assist the Commission in gaining first-hand knowledge of local problems as well as local reaction to the judicial system and proposed changes.

If state funding is desired, legislation should be considered to create the Commission. In any event, the legislature should be asked to designate by resolution its members in the state-wide and regional offices.

3. Study scope and content

Suggested subject areas are recommended for consideration by the Judicial Development Commission for inclusion in both short-term and long-range study plans. These subject areas are set forth as examples and do not preclude additional topics of study; the list is not meant to be exhaustive but merely illustrative. No order of priority is suggested; this determination is left to the Commission.

a. Lower and Special Courts

- 1) inventory of present organization and operation
- 2) determination of problem areas, such as case backlog, inadequate personnel, etc.
- 3) alternate plans for improvement

b. Budgeting and Fiscal Administration

- 1) cost of operating system
- 2) fiscal procedures, budgeting practices, accounting, etc.
- 3) financial needs of system, priorities

c. Record Management

- 1) types and variety of records
- 2) inventory or equipment and use (microfilm, etc.)
- 3) record-keeping systems
- 4) record storage and destruction
- 5) feasibility of uniformity

d. Case Flow

- 1) movement of cases through court
- 2) judge-caseload ratios
- 3) development of performance standards

e. Information System Administration and Development

- 1) data needed
- 2) feasibility and limitation of automation
- 3) interrelationship with case flow, fiscal management, etc.
- 4) system design

f. Court Facilities

- 1) inventory
- 2) adequacy and needs
- 3) long-range capital plan

g. Court Personnel (non-judicial)

- 1) number, salaries, qualifications, fringe benefits
- 2) development of a personnel plan and program

4. Staffing Requirements

It is recommended that the study be conducted primarily by in-house staff. This staff could be drawn from numerous sources: law school professors, persons with legislative council or government research experience, and political science, economics, and public administration professors and their staffs. This primary reliance on in-house staff is based on several considerations.

First, an in-house staff would require little time to become familiar with the Kansas system, its needs, problems and acceptable solutions. Second, they would have more credibility with the study Commission than would outside experts who could spend only a limited time in Kansas, make their recommendations, and leave. Third, the use of in-house staff would be an excellent way of training staff for

the judicial administrator's office which will be considerably expanded during the next few years as a result of the enlarged administrative responsibility of the supreme court. Finally, the Commission could exercise better policy control over the study with in-house staff. It is sometimes difficult to keep outside consultants within the policy scope and constraints established for a study.

Despite a heavy reliance on in-house staff, however, there would still be a need for consultants in specific technical areas such as automation and system design, records management, personnel administration, etc. Such consultation would be primarily limited to technical observations and recommendations and would be extremely helpful to the in-house staff and the Commission.

5. Space Needs.

The new supreme court building should be designed to promote flexibility and accomodation to the changing needs of the court.

A review of the plans for the new supreme court building resulted in the following suggestions.

- 1) The Judicial Council and the judicial administrator's office should be located as close together as possible -- not on different floors as presently planned.
- 2) There should be more space initially assigned to the judicial administrator and more expansion space available later on.
- 3) Flexible space should be designed into the building so that walls can be moved and court related agencies transferred at a later time if necessary.
- 4) There should be a microfilm program for appellate court records to eliminate current potential storage problems.

- 5) A working library should be in close proximity to judges' chambers so as to reduce library costs and conserve judicial time.
- 6) Above all, there should not be a preconceived organization chart built into the building plans (see #3 above).

IV. CONCLUSION

The foregoing discussion is intended to provide local Kansas officials with some direction in implementing the new judicial article of the State Constitution as well as in undertaking a comprehensive study of the state's court system as a prelude to the prescribed court reorganization. The observations and recommendations submitted are a product of careful consideration of similar efforts in other jurisdictions as well as the specific needs of the Kansas judicial system. The implementation process will require an extensive ongoing effort on the part of many persons. In view of the present cooperative relationship between the supreme court and the legislature, however, there exists a sound basis for effective joint efforts in continuing the improvement of the Kansas judicial system during these key years ahead.

APPENDIX

HOUSE CONCURRENT RESOLUTION No. 1018

A PROPOSITION to amend the constitution of the state of Kansas by revising article 3 thereof, relating to the judiciary.

