

APPENDIX D:
THE LETTERS OF CYNTHIA BUTLER

--- COMMISSION HEARS INQUEST QUESTIONS -A Lawrence woman concerned about the coroner's inquest in the shooting death of a 22-year-old Native American man aired her complaints to the Douglas County Commission on Wednesday night.

Cynthia Butler, who protested the findings of the coroner's inquest in the death of Gregory Sevier by standing outside the county courthouse on Sunday and Monday, took her concerns inside with a 25-minute discussion with the commission. She said she thought some of the state laws governing the coroner's office may not have been followed. Butler, who described herself as a concerned citizen, said the law calls for an immediate filing of the autopsy report. The autopsy was filed two days after the inquest was completed, she said.

"I question that timeliness," Butler said. "I really do wonder what 'immediately' or 'timely' means according to the law, and if the law was followed on this." She said she also questioned the coroner's report about the path of one of the bullets that struck Mr. Sevier. County Administrator Chris McKenzie, who received a copy of the approximate 400-page coroner's report from Butler earlier Wednesday, told her that the only county's only responsibility to the coroner's office was financial. He said the commission would look into her questions, but that the responsibility for the office rested with District Court Judge Mike Malone.

Commissioner Mark Buhler assured Butler the commission would do what it could for her, but asked if she had contacted the Sevier family about her efforts. Butler said she had not. "I'm a little concerned that we're not going to let the Sevier family let this wound heal," he said. "I'm really concerned about that." Butler replied, "I think truth and justice is the healing process, Mr. Buhler." The commission did not give Butler a date when they would get back to her. STATUS REPORT May 28, 1991, INITIATIVES Initiatives in Place: Federal Bureau of Investigation: Investigation has been completed and results are being reviewed by FBI Headquarters, Washington, D.C. Results expected to be released in the near future.

Program of cultural diversity seminars: See program listing attached.

Lawrence Police Department Internal Affairs Division
investigation: Investigation was completed and results reported to City Manager Mike Wildgen on June 11, 1991. The Internal Affairs Division investigation found that it was clear that the life of Officer Bordman was in eminent danger at the time the officers fired. No violations of procedural rules were found.

Community Task Force on Racism, Discrimination and Cultural Diversity: The Task Force filed its Final Report with the City Commission on June 25, 1991, and the Commission accepted the Report. The City Commission has subsequently accepted the Task Force's recommendation to continue the work of the Task Force under the name of the Lawrence Alliance and the City Commission, Haskell Indian Junior College and the University of Kansas have pledged both cash and in-kind support for the operation of the Alliance.

New Initiatives:

Priority 1, Peer Review Board:

A Peer Review Board was organized and the first meeting conducted on June 24, 1991, at the Lawrence City Hall. A second meeting was conducted on July 26, 1991, at the Lawrence City Hall with Chair Darrel Stephens providing a progress report and the formation of subcommittees. Chair Stephens also provided a tentative schedule for completion of the Board's work as follows:

September 13, 1991: First drafts of subcommittee reports to Chair Stephens.

Memo To: Commissioner Martin-Smith
From: City Manager Mike Wildgen
Subject: Re-opening of Sevier Shooting Investigation
Date: August 1, 1991

After your recent meeting with Cynthia Butler, Charlene Johnson and Dan Wildcat, you asked that we provide you information about Butler's question relating to how to re-open the Sevier shooting investigation.

Answer: The District Attorney has discretionary- - authority to re-open an investigation if he believes further investigation is warranted. The Coroner, likewise, has discretionary- - authority to call another coroner's inquest. Neither the District Attorney nor the Coroner can be compelled to exercise their discretionary authority.

Credible evidence (as opposed to allegations) that refute the Coroner's findings, photographs and witness statements would be needed to support a re-opening of this matter.

Respectfully,

Mike Wildgen
City Manager:
cc: Jerry Cooley

August 16, 1991
Douglas County Coroner Carol A.
Moddrell, M.D.
Lawrence Memorial Hospital
325 Maine Lawrence, Kansas 66044

Dr. Moddrell,

There has been several questions arise since the Gregg Sevier death. On May 8, 1991 you referred me to KSA 19-1003, 1004, and 1005 only to find an update to KSA 22a-201 through 22a-238.

What oath was administered to the jury and witnesses at the Sevier inquest? In the inquest transcript the oath is not transcribed, only the words "having been first duly sworn" or "the jurors were duly sworn to try the case" appear.

