KANSAS JUDICIAL COUNCIL BULLETIN

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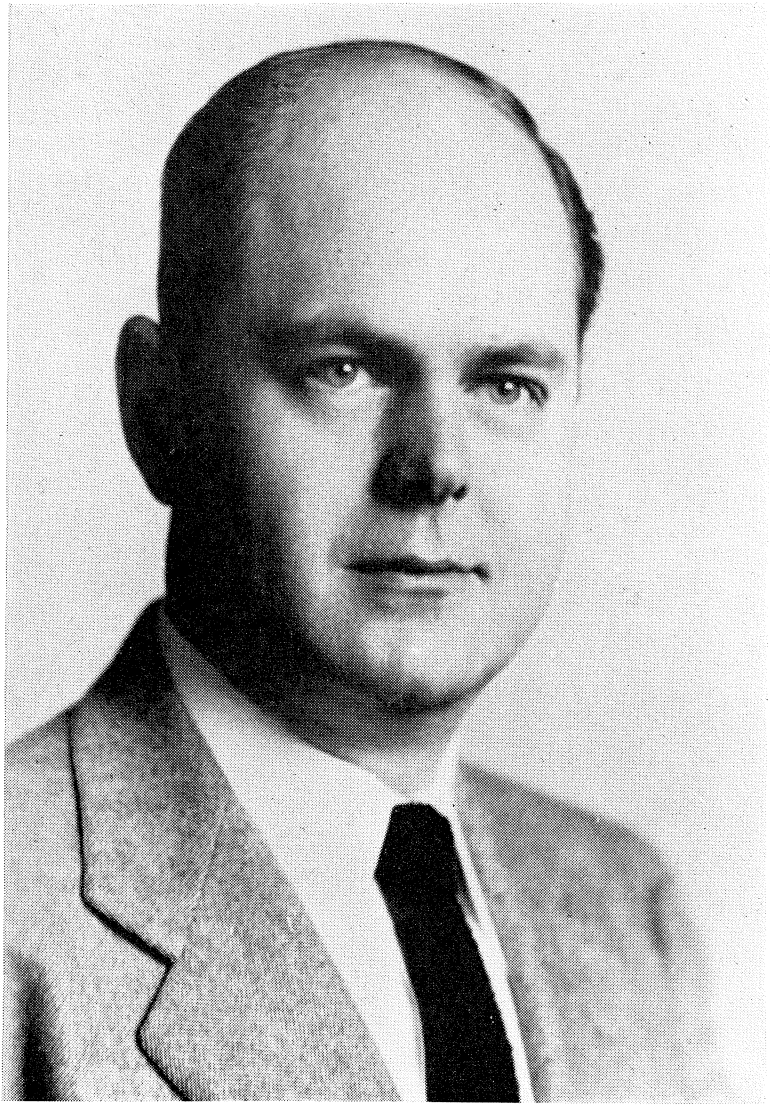

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FOREWORD

The great number of personal injuries and fatalities arising from the use of motor vehicles on the public highways has given great concern to public officials charged with the enforcement of our traffic laws and to others interested in safety measures. Although many factors enter into the problem, one of the very important ones is the person who drives a motor vehicle while under the influence of intoxicating liquor. In this issue is a timely article on the subject: "The Drinking Driver," written by M. C. Slough, dean of the University of Kansas School of Law, which merits careful reading and attention.

Dean Slough, a native of Cincinnati, Ohio, is a graduate of Columbia University. He later attended the Law School of Indiana receiving his LL. B. degree in 1941. After graduation he entered the practice of law in Indianapolis, and left that to serve in the United States Navy Reserve at the Naval Air Station at Lakehurst, N. J., and with Amphibious Forces of the Pacific Fleet at Guam, M. I., as a legal officer. In 1946 he became a member of the faculty of the University of Kansas School of Law and in 1957 he became dean of the school. Dean Slough is a member of the American Bar Association and of the Bar Association of the State of Kansas. He is also a member of the Order of the Coif and of Phi Delta Phi Legal Fraternity. Dean Slough is the author of the 1955 Supplement of Dassler's Civil Code, and of numerous articles on legal subjects which have been published in various journals of national circulation. A photo of Dean Slough is the frontispiece of this issue of the BULLETIN.

Following our usual practice we print in this issue the motion days for the year 1958 as reported by the District Judges to the Clerk of the Supreme Court.

The Drinking Driver

By M. C. Slough, Dean of the University of Kansas School of Law

I. General Principles

One commonly hears about the menace of *drunken driving*, though in reality society should be more concerned with the problem of the drinking driver. The person who is dead drunk or grossly intoxicated will most likely be so anaesthetized that he will be unable to stagger to the steering wheel. Somewhere between sobriety and deep intoxication a driver can be under the influence of alcohol, and in this critical area of perception loss, the use of liquor can cause significant diminution of co-ordination and judgment.

How does one define the phrase "under the influence?" An individual of literal complex will assert that one glass of beer can exert all the influence needed; a boastful drinking driver will deny being under the influence so long as he can recognize the center line of the highway. Opinions of either extreme are absurd. Obviously the prosecutor is only bound to prove that the defendant's faculties are adversely affected by drink, but without benefit of factual, scientific evidence, this theoretical burden becomes a monster.

Little more than twenty years ago the objective symptom tests were the sum and substance of the prosecutor's armor. The subject arrested would be put through a rough series of motion and speech tests which included simple balancing procedures, walking and turning, handwriting, picking up coins from the floor, the recitation of stock tongue twisters such as Methodist Episcopal and Around the Rugged Rock the Ragged Rascal Ran. Odor of breath was checked, and invariably the beer drinker suffered more than his share of abuse. As a result many offenders were acquitted as juries were loath to convict on the basis of questionable objective symptoms. On the other hand, diabetics in insulin shock were easy targets to shoot at.

In 1934 a law was adopted in Sweden which made blood tests compulsory in criminal and traffic cases; two years later the German Minister of the Interior ordered blood tests in suspected alcoholic cases. The American Medical Association has since determined that the percentage of alcohol in the blood bears close relationship to the degree to which a person is intoxicated, which findings are of considerable value when corroborated by standard objective symptoms.[1] By chemical analysis of the breath and certain body substances—blood, urine, saliva, or spinal fluid—the state of intoxication can be gauged with almost flawless accuracy.[2] Regardless of the substance used, the results attained can readily be translated in terms of percentage of alcohol in the blood.

