

1 BEFORE THE SUPREME COURT OF MISSOURI
2 MUNICIPAL DIVISION WORK GROUP
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7 TRANSCRIPT OF PROCEEDINGS
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9 This matter came on for hearing before
10 the Supreme Court of Missouri's Municipal Division
11 Work Group, on the 4th day of December, 2015, at 6:00
12 p.m., at City Hall, 414 East 12th Street, Kansas
13 City, Missouri, 64106.
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1 APPEARANCES

2 Appearing on the Municipal Division
3 Work Group was Mr. Todd Thornhill, Ms. Katherine
4 Banks, Mayor Sylvester James, Mr. Edward Robertson,
5 Ms. Ann Covington, Mr. Karl DeMarce and Mr. Booker
6 Shaw.

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8 SPEAKERS: Eric Zahnd
9 Aimee Gromowsky
10 Jeffery Eastman
11 Andrew Talge
12 Alissia Canady

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1 MR. SHAW: Ladies and gentlemen,
2 thank you so much for being with us this evening.
3 It's Friday evening at City Hall and I know it's very
4 important for us to hear from you and your views on
5 the work that we are doing under the orders of the
6 Supreme Court.

7 Let me just introduce the members of
8 the Supreme Court Working Group that are with us this
9 evening. Obviously your Mayor Sylvester James, Judge
10 Chip Robertson of the -- formally of the Supreme
11 Court of Missouri. I'm Booker Shaw from St. Louis,
12 Missouri; Todd Thornhill, Judge of Municipal Court in
13 Springfield, Missouri; Karl DeMarce, Judge in
14 Scotland County, Missouri; Katherine Banks from St.
15 Louis County with Voices For Children and to my far
16 right and your far left is Judge Ann Covington,
17 formerly of the Missouri Supreme Court.

18 But we are here to hear from you, so I
19 don't know if you all had a sign-in sheet today so.

20 MAYOR JAMES: There are some cards up
21 there by the podium. If you would like to speak, if
22 you would fill out a card with your name on it and
23 basically where you're from and then we can use those
24 so that our chairs can work through that as a system,
25 anybody that wants to speak I guess.

1 MR. SHAW: Eric Zahnd is it?

2 MR. ZAHND: Good evening, members of
3 the Task Force. Thank you so much for being here.
4 I'm Eric Zahnd. I'm the Platte County Prosecuting
5 Attorney. I'm here tonight appearing on behalf of
6 the Missouri Association of Prosecuting Attorneys of
7 which I am a member of the Board of Directors.

8 As many of you know, my colleague
9 Christian County Prosecuting Attorney Amy Fite,
10 testified before you in Springfield and I won't
11 repeat her testimony, but I will try to extend that
12 testimony in a couple important areas.

13 As you know MAPA's position on this
14 issue is that no municipal prosecutor or assistant
15 municipal prosecutor should represent any party other
16 than the state or a political subdivision in any
17 criminal or municipal ordinance proceeding anywhere
18 in the State of Missouri. Put simply, we believe
19 that we should end the game of musical chairs where
20 attorneys serve in one city as a prosecutor and show
21 up sometimes the next night in a neighboring city as
22 a defense attorney. In the past we lawyers have
23 found a way to justify that conduct. It's conduct
24 that would be a crime if it was a state prosecutor or
25 a state assistant prosecutor who performed the same

1 duties. In this working group and the Supreme Court,
2 could certainly fashion a way to continue to justify
3 that conduct, but, of course, that's exactly why you
4 all are here tonight and why you are holding this
5 hearing because the public no longer accepts those
6 lawyerly mental gymnastics. Instead the spotlight is
7 now on Municipal Courts as a result of the tragic
8 events of Ferguson and we, as members of the bar, are
9 being forced to confront the often forgotten
10 stepchildren of courts, those Municipal Courts.

11 For too long I would submit we have
12 accepted a lesser standard of due process in those
13 courts than we have deemed acceptable in our state
14 courts. So let me deal with just briefly two nuances
15 of what prosecutors hope will become a binding rule
16 of the Supreme Court prohibiting municipal
17 prosecutors from concurrently serving as defense
18 attorneys in other municipalities.

