Approved: 4-26-96
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Chairperson Tim Emert at 10:00 a.m. on February 26, 1996 in Room 514-S- of the Capitol.

All members were present except: Senator Moran (excused)
Senator Martin (excused)

Committee staff present: Michael Heim, Legislative Research Department
Jerry Donaldson, Legislative Research Department
Gordon Self, Revisor of Statutes
Janice Brasher, Committee Secretary

Conferees appearing before the committee: Jim Clark, County and District Attorneys Associations
Sara Welch, Assistant District Attorney, Johnson County
Wendy McFarland, ACLU
Kyle Smith, KBI
Kathy Taylor, Kansas Bankers Association

Others attending: See attached list

The Chair called the meeting to order at 10:00 a.m.

SB 700--Search without search warrant.

Jim Clark of the County and District Attorneys Association testified in support of **SB 700**. The conferee stated that this bill was requested because in January of 1996 the Kansas Supreme Court ruled that Kansas's search incident to arrest statute was more limited than what the United States Supreme Court has held is required by the Fourth Amendment. The conferee explained that the U.S. Supreme Court extended the authority to search incident as in the 1981 case of *New York v Belton* . The conferee related that the purpose of **SB 700** is to expand the statutory authority to search incident to arrest to include a search for the fruits, instrumentalities, or evidence of any crime, regardless of the crime for which the arrest was based. The conferee stated that limiting this bill to automobile search would be okay with the County and District Attorneys' Association. (Attachment 1)

Sara Welch, Assistant District Attorney, Johnson County testified in support of **SB 700**. The conferee related that the number of methamphetamine related cases filed in Johnson County has increased. The conferee discussed the recent Kansas Supreme Court case of *State v Anderson*, and stated that the police's efforts will be hampered due to that case. The conferee related the circumstances regarding the case. The conferee stated that the passage of **SB 700** is valuable for the seizure of evidence and the protection of police officers. (Attachment 2)

The Chair related that **SB 700** is supported by Kansas Sheriff and Peace Officer's Association.

Wendy McFarland, ACLU addressed the Committee in opposition to **SB 700**. The conferee stated that the ACLU is opposed to **SB 700** because it would give great latitude to the police with the language change of "the crime" to "any crime" in K.S.A. 22-2501. The conferee stated that those in support of this bill want to make legal what has been illegal since 1970. The conferee related some hypothetical examples of the potential for abuse of police powers if this bill is passed. (Attachment 3)

The Committee members discussed issues concerning the *State v Anderson & Huffman* and the police officer's discretion in the scope of that search.

Kyle Smith, KBI testified in support of **SB 700** and related that many provisions of **SB 700** are included in **HB 3026**. The conferee stated that the federal and state courts have always recognized some exceptions to the probable cause requirement. The conferee stated that until *State v Anderson & Huffman* law enforcement officers in Kansas, operated under *New York v Belton* guidelines allowing that it is constitutional to search the immediate area around an arrested person, regardless of the existence of probable cause. The conferee stated that the Attorney General had requested the conferee to prepare a response to the ACLU's statements regarding **SB 700 and HB 3026.** (Attachment 4)

A motion was made by Senator Bond and seconded to amend **SB 700** to apply to search of automobiles and recommend the bill favorably for passage as amended. The motion carried.

SB 177--Enhanced penalties for repeated acts of battery.

The Chair called on the Revisor to explain the proposed changes to **SB 177.** The Revisor explained that the balloon is the escalation of second and third and subsequent offenses made applicable to battery as found in subsection (a) which is intentionally or recklessly causing bodily harm to another person and it does not apply to (b) which is the intentional causing physical contact in a rude or insulting manner--that would continue to be a Class B person misdemeanor. (Attachment 5)

The Revisor stated that the second proposed change deletes New Section 1, the statement of legislative intent

The Committee members discussed the balloon regarding the escalating penalties and problems with the definition of battery on lines 29-31.

A motion was made by Senator Feleciano, seconded by Senator Parkinson to amend **SB 177** by inserting reference to subsection (a) and other changes as stated in the balloon and deleting New Section 1. The motion carried.

A Committee member discussed the increase in prison population that might result from passing **SB 177**, and suggested looking to other alternatives. A suggestion was made to provide a funding clause.

A motion was made by Senator Reynolds, seconded by Senator Feleciano to recommend **SB 177** favorably for passage as amended. After further discussion the motion carried with three Committee members opposing.

SB 523--Statute of limitations relating to actions by corporations or associations against its officers or directors.

The Chair stated that KBA has offered some compromise language and introduced Kathy Taylor, Kansas Bankers Association.

Ms Taylor testified in support of **SB 523** and stated that compromised language had been developed in cooperation with the Trial Lawyers Association representative. The conferee stated that **SB 523** calls for a four year period of repose for a negligence cause of action. The conferee stated that the proposed change for all other causes of action would be a ten year period of limitation. The conferee discussed the third proposed change concerning what is not a negligence cause of action. (Attachment 6)

The Committee members discussed with a representative from the Trial Lawyers Association the compromises that were made.

A motion was made by Senator Vancrum, seconded by Senator Petty to adopt the balloon with a five year statute for a negligence cause of action. The motion carried.