The blood test is undeniably accurate, but often not feasible in the workaday pattern of law enforcement. Only a physician, nurse, or medical technician should be permitted to draw blood, and their services are not always available. If there be a delay of more than two hours between time of accident and time of drawing the blood sample, there is likely to be a considerable drop in the percentage of blood alcohol. Urine tests as a rule are satisfactory, but if the bladder has not been emptied for several hours, the urine may evidence a lag in alcohol as compared with the blood. All tests considered, breath

seems the logical choice of substance from the standpoint of the average law enforcement agency. For one thing, breath is probably the easiest of the body substances to obtain. Tests may be completed within a matter of minutes, and true cases of intoxication can be readily separated from those associated with pathological conditions. Breath tests repeated at about fifteen-minute intervals will also be of value in determining the probable time of drinking. In addition, by performing two or more tests one is in a better position to refute the contention that the examination was made carelessly and not in duplicate as is recommended in some quarters.

At the present time there are several portable breath-testing units available, all relatively simple testing devices which can be operated by any intelligent police technician who has been subjected to the minimal of training in chemistry. Harger's Drunkometer was first reported in 1931 and is probably most widely used. Forrester's Intoximeter and Greenberg's Alcometer followed a decade later, and of very recent date, a fourth breath alcohol apparatus called the Breathalyzer, has been developed by Borkenstein.

With one outstanding exception,[3] courts have been unanimous in their acceptance of the various tests outlined. Special attention should be given, however, to supplying an adequate foundation before tests results are offered in evidence. Each facet of the testing situation should be well presented and outlined as to methods employed and the manner in which the analysis was carried out. The prosecution must be prepared to demonstrate that the sample has been properly procured, analyzed and identified. Accuracy of the testing device stands for little if chemicals employed were impure or in a state of deterioration. Decomposition of the sample itself may cause significant changes in test results since organic products formed by decomposition of the substance may cause the sample to yield values for alcohol when, in fact, none may be present. In the case of breath tests, one should be able to prove that the balloon and containers used were clean and uncontaminated, that precautions were taken to prevent condensation of water vapor from the breath. If a blood sample was taken, it must be shown that the blood was unclotted at the time of testing for the concentration of alcohol in plasma may be appreciably greater. Furthermore, in the case of the blood sample, the physician, nurse or technician who drew the specimen should testify if available.[4] At any rate the chemist who made the actual analysis must be called to explain the laboratory practice in detail, otherwise test results may be rejected on proper objection for lack of authentication.

II. Recent Legislation

The National Safety Council and the American Medical Association have recommended standards to aid in the interpretation of chemical test results. Three broad zones have been designated, interpreting the degree of impairment of the person being tested. Although there is no minimal percentage at which there will be no effect from alcohol, experts in the field of blood chemistry generally recognize that a person with a blood alcohol concentration of 0.05 percent or less is not under the influence of alcohol. With a concentration in excess of 0.05 percent but less than 0.15 percent, many individuals are recognizably under the influence, thereby suffering definite impairment of driving ability. Persons evidencing a concentration of 0.15 percent or more will almost invariably be under the influence. The Uniform Motor Vehicle Code[5] pro-

vides that if there was 0.05 percent or less by weight of alcohol in the blood, it shall be presumed that the defendant was *not* under the influence of intoxicating liquor; if there was in excess of 0.05 percent but less than 0.15 percent by weight of alcohol in the defendant's blood, such fact shall not give rise to presumptions of being or not being under the influence, but may be considered with other competent evidence in determining the guilt or innocence of the defendant; if there was 0.15 percent or more by weight of alcohol in the blood, it shall be presumed that the defendant *was* under the influence of intoxicating liquor. More recently the National Safety Council Committee on Tests for Intoxication has recommended that lines of demarcation be further amplified: 0.00 percent to 0.05 percent safe; 0.05 percent to 0.10 percent *possibly* under the influence; 0.10 percent to 0.15 percent *probably* under the influence; 0.15 percent and above *definitely* under the influence.

Basic features of the Model Code have been substantially incorporated into the Motor Vehicle Codes of at least twenty-three states.[6] But like any new experiment in the area of legal discipline, this effort has absorbed its share of criticism. Many prosecutors have complained that convictions are hard to come by as far as defendants in the middle zone are concerned. Juries are peculiarly affected by the 0.15 percent figure and tend to require a concentration of that amount before judging the accused as being under the influence.

In 1955 the Kansas Legislature enacted a statute providing that "Any person who operates a motor vehicle upon a public highway in this state shall be deemed to have given his consent to submit to a chemical test of his breath, blood, urine or saliva for the purpose of determining the alcoholic content of his blood whenever he shall be arrested or otherwise taken into custody for any offense involving operating a motor vehicle under the influence of intoxicating liquor . . ."[7] The force of the statute applies when the arresting officer has reasonable grounds to believe that the person has been driving under the influence of intoxicating liquor.

The test shall be administered at the direction of the arresting officer, but if the person arrested refuses a request to submit, the test shall not be given. In cases of refusal the arresting officer must make a sworn report, stating that prior to the arrest he had reasonable grounds to believe that the person was driving under the influence of intoxicating liquor. Upon receipt of this report the vehicle department of the state highway commission shall suspend the person's license or permit for a period not exceeding ninety days, granting the person an opportunity to be heard on the issue of the reasonableness of his failure to submit. Hearing provided, the department may revoke the person's license or permit to drive. By providing for a hearing, the Kansas legislature undoubtedly took notice of the fate of earlier legislation in New York which had called for automatic revocation of license upon failure to submit to testing procedures.[8] A recent New York decision held summary revocation to be violative of due process, based as it would be upon hearsay without adequate hearing.[9] Judicial objections outlined were met by legislative amendment permitting temporary suspension without hearing, but requiring hearing prior to final revocation.[10]

One section of the new Kansas law provides that the defendant shall be presumed to be under the influence of intoxicating liquor if there was at the time alleged 0.15 percent or more by weight of alcohol in the defendant's

blood. If there was less than 0.15 percent by weight of alcohol in his blood, it shall be presumed that he was not under the influence.[11] These provisions represent a radical departure from the language of the Uniform Vehicle Code and all but deny the validity of findings made by the National Safety Council with respect to the effect of alcohol upon the human kind. It is highly unlikely that the National Safety Council committed gross error by asserting that persons in the 0.10 percent to 0.15 percent zone would *probably* be under the influence. In fact its assertions derived from a most exhaustive study of accident reports and medical reports gathered from reliable sources. The 0.15 percent figure, always impressive to the jury, achieves an added element of importance under the new law. Working against an inhibiting presumption, the prosecutor as a practical matter must offer evidence indicating that the accused tested at 0.15 percent or more. With or without purpose this legislation dictates acquittal in many cases where verdicts of guilty would reflect the true condition of things.