KSA 22a-204. Jury; oath. If any juror fails to appear, the coroner shall summon the proper number from bystanders immediately, and proceed to impanel them and administer the following oath, in substance: "You do solemnly swear [or affirm] and true presentation make, when, how and by what means the person whose body lies here dead came to his death, according to your knowledge, and evidence given you. So help you God."

Does this mean that the jury is to have access to the body prior to any disposal of that body? This wording also implies that questioning of jury members is not necessary for them to be fit jurors. Why then did you have District Attorney Flory do such a detailed questioning and qualifying of the jurors at the Sevier inquest? Was this qualifying done by your instructions or by D.A. Flory's?

KSA 22a-206. Oath of witnesses. An oath shall be administered to the witness, in substance as follows: "You do solemnly swear that the testimony which you shall give to this inquest, concerning the death of the person here lying dead, shall be the truth, the whole truth, and nothing but the truth. So help you God."

Again, the words "here lying dead" says the jury was to have seen the body as part of their decision making process. Why is the actual inquest process so different than what the law states? Is this the oath that was administered to the witnesses? Who determined what oath to administer, you or D.A. Flory?

KSA 22a-208. Return and form of verdict. The jurors, having inspected the body, if available, heard the testimony, and made all needful inquiries, shall return to the coroner their inquisition in writing, under their hands, in substance as follows, and stating the matter in the following form suggested, as far as found:

State of Kansas, _____County,
An inquisition holden at _____, in _____county,
before me, _____ coroner of said county, on the body of
_____ [or, a person unknown], there lying dead: by the
jurors whose names hereunto subscribed. The said jurors, upon
their oaths, do say [here state when, how, by what person,
means, weapon or accident he or she came to his or her death,
and whether feloniously]. In testimony whereof, the said jurors
have hereunto set their hands, the day and year aforesaid.
Which shall be attested by the coroner.

The actual form used for the verdict closely followed this above
stated format with two exceptions:

- 1..The word death is used instead of body on the form the
jury was allowed to use.
- 2..The phrase "there lying dead" is omitted from the wording on this
same form. The wording "having inspected the body", as well as
the two previously mentioned changes all point to the jury
viewing the body as part of the inquest process. Again, the
same question is obvious, why is the law and the actual process
so very different? Is the jury, in fact, to view the body and
possibly the death scene by law?

KSA 22a-209. Making verdict public. If the inquisition finds a
crime has been committed on the deceased, and name the person
whom the jury believes has committed it, the inquest shall not
be made public until after the arrest directed in the next
section.

Why was this inquest held in a public format? Was this public
inquest of your choosing or was this by the direction of D.A
Flory, or was this at the suggestion of Police Chief Ron Olin,
or even a combination of sources? How much did the previous
Native American deaths play in choosing this public format?

KSA 22a-215. District coroner; disposition of body of deceased;
burial, when; expenses, how paid; penalties. _____
Any coroner who, over the protest of the immediate family or
next of kin of the deceased, delivers or causes to be delivered
the body of a deceased person to a particular embalmer, funeral
director or funeral establishment, shall be deemed guilty of a
class B misdemeanor and upon conviction thereof shall forfeit
his or her office.

If this had been my own son there is no possible way I would
have known of this law or had the presence of mind to have asked
had I any doubts around the circumstances of his death. Was the
Sevier family made aware that this law existed? What, if any
responsibility do you have in regards to informing the Sevier's
of their rights? Were you aware that this law existed?

KSA 22a-229. Same; [District coroner] possession of property in determining cause of death. The district coroner, or his deputy, shall take possession of and retain as long as necessary, any property important in determining the cause of death in any case in which this act required that the coroner be notified, but only such property. When such property is no longer necessary for his investigation, the property shall be put into the possession of the law enforcement authorities having responsibility for the case. Attorney General's Opinions: District coroner' possession of property, 8561. [coroner may take possession of ANY PROPERTY important to the determination of death] This would seem to include the guns of both the officers, the empty casings, the knife, the nightsticks, the bedding, and most likely other evidence that is not part of public record or access now. Is there a reason why you did not take possession of the items but instead, according to your testimony, went directly to the LEC to await the release of the body from the scene of death? Were you aware of this law? How do you see it applying to your actions? Were you being directed by the D.A. or police as to what was proper procedure? What part did D.A. Flory and Chief Ron Olin play in the decisions that you made?

KSA 22a-230. District coroner; inquest, when; jury; laws applicable. [a] The coroner shall hold an inquest upon the dead bodies of such persons whose deaths appear to have been caused by unlawful means when the circumstances relating to such deaths are unknown. Except as provided in subsection [b], upon being notified of any such death occurring within the district, the coroner shall forthwith summon a jury of six [6] residents of the county in which the death occurred, at a time and place named, for the purpose of inquiring into the cause of death.