19 First, let's set aside once and for
20 all the notion that Municipal Courts are somehow
21 different because they only deal with ordinance
22 violations, which aren't really criminal at all, but
23 are merely quasi criminal. Again, this is one of
24 those distinctions that only a lawyer could love or
25 perhaps even understand. A Municipal Court ordinance

1 can and usually does, a violation of a municipal
2 ordinance, can and does punish the exact same kind of
3 conduct that Missouri criminal codes, misdemeanors
4 do, bar the State from prosecution due to the
5 application of the principle of double jeopardy,
6 subject a person to arrest, permit that person to be
7 held prior to trial, subject that person to appeal
8 the incarceration in the municipal or county jail,
9 afford that person the right to a public defender,
10 and if that person is found guilty of certain crimes,
11 such as driving while intoxicated, domestic assault
12 or stealing, that finding can be used to enhance a
13 later sentence in a state court prosecution. Given
14 all of this, it really doesn't matter what word we
15 lawyers use to define a municipal ordinance
16 violation. To the general public it's a crime and it
17 is, in fact, the exact same offense that a member of
18 the public would be prosecuted for in a state court
19 by a state prosecutor if it happened to be committed
20 outside the city limits of a municipality.

21 Second, let's deal with the issue of
22 the geographic reach of this prohibition. The
23 Missouri Association of Prosecuting Attorneys'
24 position is, is that ought to have state wide impact,
25 that restricting prosecutors merely from prosecuting

1 within a single county does not make sense. It might
2 make sense on the eastern side of the state in St.
3 Louis where St. Louis County provides a complete
4 collar around the City of St. Louis. On the western
5 side of the state, however, here in Kansas City, it
6 doesn't make much sense. The Kansas City Mero area
7 is a very different metro area than St. Louis. In
8 the Kansas City metro area, Jackson, Clay, Platte and
9 Cass Counties are viewed by most people as the metro
10 area and they are in many ways fundamentally
11 interchangeable. It is the Kansas City metro area.
12 In fact, the City of Kansas City itself extends into
13 each of those counties, and has a sizable number of
14 residents within three of those counties, about
15 300,000 people in Jackson County, 113,000 people in
16 Clay County and 43,000 people in Platte County.
17 Lawyers commonly practice in all of these counties
18 with the addition of Cass County, and the residents
19 frequently have no idea which county they are in.

20 Let me give you one example, the City of
21 North Kansas City, just north of us, a separate city
22 from the City of Kansas City, happens to be in Clay
23 County. It's a rather large city in the Kansas City
24 metropolitan area. It's only about two miles from
25 the City of Riverside, also a relatively large city

1 in the Kansas City metro area, which happens to be in
2 Platte County. Both of these cities have active
3 Municipal Courts and I suspect that many of those
4 charged with an ordinance violation in one city, also
5 wind up being charged with an ordinance violation in
6 the other city. If a prosecutor in North Kansas City
7 can act as a defense attorney in Riverside, it's
8 likely that prosecutor will encounter many of the
9 same members of the public in the other city. And if
10 the goals of this task force, if one of those goals
11 is to attempt to regain public trust in the justice
12 system, which I hope and believe it is, simply
13 prohibiting a lawyer from playing the dual roles of
14 prosecutor and defense attorney in a single county
15 will do little to regain that trust.

16 In short, the Missouri Association of
17 Prosecuting Attorneys recommends this task force and
18 ultimately the Supreme Court that the real reform
19 that actually has a chance of restoring public
20 confidence in our Municipal Courts and ultimately in
21 our justice system as a whole, we do that by ensuring
22 that the city prosecutors are free from any actual or
23 even perceived conflict of interest by prohibiting
24 them from also representing those accused of crimes
25 or municipal ordinance violations anywhere else in

1 the State of Missouri. Thank you.

2 MR. SHAW: Thank you, Mr. Zahnd.

3 Andrew Talge.

4 MR. TALGE: I'm going to defer at this
5 time.

6 MR. SHAW: Aimee Gromowsky.

7 MS. GROMOWSKY: Hello, my name is
8 Aimee Gromowsky. I'm a defense attorney here in
9 Kansas City. I've being practicing since 1999 and
10 mainly in the Municipal Court area since 2007. I
11 currently serve as the chair of the Kansas City
12 Metropolitan Bar Association's Municipal Court
13 Committee, have been in that role for two years and
14 was the vice chair for a year before that, and so I
15 kind of call Kansas City Municipal Court my home
16 court. And when I first started working in that
17 arena, I also called it my Class Reunion because I
18 would always see all the lawyers when I was a
19 prosecutor, all the defense attorneys over there.
20 You just see a lot of people, so anyway I very much
21 enjoy my practice. I've always felt that our court
22 is sort of the front door to the court system in the
23 State of Missouri. More people are probably going to
24 have contact with our court than they are going to
25 have with an associate or circuit court and obviously