Kansas law expressly stipulates that only a physician or qualified medical technician is authorized to draw blood.[12] If this limiting provision is literally construed, a registered nurse, though trained and professionally able, would be excluded. A liberal and common-sense interpretation would permit the registered nurse to qualify for this function as it is quite possible that the services of a physician or medical technician would be unavailable when the occasion demands. The legislative enactment was undoubtedly motivated by humanitarian principles, and these principles would not be violated by a ruling sanctioning withdrawal of blood by a professional nurse.

III. Possible Constitutional Limitations

Without reference to particular statutory provisions, what is the state of the law when an individual refuses to submit to a chemical test? In attempting to compose a forthright answer, one must consider whether involuntary submission is a violation of the privilege against self incrimination, whether the taking of a body substance amounts to an unlawful search and seizure, whether imposition of the test gravitates against due process, and if a physician be involved, whether the time-worn physician-patient privilege will rise as an unexpected and uninvited obstruction.

Coursing back through the history of the privilege against self incrimination, it would appear that it has little, if any, pertinence to the taking of body substances. The privilege, as expressed in our constitutions, was against being compelled to give oral testimony in court, or to produce in court, under judicial order, documents and other objects amounting to testimonial compulsion.[13] The prohibition of compelling a man to be a witness against himself is a prohibition of the use of physical or moral compulsion to extort *communications* from him, not an exclusion of his body or its substances as evidence if and when they be material.[14] Recent decisions strongly evidence the trend set by early authorities which recognized that the privilege should apply only to *testimonial compulsion*.[15]

The constitutional prohibition against unlawful searches and seizures should not govern inasmuch as this provision was designed to serve as a protection to persons in their possessions and effects.[16] Even though the search is considered to be unlawful, in a majority of states, including Kansas, the fruits of the search are admissible.[17]

In *Breithaupt v. Abram*,[18] the Supreme Court of the United States has partially answered certain questions posed with respect to violations of due process. The petitioner was involved in a collision on a New Mexico highway. He was taken to a hospital where the odor of liquor was detected on his breath. While still unconscious, a physician at the request of a state patrolman, withdrew about twenty cubic centimeters of blood. The blood was tested, and its alcoholic content was used in evidence against the petitioner at his trial for involuntary manslaughter of which charge he was convicted. The Supreme Court of New Mexico denied the petitioner a writ of habeas corpus, and on *certiorari*, the Supreme Court of the United States, with three justices dissenting, also denied the writ, holding that the conduct of the state officer in directing the removal of blood did not offend a "sense of justice" so as to render the admission of evidence so obtained a violation of due process as defined by the Fourteenth Amendment.

The petitioner's argument was in large part based upon *Rochin v. California*,[19] which set aside a conviction because of brutal and offensive conduct that did not comport with traditional ideas of fair play and decency. In the instant case the Supreme Court refused to apply the rule of the *Rochin* case since it found that there was no force present. The absence of conscious consent without more did not necessarily render the taking a violation of a constitutional right, and there was nothing essentially brutal or offensive in the taking of a sample of blood, particularly where the taking was effected under the protective eye of a physician.

The majority opinion was careful to note however, that the indiscriminate taking of blood under different conditions could amount to "brutality," thereby coming within the inhibiting circle of the *Rochin* rule. If the arrested party resists the taking of blood, it appears that the result might be the same as in the *Breithaupt* case since the police would have a right to use reasonable force to carry out the purpose of their mission. Were the rule to be otherwise, no force whatsoever being countenanced, the law abiding citizen would be penalized unfairly; the obstreperous, vocative citizen would succeed in dictating the course of the law.[20]

When a physician administers a blood test to an inebriate, should the physician-patient privilege apply so as to prevent the physician from testifying? If the privilege were to apply, one would be forced to relegate the task of administering blood tests to patrolmen and prosecuting attorneys; and this solution seems just about as sensible as any ruling which would support application of the privilege in this instance. Obviously, the privilege can only have relevance to a situation wherein the subject has been treated by a physician, yet even then it should apply solely to those facts made known for purposes of treatment. The privilege seeks its roots in a confidential relationship, and the bond between doctor and drunk can scarcely be labeled confidential.[21]

Statutory enactments in Kansas have removed some of the ambiguities inherent in blood testing without benefit of legislation. As heretofore stated, any person who operates a motor vehicle upon a public highway in this state shall be deemed to have given his consent to submit to a chemical test. If he is rendered insensible by consumption of intoxicants or is unconscious as a result of accident or other mishap, he has in fact consented in advance to submission to a chemical test as prescribed by statute. Without doubt some will assert that the test should not be given if the subject involved is not in a posi-

tion to give intelligent consent, yet this point of view can only thwart the purpose of the statute. It seems quite obvious that the legislature intended that tests should be administered in all cases where refusals were not evident. This interpretation of the law in no way precipitates or encourages violence, and in light of the opinion of the United States Supreme Court in the *Breithaupt* decision, no overt violation of due process is contemplated. In short, the statutory provision with respect to automatic consent, serves its most useful function in those extreme situations where, because of injury or gross intoxication, actual consent is difficult if not impossible to obtain.

Suppose that the arrested person refuses to grant consent, but his wishes are not observed and the test is administered. Would the results of this test be admissible? In the absence of concrete statutory recommendations, the evidence might well be received as long as the manner of procuring the specimen did not exceed conventional bounds of due process. Even though considered an unlawful search and seizure, the fruits of the search would be admissible in most jurisdictions. On the other hand, Kansas law expressly provides that the test *shall not be given* if the arrested person refuses to submit,[22] which would appear to indicate that evidence obtained in violation of statutory mandate, would be inadmissible. This interpretation seems reasonable when considered in connection with another section of the law providing that an original test shall not be competent evidence when an officer refuses permission to secure an additional test from a physician of the subject's choosing.[23] When evidence is obtained by force, the letter and spirit of the law are broken, and it is quite clear that these statutory provisions represent a concerted attempt to inhibit and forestall the employment of arbitrary tactics and their necessary unwholesome consequences.