Be it resolved by the Legislature of the State of Kansas, two-thirds of the members elected to the House of Representatives and two-thirds of the members elected to the senate concurring therein:

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

"Article 3.—Judicial :—

"Section 1. Judicial power; seals; rules. The judicial power of this state shall be vested exclusively in one court of justice, which shall be divided into one supreme court, district courts, and such other courts as are provided by law; and all courts of record shall have a seal. The supreme court shall have general administrative authority over all courts in this state.

"Sec. 2. Supreme court. The supreme court shall consist of not less than seven justices who shall be selected as provided by this article. All cases shall be heard with not fewer than four justices sitting and the concurrence of a majority of the justices sitting and of not fewer than four justices shall be necessary for a decision. The term of office of the justices shall be six years except as hereinafter provided. The justice who is senior in continuous term of service shall be chief justice, and in case two or more have continuously served during the same period the senior in age of these shall be chief justice. A justice may decline or resign from the office of chief justice without resigning from the court. Upon such declination or resignation, the justice who is next senior in continuous term of service shall become chief justice. During incapacity of a chief justice, the duties, powers and emoluments of the office shall devolve upon the justice who is next senior in continuous service.

"Sec. 3. Jurisdiction and terms. The supreme court shall have original jurisdiction in proceedings in quo warranto, mandamus, and habeas corpus; and such appellate jurisdiction as may be provided by law. It shall hold one term each year at the seat of government and such other terms at such places as may be provided by law, and its jurisdiction shall be co-extensive with the state.

"Sec. 4. Reporter; clerk. There shall be appointed, by the justices of the supreme court, a reporter and clerk of said court, who shall hold their offices two years, and whose duties shall be prescribed by law.

"Sec. 5. Selection of justices of the supreme court. (a) Any vacancy occurring in the office of any justice of the supreme court and any position to be open thereon as a result of enlargement of the court, or the retirement or failure of an incumbent to file his declaration of candidacy to succeed himself as hereinafter required, or failure of a justice to be elected to succeed himself, shall be filled by appointment by the governor of one of three persons possessing the qualifications of office who shall be nominated and whose names shall be submitted to the governor by the supreme court nominating commission established as hereinafter provided.

"(b) In event of the failure of the governor to make the appointment within sixty days from the time the names of the nominees are submitted to him, the chief justice of the supreme court shall make the appointment from such nominees.

"(c) Each justice of the supreme court appointed pursuant to provisions of subsection (a) of this section shall hold office for an initial term ending on the second Monday in January following the first general election that occurs after the expiration of twelve months in office. Not less than sixty days prior to the holding of the general election next preceding the expiration of his term of office, any justice of the supreme court may file in the office of the secretary of state a declaration of candidacy for election to succeed himself. If a declaration is not so filed, the position held by such justice shall be open from the expiration of his term of office. If such declaration is filed, his name shall be submitted at the next general election to the electors of the state on a separate judicial ballot, without party designation, reading substantially as follows:

"Shall

(Here insert name of justice.)

(Here insert the title of the court.)

be retained in office?"

If a majority of those voting on the question vote against retaining him in office, the position or office which he holds shall be open upon the expiration of his term of office; otherwise he shall, unless removed for cause, remain in office for the regular term of six years from the second Monday in January following such election. At the expiration of each term he shall, unless by law he is compelled to retire, be eligible for retention in office by election in the manner prescribed in this section.

"(d) A nonpartisan nominating commission whose duty it shall be to nominate and submit to the governor the names of persons for appointment to fill vacancies in the office of any justice of the supreme court is hereby established, and shall be known as the "supreme court nominating commission." Said commission shall be organized as hereinafter provided.

"(e) The supreme court nominating commission shall be composed as follows: One member, who shall be chairman, chosen from among their number by the members of the bar who are residents of and licensed in Kansas; one member from each congressional district chosen from among their number by the resident members of the bar in each such district; and one member, who is not a lawyer, from each congressional district, appointed by the governor from among the residents of each such district.

"(f) The terms of office, the procedure for selection and certification of the members of the commission and provision for their compensation or expenses shall be as provided by the legislature.