_____ 1. Autopsy reports and photographs of deceased person held relevant and admissible in murder prosecution.

There are three obvious situations to question here. The first is why does the phrase "inquest upon the dead bodies" keep being repeated if the inquest was not held on the dead body? Second, the phrase "the coroner shall forthwith summon a jury of six residents" implies an immediate action. When was it decided that an inquest was viable? Who made that decision? What does forthwith mean if not immediately? The third issue is the photographs of the body. Where are these photographs? Why are these photographs not part of the public record as called for by law?

KSA 22a-232. Same; duties of coroner after notice [of death]; report. Upon receipt of such notice, the coroner shall take charge of the dead body, make inquiries regarding the cause of death, and reduce the findings to a report in writing. Such report shall be filed with the clerk of the district court of the county in which death occurred. 85-61 [possession of property] and 86-5 [open records act]

This report was attached to the autopsy and filed with the clerk of the district court on May 3, 1991, two full days after the findings of the Sevier inquest. Why was the report and autopsy filed simultaneously? Why was there a delay in filing these two documents? Is there a time limitation placed on the filing of these papers? Take note of the following law. Were you aware of this law? Did you receive instruction from any other source to do different than what the law states? Were you aware that the open records act applied to these records?

KSA 22a-233. Same; autopsy, when; fees and travel allowances; specimens; record and report to coroner and clerk of the district court; exhumation and autopsy. _____ [c] A full record and report of the facts developed by the autopsy and findings of the pathologist performing such autopsy shall be promptly made and filed with the clerk of the district court of the county in which decedent died. _____

On the coroner's report it is noted that the death occurred at about 2:40 am on 4/21/91 and that you were notified at 4:30 am and arrived at the residence at 4:55 am. Why such a lengthy delay before you were called to the scene? Is this a common occurrence in time delay? Who was responsible for calling you to the scene? How long had D. A. Flory been at the scene before advising you be called [per our previous communications through County Administrator McKenzie]? What did you note about the blankets on the bed where the body was located? Is this some of the possessions you had authority to collect as evidence? In gathering of the "facts" about the death did you question Officers Bordman, Phillips, and Wheeler or the Sevier family? What are the results of those communications?

As part of the autopsy report you drew a diagram of the six [6] bullet paths as described by Dr. Sperry. Since this diagram was the "expert" interpretation of the technical language of Dr. Sperry, do you consider these bullet paths to an accurate representation adequate for the legal process and official responsibilities that befall you? For example: BULLET #3 is drawn by you as almost a horizontal line but in fact the bullet is described as "the missile track perforates the sternum at the level of the left fourth interspace" and "the semi-jacketed gray metal missile" ends up at "the posterolateral ninth interspace, with a notching fracture of the upper margin of the tenth rib". This bullet path is in fact a severe downward path from the left center chest at the fourth rib on the breast bone and travels sharply downward and backward to the tenth rib.

How did you so grossly mis-diagram this bullet path? There are other bullet paths that are just as questionable. How could the jury make a reasonable evaluation from the diagram? Your testimony clearly states "all the wounds were at angles that indicated the victim was upright when struck". It appears that the diagram is drawn to substantiate the "victim was upright" statement when in fact if the bullet paths had been drawn accurately this statement would have been under question by any alert juror. Did you purposely misrepresent the bullet paths? Were you under pressure by the D.A. or Chief of Police to make such erroneous diagrams and statements?

By the way Dr. Sperry described the bullet wounds it could be possible that he had prepared a diagram of the body with the subsequent bullet paths. Was there a diagram prepared by Dr. Sperry? How many other autopsies has Dr. Sperry prepared for your office over the past three years? Are there any other Native American deaths attended to by Dr. Sperry? Where is Dr. Sperry originally from? Where did he seek his degrees? How did you come to know of his work? How did you come to choose him over other pathologists? Were you under any pressure to use Sperry in lieu of any other choice?

How and why was it decided to advise the jury they could visit the Sevier home as part of the deliberation process versus part of the fact finding/evidence development? Had the jury gone to the home as it was arranged by you as deliberation would it have been possible to develop new questions or witnessesor would the evidence development process officially have ceased because the jury was now in deliberation?

Has all the information that exists in the coroner's inquest file on the Sevier death, or any other death, been made part of the public records? Is there a duplicate of the records kept in the files at LMH where your office is located? Are you satisfied with the way D.A. Flory handled the inquest? Was there a just and legal inquest held for the Sevier death?