When the accused refuses to undergo a chemical test, may the fact of refusal be commented upon by the prosecution? This specific question was raised and decided adversely to the defendant in the courts of at least four states.[24] Such results are, of course, contrary to the position taken by most authorities with regard to comment when the defendant refuses to take the witness stand in his own behalf.[25] However, the chemical test cases exhibit correct reasoning in allowing comment inasmuch as the admission of the test results themselves would not violate the privilege against self incrimination. Even in those cases wherein the defendant refuses to testify, the Supreme Court of the United States has ruled that comment is not a deprivation of due process.[26] One North Dakota decision reaches a contrary result,[27] citing no precedent to support it, largely on the strength of statutory provisions asserting that a defendant shall not be required to submit to chemical testing without his consent. The court draws analogy between this situation and the situation where comment is disallowed on defendant's failure to testify, in general justifying its conclusion as being in harmony with the spirit of fair criminal law administration.

Despite the fact that Kansas law also grants one the privilege of refusal, it does not necessarily follow that comment upon refusal will work undue hardship on the accused. Furthermore, if it be admitted that the privilege of re-

fusal stems from a legislative effort to eliminate unreasonable force in terms of police action, the accused has received all benefits due him when he is granted the luxury of refusal. For the sake of peace and order the state has surrendered evidence of significant value, and beneficence should not be compounded by rulings denying the state the privilege of comment. Far from being unduly prejudicial to the defendant's cause, any diminution of the value of the privilege of refusal by allowing comment will be comparatively slight. Taking account of the broad presumptions already bestowed upon the defendant, it would be most impractical to insist that effective prosecution be further curtailed by an unnecessary and unrealistic prohibition of comment. In the summing up, it would be far better to repeal the statute than to reduce its provisions to the status of a hollow gesture.

THE DRINKING DRIVER—FOOTNOTES

1. Report of *Committee to Study Problems of Motor Vehicle Accidents of the American Medical Association,* 119 A. M. A. J. 653 (1943).

2. Use of cerebral-spinal fluid for alcoholic intoxication tests is impractical for lack of expert assistance. Lumbar punctures are as a rule reserved for diagnostic purposes only.

3. *People v. Morse,* 325 Mich. 270, 38 N. W. 2d 322 (1949). The Supreme Court of Michigan, by drawing analogy to the ill-fated lie detector, failed to find that the Harger Drunkometer had achieved general scientific recognition. Results obtained in this case may be explained in part by failure of the prosecution to offer adequate expert testimony. Apparently the defense had presented the ultimate in medical testimony.

4. Courts have not consistently required testimony of the physician, nurse or technician who drew the blood sample. In *Mora v. State,* 263 S. W. 2d 787 (Tex. Crim. App. 1954) identification of specimen by chemist who made analysis was held sufficient. The police officer who personally mailed the specimen to the analyst was in court to testify.

5. Uniform Vehicle Code, Art. V, § 54(b).

6. Arizona, Delaware, Georgia, Idaho, Indiana, Kansas, Kentucky, Maine, Minnesota, Nebraska, New Hampshire, New Jersey, New York, North Dakota, Oregon, South Carolina, South Dakota, Tennessee, Utah, Virginia, Washington, Wisconsin, Wyoming. Other jurisdictions have endorsed the use of chemical tests without statutory authority but with court approval.

7. Kan. G. S. 1955 Supp., 8-1001.

8. New York Laws 1953, c. 854, adding § 71-a to the N. Y. Veh. & Traf. Law Procedures for administering the test are listed in subdivisions 1-4 of this section.

9. *Schutt v. MacDuff,* 127 N. Y. S. 2d 116 (Sup. Ct. Orange County 1954).

10. N. Y. Laws 1954, c. 320, effective March 30, 1954, amending N. Y. Veh. & Traf. Law § 71-a(1).

11. Kan. G. S. 1955 Supp., 8-1005.

12. Kan. G. S. 1955 Supp., 8-1003.

13. *State v. Berg,* 76 Ariz. 96, 259 P. 2d 261 (1953). 8 Wigmore, Evidence § 2263 (3d ed. 1940).

14. *State v. Sturtevant,* 96 N. H. 99, 70 A. 2d 909 (1950). Inbau, Self Incrimination 72 (1950).

15. *People v. Trujillo,* 32 Cal. 2d 105, 194 P. 2d 681 (1948); *Green Lake County v. Domes,* 247 Wis. 90, 18 N. W. 2d 348 (1948). *Contra, Apodaca v. State,* 140 Tex. Crim. 593, 146 S. W. 2d 381 (1941). See *Note,* 24 Minn. L. Rev. 444 (1940).

16. LADD and GIBSON, *The Medico-Legal Aspects of the Blood Test to Determine Intoxication,* 24 Iowa L. Rev. 191, 262 (1939). However, evidence as to alcoholic content of blood obtained by illegal search and seizure was held inadmissible in a recent decision by the Supreme Court of Wisconsin. *State v. Kroening,* 247 Wis. 266, 79 N. W. 2d 810 (1956), *modified,* 80 N. W. 2d 816 (1957).

17. *State v. Johnson,* 116 Kan. 58, 226 Pac. 245 (1924). 8 Wigmore, Evidence § 2184 (3d ed. 1940). The federal courts and minority of state jurisdictions exclude evidence illegally obtained. *Weeks v. United States,* 232 U. S. 383 (1914); *State v. Owens,* 302 Mo. 348, 259 S. W. 100 (1924). The federal rule of exclusion is not imposed on the states as a requirement of due process. *Wolf v. Colorado,* 338 U. S. 25 (1949). *Note,* 50 Colum. L. Rev. 364 (1950).

18. 352 U. S. 432 (1957).

19. 342 U. S. 165 (1952). In this case, police officers illegally entered the home of the defendant, forcing open the door to his bedroom. Having observed that defendant swallowed two capsules, they made an unsuccessful attempt to extract them, then took him to a hospital where a physician forced an emetic solution through a tube into defendant's stomach. The capsules were used in evidence to convict the defendant, but conviction was reversed, the court indicating that police procedures violated basic concepts of due process.

20. In *State v. Berg*, cited note 13 *supra*, the Supreme Court of Arizona ruled that forcible extraction of breath specimen did not amount to violation of due process. See, Slough, *Some Legal By-Products of Intoxication*, 3 Kan. L. Rev. 181, 218 (1955).

21. *Richter v. Hoglund*, 132 F. 2d 748 (5th Cir. 1943); *State v. Townsend*, 146 Kan. 982, 73 P. 2d 1124 (1937).

