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J.W. Boyce (1884-1915)
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September 20, 1993

Re: Ethics Opinion 93-12

Dear

You have requested an opinion from this Committee regarding the following factual scenario:

FACTS

You are the State's Attorney in a county in South Dakota. The county and a city within that county are defendants in a federal court suit in which the plaintiff alleges the violation of his civil rights. You have given deposition testimony in that action regarding the confidentiality of police records. It appears that there is the possibility that you may appear as a witness in the federal court suit if the case is tried.

The plaintiff in the federal court action is also the subject of a criminal investigation in your county. You have inquired as to whether or not you may participate in the investigation and file criminal charges should that be warranted by the investigation. The general question you have raised is whether or not you have a conflict of interest that would require you to refer the criminal investigation to the South Dakota Attorney General's office or a Deputy State's Attorney to be hired by the county.

OPINION

It is the opinion of this Committee that no conflict of interest exists within the factual scenario that you have outlined. You may be precluded from participating in the defense of the federal court action by virtue of your status as a witness but this is not the issue you have raised. This Committee cannot envision any circumstance under which your participation in a criminal

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investigation and prosecution of a third party would be adverse to the interests of your client, the county.

Due to a conflict of interest, Committee members John Brown and Lonnie Braun did not participate in this request.

Thank you.

Sincerely,

Michael S. McKnight, Chairman
Ethics Committee