"(g) No member of the supreme court nominating commission shall, while he is a member, hold any other public office by appointment or any official position in a political party or for six months thereafter be eligible for nomination for the office of justice of the supreme court. The commission may act only by the concurrence of a majority of its members.

"Sec. 6. *District courts.* (a) The state shall be divided into judicial districts as provided by law. Each judicial district shall have at least one district judge. The term of office of each judge of the district court shall be four years. District court shall be held at such times and places as may be provided by law. The district judges shall be elected by the electors of the respective judicial districts unless the electors of a judicial district

have adopted and not subsequently rejected a method of nonpartisan selection. The legislature shall provide a method of nonpartisan selection of district judges and for the manner of submission and resubmission thereof to the electors of a judicial district. A nonpartisan method of selection of district judges may be adopted, and once adopted may be rejected, only by a majority of electors of a judicial district voting on the question at an election in which the proposition is submitted. Whenever a vacancy occurs in the office of district judge, it shall be filled by appointment by the governor until the next general election that occurs more than thirty days after such vacancy, or as may be provided by such nonpartisan method of selection.

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

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

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

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

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

"Sec. 7. *Qualifications of justices and judges.* Justices of the supreme court and judges of the district courts shall be at least thirty years of age and shall be duly authorized by the supreme court of Kansas to practice law in the courts of this state and shall possess such other qualifications as may be prescribed by law.

"Sec. 8. *Prohibition of political activity by justices and certain judges.* No justice of the supreme court who is appointed or retained under the procedure of section 5 of this article, nor any judge of the district court holding office under a nonpartisan method authorized in subsection (a) of section 6 of this article, shall directly or indirectly make any contribution to or hold any office in a political party or organization or take part in any political campaign.

"Sec. 12. *Extension of terms until successor qualified.* All judicial officers shall hold their offices until their successors shall have qualified.

"Sec. 13. *Compensation of justices and judges; certain limitation.* The justices of the supreme court and judges of the district courts shall receive for their services such compensation as may be provided by law, which shall not be diminished during their terms of office, unless by general law applicable to all salaried officers of the state. Such justices or judges shall receive no fees or perquisites nor hold any other office of profit or trust under the authority of the state, or the United States except as may be provided by law, or practice law during their continuance in office.

"Sec. 15. *Removal of justices and judges.* Justices of the supreme court may be removed from office by impeachment and conviction as prescribed in article 2 of this constitution. In addition to removal by impeachment and conviction, justices may be retired after appropriate hearing, upon certification to the governor, by the supreme court nominating commission that such justice is so incapacitated as to be unable to perform adequately his duties. Other judges shall be subject to retirement for incapacity, and to discipline, suspension and removal for cause by the supreme court after appropriate hearing.

"Sec. 16. *Savings clause.* Nothing contained in this amendment to the constitution shall: (a) Shorten the term of office or abolish the office of any justice of the supreme court, any judge of the district court, or any other judge of any other court who is holding office at the time this amendment becomes effective, or who is holding office at the time of adoption, rejection, or re-submission of a nonpartisan method of selection of district judges as provided in subsection (a) of section 6 hereof, and all such justices and judges shall hold their respective offices for the terms for which elected or appointed unless sooner removed in the manner provided by law; (b) repeal any statute of this state relating to the supreme court, the supreme court nominating commission, district courts, or any other court, or relating to the justices or judges of such courts, and such statutes shall remain in force and effect until amended or repealed by the legislature.

Sec. 2. This resolution, if concurred in by two-thirds of the members elected to the senate and two-thirds of the members elected to the house of representatives, shall be entered on the

HOUSE CONCURRENT RESOLUTION No. 1018—page 4

journals, together with the yeas and nays. The secretary of state shall cause this resolution to be published as provided by section 1 of article 14 of the constitution, and shall cause the proposed amendment to be submitted to the electors of the state at the general election in the year 1972 as provided by law.

I hereby certify that the above CONCURRENT RESOLUTION originated in the HOUSE, and was adopted by that body

HOUSE concurred in _____
SENATE amendments _____

Speaker of the House.

Chief Clerk of the House.

Adopted by the SENATE
as amended _____

President of the Senate.

Secretary of the Senate.

END