22. Kan. G. S. 1955 Supp., 8-1001.

23. Kan. G. S. 1955 Supp., 8-1004.

24. *State v. Case*, 247 Iowa 1019, 75 N. W. 2d 233 (1956); *State v. Gatton*, 60 Ohio App. 192, 20 N. E. 2d 265 (1938); *State v. Smith*, 230 S. C. 164, 94 S. E. 2d 886 (1956); *Gardner v. Commonwealth*, 195 Va. 945, 81 S. E. 2d 614 (1954). Annot., 175 A. L. R. 234, 240 (1948).

25. Kan. G. S. 1949, 62-1420. In Kansas, comment may not be made upon defendant's refusal to testify.

26. *Adamson v. California*, 332 U. S. 46 (1947). California law permitting comment upon defendant's failure to testify, upheld as constitutional, thus not violating the due process clause of the Fourteenth Amendment.

27. *State v. Severson*, 75 N. W. 2d 316 (N. Dak. 1956).

MOTION DAYS IN DISTRICT COURTS—1958

(Please see notes on page 83)

COUNTY	County seat	Judge	Clerk	No. Jud. Dist.	Jan.	Feb.	Mar.	Apr.	May	June	Sept.	Oct.	Nov.	Dec.
Allen (See note 2)	Iola	Spencer A. Gard	Mrs. Ina F. West	37	*14* 27	10	3 17	7 21	*6* 26	16	8	*7* 20	3 24	15 .....
Anderson (See note 3)	Garnett	Floyd H. Coffman	Mrs. Nell R. Graves	4	3	7	*3*	4	2	*9*	12	*13*	7	5
Atchison (See note 4)	Atchison	Edmund L. Page	Hal Waisner	2	2 8 15 22 29	5 13 19 26	5 12 19 26	2 9 16 23 30	7 14 21 28	4 11 18 25	3 10 17 24	1 8 15 22 29	5 12 19 26	3 10 17 24 31
Barber (See note 5)	Medicine Lodge	Clark A. Wallace	Mrs. Edith Myers	24	8	*10*	7	*28*	15	12	5	*27*	6	4
Barton (See note 6)	Great Bend	Roy J. McMullen	Geneva Steincamp	20	8	5	*4*	2	7	*3*	3	1	*3*	3
Bourbon (See note 7)	Fort Scott	Harry W. Fisher	Amy Armstrong	6	3 *6* 10 17 24 31	7 14 21 28	7 14 21 28	4 11 18 25	2 9 *12* 16 23 30	6 13 20 27	5 *8* 12 19 26	3 10 17 24 31	7 14 21 28	5 12 19 ....
Brown	Hiawatha	Chester C. Ingels	Mrs. Edna Boicourt	22	21	18	18	22	20	3	16	21	18	16
Butler Div. No. 1 Div. No. 2	El Dorado	..... George Reynolds W. N. Calkins	Mrs. Leah Miller	13	8	7	*3*	3	1	*9*	4	7	*10*	2
Chase	Cottonwood Falls	Jay Sullivan	Mrs. Mildred Speer	5	31	28	28	25	29	27	26	31	28	26
Chautauqua Div. No. 1 Div. No. 2	Sedan	..... George Reynolds W. N. Calkins	Cleophal Call	13	16	3	7	*7*	2	2	*2*	2	3	*1*

MOTION DAYS IN DISTRICT COURTS—1958—CONTINUED

(Please see notes on page 83)

COUNTY	County seat	Judge	Clerk	No. Jud. Dist.	Jan.	Feb.	Mar.	Apr.	May	June	Sept.	Oct.	Nov.	Dec.
Cherokee	Columbus	Jerome Harmon	Nina Coldiron	11										
Columbus Div.					7	4	4	1	6	3	2	7	4	2
Galena Div.					8	5	5	2	7	4	3	1	19	3
Cheyenne	St. Francis	Robert W. Hemphill	Mrs. Lois Slyhoff	17	25	15	7	7	26	11	12	9	7	1
								17						13
Clark (See note 9)	Ashland	Ernest Vieux	Mrs. Hope Grimes	31	9	6	6	10	8	5	4	9	6	4
Clay (See note 10)	Clay Center	Lewis L. McLaughlin	Hazel K. Chestnut	21	8	5	*3*	2	6	*2*	4	1	*3*	3
Cloud	Concordia	Marvin O. Brummett	Mrs. Minnie L. Johnson	12	*6*	5	5	*7*	7	4	*22*	22	19	15
Coffey	Burlington	Jay Sullivan	Mrs. Mary Henning	5	27	24	31	28	26	30	29	27	24	29
Comanche (See note 9)	Coldwater	Ernest M. Vieux	Mary Guyer	31	8	5	5	9	7	4	3	8	5	3
Cowley	Winfield	Doyle E. White	Mrs. Sallie K. Smith	19	3	7	7	4	2	6	5	3	7	5
					17	21	21	18	16	20	19	17	21	19
Crawford	Girard	L. M. Resler	Josephine Cattaneo	38										
Girard Div.					3	7	7	4	2	6	5	3	7	5
Pittsburg Div.					6	3	3	7	5	2	8	6	3	1
Decatur	Oberlin	Robert W. Hemphill	Mrs. Alice J. Vernon	17	23	13	5	15	12	5	10	7	18	11
						24						13		
Dickinson (See note 11)	Abilene	Walter E. Hembrow	Seth Barter, Jr.,	8	*6*	6	4	3	*19*	5	*8*	1	5	2
Doniphan	Troy	Chester C. Ingels	Virgil W. Begesse	22	22	19	19	23	21	4	17	22	19	17
Douglas	Lawrence	Frank R. Gray	Mrs. Lucille Allison	41	3	*3*	7	4	*5*	6	5	3	*3*	5
Edwards	Kinsley	Lorin T. Peters	John Stoner	33	8e	10e	5e	2e	5e	4e	3e	27e	5e	3e
						5e			*2e*			*2e*		

MOTION DAYS IN DISTRICT COURTS—1958—CONTINUED

(Please see notes on page 83)