1 appellate and Supreme Court situations, so it's
2 always -- for me it's important that our court, my
3 home court is accommodating and helpful to the people
4 that come through it. And so as part of my duties of
5 being on the Municipal Court Committee is I sit in
6 the court embank meetings here at Municipal Court
7 that happen once a month, so a lot of its kind of
8 boring stuff, but I will tell you that long before
9 Ferguson they were talking about alternatives to
10 fines and what high fines can do to the people that
11 appear before them. The commitment was there when I
12 started attending meetings over two-and-a-half years
13 ago that they, you know, that they were aware of the
14 problem. And some people -- obviously when you're
15 having a public defender, in our case we have Legal
16 Aid that represents indigent people in Kansas City,
17 you know, a lot of those deals are worked out so that
18 it is probation or community service. But sort of
19 part of the problem over there is that Legal Aid,
20 basically you have to be unemployed to get Legal Aid.
21 So there's this stratosphere of people that need
22 representation that certainly live paycheck to
23 paycheck in a very, very real way that still need
24 representation and so lots of times you're trying to
25 work out deals, trying to get it done and you have to

1 take -- the attorney themselves need to take into
2 consideration what their client can do. So that is
3 one of the problems that I see at Kansas City
4 Municipal Court is Legal Aid is very, very limited to
5 what they can do for people and that scope needs to
6 be larger.

7 But, basically, I'm here because I
8 just want to, and I said this as Ferguson was
9 happening and occurring and that, you know, I knew
10 that our court was ahead of the game because they
11 were talking about it before it became an
12 inflammatory issue in Ferguson. So that's all I'm
13 here for. If anybody has any questions of our court
14 or anything about the KCMB, Municipal Court
15 Committee, I'd be happy to answer them. Thank you.

16 MR. SHAW: Thank you very much. Jeff
17 Eastman.

18 MR. EASTMAN: Members of the panel,
19 I've been practicing law for over 30 years and I've
20 served in a variety of capacities as a city
21 prosecutor in the wonderful City of Kansas City.
22 I've served as a defense attorney for probably 25
23 years. I've had the privilege and continue to have
24 the privilege of serving as a municipal judge for a
25 long time in the City of Gladstone where I have an

1 office, and now in the City of Lawson. I think the
2 Municipal Courts on this side of the state do not
3 suffer from the problems that the cities on the east
4 side of the state do. We've got some very fine
5 judges, but, as far as, what you're asked to do and
6 what I see when people come before me is alternatives
7 and resources.

8 You have to understand that the court
9 system at the municipal level for most of the cities
10 are part-time people. The city prosecutor is
11 part-time, the city clerk is part-time, certainly the
12 Judge is part-time. That limits our opportunities to
13 do a lot of things. I'm not suggesting that we can
14 equate what we do with state court judges, but as
15 Mr. Zahnd represents when those people come before me
16 and I'm asked to adjudicate the merits of their case,
17 I understand that when I put my name on the back of
18 that ticket with a disposition, it is going to follow
19 that individual. And if I decide that they're guilty
20 of certain offenses or they keep doing it, they're
21 going to end up in front of that gentleman in his
22 office and if I haven't exercised good discretion and
23 given that person due process and recognize that he
24 or she has rights that have been enforced, I've done
25 an injustice to the system. That said, in the small

1 community of Lawson we don't see a line of DWIs, but
2 we see a very polite, respectable police force that
3 is going out there trying to do the common day tasks
4 of just cleaning up the neighborhood, making sure
5 that you're not driving past that bus stop sign
6 that's out in the neighborhoods in the morning when
7 the kids are out there.

8 So how do you fashion some remedy for
9 a person who is making eight or \$9.00 an hour, barely
10 struggling, yet, happens to engage in these
11 transgressions? And I suggest to the authorities
12 alternative programs such as more community service,
13 defensive driving school, programs that are perhaps
14 subsidized by the Department of Transportation,
15 MODOT, let them tender some grants and give us an
16 opportunity to put these through.