As you are probably aware, I have been asking these questions of you through many sources and I am now asking them of you directly. Perhaps your answers to these many questions will restore the faith in your office. Thank you.

Cynthia Butler
801 Lake
Lawrence, Kansas 66044
copy:
Olin
Flory
city commissioners
county commissioners
Malone, administrative judge
Stephan, atty gen
Finney, governor's office
KBI
FBI
DOJ

U.S. DEPARTMENT OF JUSTICE
UNITED STATES ATTORNEY
DISTRICT OF KANSAS
306 United States Courthouse
401 North Market
Wichita, Kansas 67202

August 19, 1991

Cynthia Butler
801 Lake
Lawrence, KS 66044

Dear Ms. Butler:

I have received your letter of August 13, 1991 and have asked the appropriate federal agency to review it. I am not able at this time to give you any specific thoughts pending greater understanding of the facts. We will, however, certainly do our job and if necessary, will be back in touch with you.

Yours very truly,

LEE THOMPSON
UNITED STATES ATTORNEY CITY OF LAWRENCE,
KANSAS

City Commission
September 11, 1991 Mayor:
Robert L. Walters
Commissioners:
Bob Schulte
Shirley Martin-Smith
John Nalbandian
Bob Schumm

Ms. Cynthia Butler
801 Lake Street
Lawrence, Kansas 66044

Ms. Butler:

I am in receipt of a copy of your letter of September 10, 1991, directed to City Manager Mike Wildgen, Assistant City Manager Rod Bremby and Commissioner Shirley Martin-Smith. In behalf of the named persons and the Lawrence City Commission, I am responding to your letter of September 10.

It would seem to me the whole tenor of your letter has to do with paragraph two, the statement, "it was agreed upon that the City Manager's office would research to see if there is a way to create another inquest or outside [of Lawrence city government] investigation of the Greg Sevier death. What is the result of that inquiry?"

You, personally, had asked me to investigate the means of organizing a grand jury investigation in the matter of the death of Greg Sevier. By letter of June 6, 1991, written by City of Lawrence Management Analyst David Corliss, information as to the process about convening a grand jury was sent to you to the address of 801 Lake Street, Lawrence, Kansas, 66044, and the City of Lawrence experienced no return of that written communication. Therefore, you have in hand a facsimile copy of K.S.A.- 222-3001seq.- -, which pertains to that process. Based on your current request about procedures to reopen the coroner's inquest, we enclose the following information:

Memorandum to Commissioner Shirley Martin-Smith from City manager Mike Wildgen dated August 1, 1991.
Copy of K.S.A. 22a-230seq.- -, relating to coroner's inquests.

As to the balance of your observations, the Lawrence City Commission is satisfied with the coroner's inquest conducted by Coroner Carol Moddrell about the death of Greg Sevier.

Sincerely,

Robert L. Walters Mayor:
City Manager Mike Wildgen
Commissioner Shirley Martin-Smith
Commissioner John Nalbandian
Commissioner Robert Schulte
Commissioner Robert Schumm
Assistant City Manager Rod Bremby
Coroner Carol Moddrell
District Attorney Jerry Wells
Jerry Cooley

STATE OF KANSAS
SENATE CHAMBER-TOPEKA
September 17, 1991

Ms. Cynthia Butler
801 Lake
Lawrence, KS 66044

Dear Ms. Butler:

Thank you for your letter of August 10 and the enclosures. I understand that you are concerned about alleged inadequacies or other problems with respect to the investigation of the death of Gregg Sevier. That certainly was a terrible tragedy; in fact I called Mr. and Mrs. Sevier to express my sympathies and I requested that the Legislature approve a study during this summer and fall regarding the methods of investigating allegations involving police misconduct.

It is my understanding that either the KBI or FBI is currently investigating the issue. This is not a matter which involves legislative responsibility, except as to a possible review of state statutes involving allegations of police misconduct which I have already requested. Your concerns regarding possible improprieties should be raised with the Office of the U.S. Attorney, the Attorney General, the Supreme Court Disciplinary Administrator or other similar authorities.

I will continue to try to review laws with respect to allegations of police misconduct and I certainly hope the authorities I have mentioned with responsibilities to directly review your allegations respond to your satisfaction.

Very truly yours,

Senator Wint Winter, Jr.