COUNTY	County seat	Judge	Clerk	No. Jud. Dist.	Jan.	Feb.	Mar.	Apr.	May	June	Sept.	Oct.	Nov.	Dec.
Elk Div. No. 1 Div. No. 2	Howard	 George Reynolds W. N. Calkins	Mrs. Floy B. Magers	13	*6*	4	4	1	*5*	3	*15*	3	4	4
Ellis (See note 12)	Hays	Benedict P. Cruise	Eddie Bieker	23	20	*3*	10	14	*19*	9	8	*20*	10	8
Ellsworth	Ellsworth	John W. Young	Harold E. Grant	30	27	14	7	21	16	5	22	6	7	15
Finney	Garden City	Roland H. Tate	G. Mae Purdy	32	*13*	7a	7a	11a	*12*	6a	*15*	3a	7a	5a
Ford (See note 9)	Dodge City	Ernest Vieux	Elta J. Riley	31	10 17 24	7 14 21 28	7 14 21 28	11 18 25	9 16 23	6	5 12 19 26	10 17 24 31	7 14	5 12 19 .....
Franklin (See note 3)	Ottawa	Floyd H. Coffman	Christina Woke	4	*6*	5	5	*7*	7	4	*8*	8	12	3
Geary (See note 11)	Junction City	Clement F. Clark	Frank C. Woodward	8	7	4	*3*	4	7	*2*	4	2	*10*	4
Gove (See note 12)	Gove	Benedict P. Cruise	Mrs. Louise Brown	23	22	19	*17*	17	15	*16*	11	3	*17*	11
Graham	Hill City	C. E. Birney	Mrs. Louise Lee	34	9	*3*	12	16	*12*	4	*15*	15	10	11
Grant	Ulysses	L. L. Morgan	Mrs. Juanita Barber	39	6d	3d	3a	14	5d	2d	22a	6d	3d	1
Gray (See note 9)	Cimarron	Ernest Vieux	Carrie Borland	31	7	4	4	8	6	3	2	7	4	2
Greeley	Tribune	Roland H. Tate	Laura M. Holmes	32	8a	*10*	5a	8a	7a	3a	10a	*20*	5a	2a
Greenwood Div. No. 1 Div. No. 2	Eureka	 George Reynolds W. N. Calkins	Alma Long	13	*20*	6	6	4	*19*	5	5	*13*	6	5

MOTION DAYS IN DISTRICT COURTS—1958—CONTINUED

(Please see notes on page 83)

COUNTY	County seat	Judge	Clerk	No. Jud. Dist.	Jan.	Feb.	Mar.	Apr.	May	June	Sept.	Oct.	Nov.	Dec.
Hamilton	Syracuse	Roland H. Tate	Amelia J. Minor	32	10a	*17*	5d	8d	9a	5a	12a	*13*	5d	2d
Harper (See note 5)	Anthony	Clark A. Wallace	Mrs. Helen Pearl	24	*13*	5	6	*14*	14	*16*	4	*13*	5	3
Harvey (See note 13)	Newton	George L. Allison	Mrs. Mabel A. McMullen	9	9 23	*10* 20	13 27	10 24	*12* 29	12 26	4 18	9 23	*10* 26	4 13
Haskell	Sublette	L. L. Morgan	Mrs. Evelyn Yount	39	6a	3a	10	7a	5a	2a	15	6a	3a	8a
Hodgeman	Jetmore	Lorin T. Peters	Mrs. Nina Lupfer	33	8d	24d 5d	5d	2d	19d 2d	4d	3d	2d	10d 5d	3d .....
Jackson (See note 14)	Holton	Robert H. Kaul	Mrs. Florence Clements	36	*13*	5	5	2	*5*	4	3	*6*	5	3
Jefferson (See note 14)	Oskaloosa	Robert H. Kaul	Mrs. Myrtle Kimmel	36	17	7	*3*	4	9	*2*	5	10	*3*	5
Jewell	Mankato	Donald J. Magaw	Mrs. Iris Cosand	15	16	6	3	24	15	2	25	23	10	3
Johnson	Olathe		Mrs. Betty West	10	6	3	3	7	5	2	2	6	3	1
Div. No. 1		Earl E. O'Conner												
Div. No. 2		Clayton Brenner												
Div. No. 3		Raymond H. Carr.												
Kearny	Lakin	Roland H. Tate	Mrs. Bertha Adams	32	10d	5d	*10*	10a	9d	5d	12d	1d	*10*	4a
Kingman (See note 5)	Kingman	Clark A. Wallace	Gladys Layman	24	10	7	*24*	11	16	*2*	*22*	10	7	*8*
Kiowa (See note 9)	Greensburg	Ernest Vieux	Mrs. Eunice E. Rich	31	8	5	5	9	7	4	3	8	5	3
Labette	Oswego	Hal Hyler	H. L. Lane	16										
Oswego Div.					10	28	7	25	2	6	5	.....	7	12
					24	.....	21	.....	23	20	19	.....	21	23
Parsons Div.					6	17	31	21	19	9	22	20	17	15
Lane	Dighton	Roland Tate	Mrs. Eva Cramer	32	9a	6a	*17*	9a	8a	4a	11a	2a	*17*	3a
Leavenworth	Leavenworth	Joseph J. Dawes	Mary Kate Gausz	1	3	7	7	4	2	6	5	3	7	5

MOTION DAYS IN DISTRICT COURTS—1958—CONTINUED

(Please see notes on page 83)

COUNTY	County seat	Judge	Clerk	No. Jud. Dist.	Jan.	Feb.	Mar.	Apr.	May	June	Sept.	Oct.	Nov.	Dec.
Lincoln	Lincoln	John W. Young	Roy Livingood	30	20	17	4	15	19	6	30	21	12	18
Linn (See note 7)	Mound City	Harry W. Fisher	Mrs. Ferne Bearly	6	9 23	6 20	6 20	7 17	1 15	5 19	4 18	9 23	6 20	*1* 18
Logan (See note 12)	Russell Springs	Benedict P. Cruise	Mrs. Ada F. Rogge	23	23	20	13	7	16	12	*2*	16	13	*1*
Lyon	Emporia	Jay Sullivan	Cleadora Held	5	29	26	26	30	28	25	24	29	26	31
Marion (See note 11)	Marion	Walter E. Hembrow	C. J. Ross	8	9	*3*	5	2	*5*	3	3	*6*	6	3
Marshall (See note 10)	Marysville	Lewis L. McLaughlin	W. J. Koppes	21	10	*3*	7	4	*5*	6	5	*6*	7	5
McPherson (See note 13)	McPherson	George L. Allison	Donald S. Clark	9	*13* 24	7 21	7 21	7 25	9 23	13 27	5 19	*6* 24	14 28	5 19
Meade (See note 9)	Meade	Ernest M. Vieux	Edyth Cooper	31	6	3	3	7	5	2	2	6	3	1
Miami (See note 7)	Paola	Harry W. Fisher	Mrs. Ethel J. Hunt	6	7 21	*3* 18	4 18	1 15 29	13	*2* 17	2 16	*6* 21	4 18	2 16 .....
Mitchell	Beloit	Donald J. Magaw	Ida B. Jamison	15	13	7	6	21	16	5	22	24	13	4
Montgomery Independence Div. Coffeyville Div.	Independence	Warren B. Grant	M. D. Smith	14	 4 3	 1 7	 1 7	 5 4	 3 2	 7 6	 6 5	 4 3	 1 7	 6 5
Morris (See note 11)	Council Grove	Walter E. Hembrow	Mrs. Virginia Scholes	8	10	5	6	7	6	*16*	2	3	4	*1*
Morton	Richfield	L. L. Morgan	Mrs. Irene Kuder	39	7d	10	4a	8d	6d	3d	2	7d	4d	9a
Nemaha	Seneca	Chester C. Ingels	Mrs. Ruth Shaffer	22	20	17	17	21	19	2	15	20	17	15
Neosho Erie Div. Chanute Div.	Erie	B. M. Dunham	Merle Estes	7	 1 14	 5 4	 *11* *12*	 2 8	 7 6	 4 3	 3 9	 *8* *14*	 5 4	 3 2