17 I had a gentleman last night who was
18 16-years-old driving 65 in a 35, absolutely
19 petrified. You could tell his father was a working
20 man. He come in off the streets, perhaps worked a
21 ten or 12 hour day. He was there with his son,
22 recognizing his son had done wrong. How do we
23 fashion a remedy for a man whose probably barely able
24 to put food on the table, yet, he got his son whose
25 made a mistake and the concept was let's get some

1 community service out of this young man. He's young,
2 he's healthy, he's obviously got some free time and
3 let's put him into a class or two. Take away some of
4 his time. But those who have been practicing as long
5 as I have, I remember the Tom Sims of the Kansas City
6 Municipal Court. Tom said, when I was a prosecutor
7 in his courtroom, fashion the disposition if it's a
8 criminal plea or finding of guilty to the offender.
9 It doesn't do a darn good to sentence -- to give a
10 gentleman who lives in Johnson County, Kansas, making
11 \$250,000 a year a \$100 fine and to give the same fine
12 to somebody who is working at 12th and Vine. And
13 Tom's answer to that was send the gentleman from
14 Johnson County, Kansas, who wants this relief to do
15 some community service or take away some of his
16 Saturday golf time and make him go to do an eight
17 hour defensive driving school class.

18 So my suggestion to this group is
19 let's look at the alternatives and how to fund them.

20 Secondly, on behalf of the judges that
21 I know is restore the ability of the Municipal Court
22 to at least suspend a license on a failure to appear
23 or a failure to satisfy a financial obligation. Last
24 night we had a 30 percent no-show rate. I've got a
25 part-time clerk that works ten hours a week. The

1 city can't afford to pay her a lot more to come in
2 and do all the necessary paperwork, to issue all the
3 summons. Many of these people do not live in the
4 City of Lawson. The small police force cannot drive
5 to North Kansas or to Platte City, Missouri to pick
6 somebody up on \$150 warrant. It doesn't take a great
7 deal of paperwork to send to the state with a copy to
8 the offender saying you missed your court date. You
9 got 30 days to come in and address this situation.
10 There's no immediate suspension, there's an
11 opportunity to cure it. And it's one way that we can
12 reinvest our resources in the court and hold people
13 accountable. I'm almost to the point where I want to
14 reward people for coming to Court. I want to -- sir,
15 you took the time to come tonight and address the
16 allegation that was levied against you, either
17 admitting fault or asking for a hearing. By gosh, we
18 should cut your fine in half because you did that
19 because a lot of people don't and we don't have the
20 ability right now to do much with them. So I really
21 ask that serious consideration be given. It's not
22 immediate, it will catch up to somebody and we've
23 taken away a lot of the other things that perhaps may
24 have been abused in certain situations; fine, we can
25 accept that, but at least let's get the respect back

1 so the people who do show respect are rewarded and
2 the people who fail to live up to their
3 responsibilities by at least showing up, serve some
4 sanction and are eventually called in to answer for
5 their failures. Thank you.

6 MR. SHAW: Thank you. Is there anyone
7 else? Tell us your name.

8 MS. CANADY: My name is Alissia Canady
9 and I am a counsel person here in Kansas City and
10 chair the Public Safety Committee which Municipal
11 Court falls up under my purview in that capacity.
12 I'm also a former prosecutor in Jackson County, so
13 having had some experience and exposure on both sides
14 at the state level and now at the city level, I am
15 proud to say that we have made some great inroads
16 here in Kansas City. However, much like Ferguson
17 allow the residents in Kansas City, particularly the
18 inner city, make up the same social economic profile.
19 Minority, often times low income and very limited
20 resources to pay the fines that they're imposed upon.
21 Couple that with the Attorney General's report that
22 minorities are more likely to be stopped for traffic
23 offenses than non-minorities in urban areas. It
24 creates a burden sometimes on the residents. I have
25 not seen the actual numbers, but those that are often

1 suspend their license for failure to pay fines or
2 failure to appear, as my colleagues just referenced,
3 is a high number and often times because of the
4 financial burden that comes along with that.

5 Now I don't know if community service
6 is a requisite penalty for driving, for speeding or
7 for driving while intoxicated, but I think that's
8 something that definitely should be looked at in
9 terms of what is fair. Because when you have the
10 economic qualities that you deal with in urban areas,
11 you have a high volume of offenders that are
12 sometimes disproportionately targeted. It does
13 create a burden and so our courts become full.
14 There's an impact on these individuals' ability to
15 provide for their families and we have to find other
16 ways to address these issues in a more proactive
17 manner.