STATE OF KANSAS
-SENATE CHAMBER TOPEKA
September 19, 1991
Senator Bud Burke
Chairperson, Legislative
Coordinating Counsel
Capitol Building, Room 375-w
300 SW 10th
Topeka, KS 66612-1565

Re: Request from Special Committee on Judiciary for Assignment
of Additional Study Topic

Dear Bud:

I write on behalf of Chairman John Solbach and myself as Vice-Chairman of the Special Committee on Judiciary to request approval from LCC to study one additional topic. The Committee at its last meeting identified that we have made progress and reached final decision on most of the topics assigned, we will make a final decision on the other topics at the October meeting and we will have all or at least a part of the November meeting available to address several additional topics not approved previously by LCC but requested for study.

Specifically, we request that LCC approve the addition of the following topic for study which was listed as topic number 4 in our memorandum to you of May 22, 1991 (enclosed):

Investigation of Police Shootings and Brutality Allegations. This topic involves a study of the current law and possible changes in law regarding investigation of police shootings and police brutality allegations. The current law provides for a citizen petition for the convening of a grand jury and also allows for the calling of a coroner's inquest in such cases. This topic would review existing law with a view toward the maintenance of confidence in law enforcement and the public's interest in assuring adequate investigations of such matters.

It is our opinion that the addition of this topic can be accomplished at the November meeting and should not require the Committee to meet in December and therefore can be accommodated without additional cost. Additionally, it is a topic of importance to law enforcement across the state, to the general public and is a topic which is currently being debated in Congress.

If you would like any additional information from Chairman Solbach, myself or staff feel free to get in touch.

Very truly yours,

Senator Wint Winter, Jr.
WW:ss Encl.
cc: Representative John Solbach

UNITED STATES SENATE
WASHINGTON, D.C. 20510-1601
SEPTEMBER 23, 1991

Ms. Cynthia Butler
801 Lake
Lawrence, Kansas 66044

Dear Ms. Butler:

Thank you for your letter regarding the death and subsequent inquest of Gregg Sevier.

I appreciate having the opportunity to review the material you provided to me. However, after a thorough review of the material, I regret there is no way I can be of specific assistance. The particulars in this case are entirely of a legal nature and it would be inappropriate for me as a member of the United States Senate to intervene. If you have not already done so, I might suggest you contact an attorney for assistance.

Thanks for taking the time to contact me. If I may be of assistance to you in the future, please do not hesitate to contact me again.

Sincerely,

BOB DOLE
United States Senate

UNITED STATES SENATE
WASHINGTON, D.C. 20510-1602
October 9, 1991

Ms. Cynthia
Butler 801 Lake
Lawrence, Kansas 66044

Dear Ms. Butler:

Thank you for your correspondence regarding the case of Gregg Sevier.

I have forwarded your letters and documents to the Department of Justice here in Washington requesting a review of your findings, questions and concerns. The Department may respond directly to you with a copy to me.

I can understand the concern which prompted you to write to me and I hope you will find the Attorney General's reply helpful and informative.

Warmest regards,

Nancy Landon Kassebaum
United States Senator

801 Lake Street
Lawrence, KS 66044

October 10, 1991

Mr. Robert L. Walters
Mayor City of Lawrence
P. O. Box 708 Lawrence, KS 66044

Dear Mayor Walters:

This is in response to your letter of September 11, 1991, concerning the possibility of having the City re-open the Greg Sevier investigation. Thank you for your prompt reply to my letter of September 10, 1991.

In your letter you state that you are responding "in behalf of the named persons and the Lawrence City Commission " and that the Lawrence City Commission is "satisfied with the coroner's inquest..." I would like to know when those decisions were made by the Commission. Specifically, when did the Commission decide that it was satisfied with the coroner's inquest and when did it authorize you to respond to my letter of September 10, 1991? To this end, please forward all minutes, notes, transcripts and agendas of the meetings described above and please consider this a request under the Kansas Open Records Act.

Thank you for your cooperation.

Sincerely,

Cynthia Butler

DEPARTMENT OF JUSTICE
-CIVIL RIGHTS DIVISION WASHINGTON, D.C.
Nov. 1991

Ms. Cynthia Butler
801 Lake
Lawrence, Kansas 66044

Dear Ms. Butler:

This is a response to your correspondence dated September 23, 1991, regarding a possible civil rights violation in the death of Gregory Sevier.

This matter has been investigated by the Federal Bureau of Investigation. The investigative reports are now under review by this Department. You can be assured that if the evidence shows that there was a violation of the federal criminal civil rights statutes, appropriate action will be taken.

Thank you for bringing your concern about this matter to our attention. It is always of interest to the Department to receive the views of private citizens on matters of public interest.

Sincerely,
John R. Dunne
Assistant Attorney General
Civil Rights Division

By: Linda K. Davis-Chief Criminal Section