MOTION DAYS IN DISTRICT COURTS—1958—CONTINUED

(Please see notes on page 83)

COUNTY	County seat	Judge	Clerk	No. Jud. Dist.	Jan.	Feb.	Mar.	Apr.	May	June	Sept.	Oct.	Nov.	Dec.
Ness	Ness City	Lorin T. Peters	Mrs Dorothy Stecklein	33	9e	6e	10e 6e	3e	3e	5e	8e 4e	3e	6e	8e 4e
Norton (See note 8)	Norton	Robert W. Hemphill	Elsie Brault	17	6 13 22	12	8	21	16	6	2 13	10	19	10
Osage	Lyndon	A. K. Stavely	Mrs. Lucille Nelson	35	3	7	*4*	4	2	*3*	5	3	*4*	5
Osborne	Osborne	Donald J. Magaw	Elma McColl	15	17	3	7	25	12	6	26	20	14	5
Ottawa	Minneapolis	John W. Young	Mrs. Esther Plunkett	30	13	11	3	7	13	3	29	28	10	16
Pawnee	Larned	Lorin T. Peters	Mrs. Eulah Almquist	33	27d 7d	4d	4d	7d *1d*	1d	3d	2d	13d *1d*	4d	2d
Phillips	Phillipsburg	Robert W. Hemphill	Gene Britt	17	21	3 11	4	18	5	4	9 15	23	20	9
Pottawatomie (See note 14)	Westmoreland	Robert H. Kaul	Deane L. Arnold	36	16	6	6	*1*	8	5	*2*	9	6	*2*
Pratt (See note 5)	Pratt	Clark A. Wallace	Mrs. Mabel Axline	24	9	6	*10*	10	*19*	13	*8*	9	*10*	5
Rawlins	Atwood	Robert W. Hemphill	Mrs. Louise Portschy	17	24	14	6 17	16	19	10	11	8	6 10	12
Reno	Hutchinson	John F. Fontron	Glenn R. Williams	40	3 10 17 24 31	7 14 21 28	7 14 21 28	4 11 18 25	2 9 16 23 30	6 13 20 27	5 12 19 26	3 10 17 24 31	7 14 21 28	5 12 19 26
Republic	Belleville	Marvin O. Brummett	Earl J. Baldridge	12	7	*3*	4	8	*5*	3	23	*20*	18	16

MOTION DAYS IN DISTRICT COURTS—1958—CONTINUED

(Please see notes on page 83)

COUNTY	County seat	Judge	Clerk	No. Jud. Dist.	Jan.	Feb.	Mar.	Apr.	May	June	Sept.	Oct.	Nov.	Dec.
Rice (See note 6)	Lyons	Roy J. McMullen	Laura Saint	20	*7*	3	3	*1*	5	2	*2*	6	5	1
Riley (See note 10)	Manhattan	Lewis L. McLaughlin	Joseph F. Musil	21	*6*	7	5	*7*	2	4	*2*	3	6	1
Rooks	Stockton	C. E. Birney	Irma Renner	34	*13*	13	13	17	*5*	5	*2*	16	13	12
Rush	La Crosse	Lorin T. Peters	Esta Manahan	33	13e 7e	4e	24e *4e*	1e	1e	3e	22e *2e*	1e	4e	2e .....
Russell (See note 12)	Russell	Benedict P. Cruise	Mrs. Mary Humes	23	*6*	17	11	15	*5*	10	9	*6*	12	9
Saline	Salina	John W. Young	Mrs. Winifred Groth	30	10	10	10	14	12	2	8	20	6	8
Scott	Scott City	Roland H. Tate	Nellie Scheuerman	32	9d	6d	6d	*14*	8d	4d	11d	2d	6d	*8*
Sedgwick	Wichita		L. D. Leland	18	All motions in civil cases, except divorce, are heard on the second Monday morning following the filing thereof. These motions are assigned to the various divisions of court by the Assignment Judge who mails notices of hearings to attorneys of record in advance. All motions in divorce cases, including contempt and custody, are heard at 1:30 P.M. on the second Monday afternoon following the filing thereof, at which time they are called by the Assignment Judge and assigned to the various divisions of court for immediate hearing. All motions in criminal cases are heard by the Judge in charge of the Criminal Court, by arrangement with him. The Criminal Court rotates among the various divisions from term to term.								
Div. No. 1		William C. Kandt												
Div. No. 2		Howard C. Kline												
Div. No. 3		B. Mack Bryant												
Div. No. 4		Clement F. Clark												
Div. No. 5		Henry Martz												
Div. No. 6		E. E. Sattgast												
Seward	Liberal	L. L. Morgan	Mrs. Mary Linley	39	13	7a	7a	21	9a	6a	12a	13	7a	12a
Shawnee	Topeka		Mrs. Lucile Carter	3										
Div. No. 1		Beryl R. Johnson		.....	10 31	21	14	4 25	16	6 27	19	10 31	21	12 .....
Div. No. 2		Paul H. Heinz		.....	17	7 28	21	11	2 23	13	5 26	17	7 28	19 .....
Div. No. 3 (See note 15)		Dean McElhenny		.....	3 24	14	7 28	18	9 30	20	12	3 24	14	5 26