18 In addition to the driving aspect of
19 it, we have a lot of housing violations that we deal
20 with in the inner city areas as well, but often find
21 themselves in Municipal Court. And I had the
22 privilege today to work with a group of my colleagues
23 from the City staff and also from the court to find
24 out what do we do? Because even though Kansas City
25 is, you know, we like to think of ourselves a lot

1 more advanced than Detroit, some neighborhoods have
2 some of the same profiles, low income, older homes
3 and elderly homeowners that don't have the resources
4 to address their properties, but the resident still
5 requires them or the city requires them to be in
6 compliance with the code regulations.

7 So what do we do with those issues?
8 I'm happy to report that collectively we came up with
9 a very proactive diversion program that we plan to
10 introduce, you know, after the next budget cycle
11 comes into play, but that's the city taking a
12 proactive role in how they're going to address that
13 issue, but we have to look at the issues and find
14 ways and address them at the root level. And I
15 understand that the laws are what they are, but when
16 you're dealing with urban areas, when you're dealing
17 with diversity, we have segments of our community
18 where you have a lot of immigrants and where you have
19 these varying factors that come into play does not
20 homogenous your environment, you have to have some
21 discretion from the court so. And currently our laws
22 do not allow as much flexibility. What we would like
23 to see is to address our issues across the board. So
24 I don't have the answer, however, I would like to
25 just pose to you all that we deal with a number of

1 different issues that have much more layers to get to
2 the real root of how we solve them, but at the end of
3 the day we want our residents to feel safe, we want
4 our communities to be vibrant and we want to make
5 sure that justice is had in our courts. And I
6 believe that the judges, while we select them and
7 appoint them, are the officers of justice and give
8 them the discretion to be able to look at the
9 individual situation and figure out what is fair in
10 those instances and see if that's an appropriate tool
11 for them to be able to have at their disposal. Thank
12 you.

13 MR. SHAW: Thank you very much,
14 Ms. Canady. Is there anyone else that would like to
15 speak? Mr. Talge.

16 MR. TALGE: Yes, Your Honor -- yes,
17 sir. My name is Andrew Talge. I am vice chair of
18 the Municipal Court Committee. I've been practicing
19 down here for probably 25 years. As Ms. Gromowsky
20 said this is a very progressive court. They take
21 into consideration a lot of aspects of the urban core
22 and the financial ability of the constituents and the
23 defendants to pay. They have programs like Stand Up
24 and Stand Down which help veterans that have
25 accumulated a lot of tickets. A lot of attorneys

1 provide pro bono services and donate their time to
2 help these people out. The Court also takes into
3 consideration and fines for those people. They also
4 help battered women take care of their situations.

5 In regards to the community service,
6 our court has been very proactive in allowing people
7 to waive fines and do community service to get rid of
8 the situation that they present themselves with.

9 However, Mr. Eastman is correct, if
10 you allow people to go to court or not go to court
11 and just not take care of their citations, what's to
12 make them come to Court if you don't suspend their
13 driver's license? You cannot put them in jail, so
14 how are we going to make them take care of the 10,
15 12, 13 citations that they get? Just accumulate them
16 and let them keep driving down the road? It doesn't
17 help anybody out. So I would echo Mr. Eastman's
18 sentiments in allowing the courts to suspend the
19 driver's license for people who don't come to Court.
20 Thank you.

21 MR. SHAW: Thank you Mr. Talge.
22 Anyone else? Well, once again, Thank you all very
23 much for coming to speak with us this evening. The
24 comments that we received this evening together with
25 those we've heard at public hearings in St. Louis and

1 Springfield will be very useful for us in preparing
2 our final report to the courts. So again thank you
3 very much. Have a good weekend.

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1 CERTIFICATE OF REPORTER

2 STATE OF MISSOURI)

3) ss.

4 CITY OF KANSAS CITY)

5 I, Mary Lynn Cushing, a Certified
6 Court Reporter (MO), do hereby certify that the
7 proceedings were taken by me to the best of my
8 ability and thereafter reduced to typewriting under
9 my direction; that I am neither counsel for, related
10 to, nor employed by any of the parties to the action
11 in which this deposition was taken, and further that
12 I am not a relative or employee of any attorney or
13 counsel employed by the parties thereto, nor
14 financially or otherwise interested in the outcome of
15 the action.

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18 _____
Mary Lynn Cushing, CCR #1077

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