MOTION DAYS IN DISTRICT COURTS—1958—CONCLUDED

(Please see notes below)

COUNTY	County seat	Judge	Clerk	No. Jud. Dist.	Jan.	Feb.	Mar.	Apr.	May	June	Sept.	Oct.	Nov.	Dec.
Sheridan	Hoxie	C. E. Birney	Mrs. Minnie Carder	34	6	*24*	10	14	*19*	2	8	*6*	12	8
Sherman	Goodland	C. E. Birney	Viva Peter	34	8	11	11	*7*	2	*9*	10	14	*17*	10
Smith	Smith Center	Donald J. Magaw	Lucille Figg	15	15	5	24	23	14	16	24	22	12	1
Stafford (See note 6)	St. John	Roy J. McMullen	Arlene McCandless	20	6	*4*	5	7	*6*	4	5	*7*	7	2
Stanton	Johnson	L. L. Morgan	Mrs. Hazel Polly	39	7a	24	3d	8a	6a	3a	8	7a	4a	8d
Stevens	Hugoton	L. L. Morgan	John F. Fulkerson	39	27	6a	24	10a	8a	5a	22d	27	6a	11a
Sumner	Wellington	Wendell Ready	Laura McCormick	25	7	4	4	1	6	3	9	7	4	2
Thomas	Colby	C. E. Birney	Thelma Livingston	34	7	10	*17*	15	*26*	3	9	13	*3*	9
Trego (See note 12)	WaKeeney	Benedict P. Cruise	Nina J. Galloway	23	21	18	*3*	16	14	*2*	10	2	*3*	10
Wabaunsee	Alma	A. K. Stavely	Dorothy M. Walker	35	7	*4*	4d	1	*6*	3d	2	*7*	4d	2
Wallace (See note 12)	Sharon Springs	Benedict P. Cruise	Evelyn P. Warren	23	23b	20b	13b	*21*b	16b	12b	*15*b	16b	13b	*15*
Washington	Washington	Marvin O. Brummett	Paul Froelick	12	8	4	*3*	9	6	*2*	24	21	*17*	17
Wichita	Leoti	Roland H. Tate	Kate Elder	32	8d	5a	6a	*21*	7d	3d	10d	1a	6a	*15*
Wilson	Fredonia	B. M. Dunham	Dwaine Spoon	7	*7*	6	6	*1*	1	5	*2*	2	6	4
Woodson	Yates Center	Spencer A. Gard	Zelma Stockebrand	37	7	11	*4* 18	15	13	*3*	*9* 23	14	*4* 25	16
Wyandotte (See note 16)	Kansas City		Richard D. Shannon	29										
Div. No. 1		O. Q. Claflin III			3 4	7 1	7 1	4 5	2 3	6 7	5 6	3 4	7 1	5 6
Div. No. 2		Willard M. Benton			10 11	14 8	14 8	11 12	9 10	13 14	12 13	10 11	14 8	12 13
Div. No. 3		Harry G. Miller, Jr.			17 18	21 15	21 15	18 19	16 17	20 21	19 20	17 18	21 15	19 20
Div. No. 4		William H. McHale			24 25	28 22	28 22	25 26	23 24	27 28	26 27	24 25	28 22	26 27

e—9:00 a. m. a—10:00 a. m. c—1:30 p. m. d—2:00 p. m. b—1:00 p. m.

NOTE 1.—Italicized dates indicate the first day of the regular term of court.

NOTE 2.—In Allen county, July 21 is motion day.

NOTE 3.—In Ottawa county, court will open at 9:30 a. m. and in Garnett, court will convene at 10:00 a. m.

NOTE 4.—In Atchison county, Wednesday was the regular motion day, however this has been changed to Thursday, January 2, and Thursday, February 13, for 1958.

NOTE 5.—In Barber, Harper, Kingman and Pratt counties, court convenes at 10:00 a. m. on all motion days and at 9:00 a. m. for jury trials. Term and motion day in Barber county is July 14.

NOTE 6.—In Barton, Rice and Stafford counties court convenes at 10:00 a. m., except when jury appears, when court will convene at 9:00 a. m.

NOTE 7.—In Bourbon county, July 11-18-25 are motion days. In Linn county, July 14 is motion day, and in Miami county, July 8-22 are motion days.

NOTE 8.—In Norton county, August 25 is motion day.

NOTE 9.—In Clark, Ford, Comanche and Gray counties, court convenes at 10:00 a. m. and in Kiowa and Meade counties, court convenes at 2:00 p. m.

NOTE 10.—In Riley county, opening day of term delayed one day, account of Labor Day. In addition to the regular motion days in Riley county, special motion days are held the third Friday of the month. Additional motion days are scheduled in Riley, Clay and Marshall counties as the need arises.

NOTE 11.—In Dickinson, Geary, Marion and Morris counties, all sessions convene at 10:00 a. m. No jury term in Dickinson, and June terms in Morris and Geary counties except on special order.

NOTE 12.—In Russell, Ellis, Trego, Gove and Logan counties, court convenes at 9:00 a. m. In Wallace county, court convenes at 1:00 p. m.

NOTE 13.—In Harvey and McPherson counties, court convenes at 9:30 a. m.

NOTE 14.—In Jackson, Jefferson and Pottawatomie counties, court convenes at 9:00 a. m. on opening day of the term. On motion days the court will convene at 10:00 a. m. Time permitting a special motion day will be held in each county two weeks after the regular motion days.

NOTE 15.—In Shawnee county, the schedule continues through July and August as follows:
Division No. 1.—Judge Beryl R. Johnson: July 18 and August 8 and 29.
Division No. 2.—Judge Paul H. Heinz: July 3 and 25 and August 15.
Division No. 3.—Judge Dean McElhenny: July 11 and August 1 and 22.

NOTE 16.—In Wyandotte county separate dates are fixed for hearing pre-trial and post-trial motions. The first line of dates opposite each judge's name applies to pre-trial motions and the second line to post-trial motions. Although no regular motion days are designated for the months of July and August, 1958, each division will before adjourning for the summer set down for hearing all motions pending in the cases assigned to the division. All attorneys of record will be given notice of the date set for such hearing.

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WALTER F. JONES. (1941-1945) ..... Hutchinson
GROVER PIERPONT. (1943-1944) ..... Wichita
I. M. PLATT. (1943-1945) ..... Junction City
C. A. SPENCER. (1944-1951) ..... Oakley
CHARLES VANCE. (1945-1947) ..... Liberal
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