A motion was made by Senator Feleciano, seconded by Senator Vancrum to recommend **SB 523** favorably for passage as amended. The motion carried.

SB 138--Divorce, time for hearing, emergency.

The Chair stated that this was a Judicial Council bill that was presented last year amending the statute on emergency divorces.

A motion was made by Senator Vancrum, seconded by Senator Parkinson to recommend **SB 138** favorably for passage. The motion carried.

SB 706--Effect on beneficiary designations by dissolution of marriage.

Senator Vancrum explained that **SB 706** would transfer the designation of a former spouse as beneficiary on an insurance policy at the marriage dissolution. Senator Vancrum stated insurance companies opposed this bill because there is no way for the insurance company to know when a marriage has been dissolved. Senator Vancrum stated that a substitute bill will provide that the transfer of beneficiary will have to be addressed in the settlement agreement at the time of the divorce.

A motion was made by Senator Vancrum, seconded by Senator Bond to conceptually amend **SB 706** to mandate that in any property settlement order that counsel will determine the beneficiary designation.

The motion was withdrawn.

Senator Bond stated that **SB 706** could be included in **SB 676** which passed out of Committee last week.

SB 578--Activities declared to be common nuisances.

The Chair stated that **SB 578** is the bill requested by City of Wichita regarding public nuisances.

The Committee members discussed the impact of this bill on business owners.

A motion was made by Senator Feleciano, seconded by Senator Harris to recommend **SB 578** favorably for passage. The motion failed.

The Chair adjourned the meeting at 11:10 a.m.

The next meeting is scheduled for February 27, 1996.

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 2-26-96

NAME	REPRESENTING
Sara Welch	Johnson County Dist Atty
Paul Shelby	OJA
Jim Clark	KCDAA
Ron Smith	KS Bar Assoc
Greg Winkler	KS Credit Union Assn.
Barbara Tombs	KS Sentencing Comm
Julie Meyer	KS Sentencing Comm.
Kathy Taylor	KBA
Helen Stephens	KPOA/KSA
Mike Taylor	City of Wichita
[illegible]	ACLU
Pat Clark	
Ron Clark	
Calli Clark	
Jennifer Ornburn	Sen. Parkinson
Roselyn James-Martin	SRS Children & Family Services
Kyle Smith	KBI
Matt Lynch	Judicial Council
Matthew Goddard	Heartland Community Bankers

#1 OFFICERS

Paul J. Morrison, President
Nanette L. Kemmerly-Weber, Vice-President
William E. Kennedy, Sec.-Treasurer
Dennis C. Jones, Past President

DIRECTORS

Julie McKenna
David L. Miller
Jerome A. Gorman
James T. Pringle

Kansas County & District Attorneys Association

827 S. Topeka Blvd., 2nd Floor • Topeka, Kansas 66612
(913) 357-6351 • FAX (913) 357-6352
EXECUTIVE DIRECTOR, JAMES W. CLARK, CAE • CLE ADMINISTRATOR, DIANA C. STAFFORD

Testimony in Support of

SENATE BILL NO. 700

The Kansas County and District Attorneys Association requested this bill in response to a recent decision of the Kansas Supreme Court. In State v. Anderson & Huffman, (71,404 decided 1/26/96) the Court held that although a search of an automobile incident to an arrest on a traffic violation exceeded the authority of K.S.A. 22-2501. That statute codified constitutional law as it existed at the time of its enactment in 1971. Since that time, the U.S. Supreme Court has extended the authority to search incident to arrest of an occupant of an automobile to include a search of the passenger compartment, including containers found within that compartment, New York v. Belton, 453 U.S. 454, 69 L.Ed. 2d 768 (1981). Our Supreme Court openly acknowledged that the statute was more restrictive than prevailing Fourth Amendment case law, but correctly held that the statute controls.

The purpose of SB 700 is simply to expand the statutory authority to search incident to arrest to include a search for the fruits, instrumentalities, or evidence of any crime, regardless of the crime for which the arrest was based. While the proposed change clearly expands the scope of such searches, they would still be restrained by the Fourth Amendment, as interpreted by the most recent U.S. Supreme Court opinions.

In conclusion, KCDAA urges the Committee to recommend the bill favorably for passage, to allow searches of vehicles within the confines of the Fourth Amendment.

SEN JUD
2-26-96
ATTACH 1

XV

STATE OF KANSAS
Tenth Judicial District

OFFICE OF DISTRICT ATTORNEY

PAUL J. MORRISON, DISTRICT ATTORNEY

SENATE JUDICIARY COMMITTEE

RE: Senate Bill 700

February 26, 1996

In the past year the number of methamphetamine related cases filed in Johnson County, Kansas has increased. I believe the drug's popularity is due to its ready availability and its high addiction potential.

The Kansas City metropolitan area has seen a sharp rise in the number of methamphetamine "cooking" laboratories in the past year. In the last quarter of 1995, the Kansas City office of the Drug Enforcement Administration responded on more methamphetamine labs than any other DEA office in the country. The chemicals used to process methamphetamine include red phosphorus, iodine crystals and hydrochloric acid. These chemicals are both volatile and dangerous.

Law enforcement officers need to use every tool at their disposal in order to combat methamphetamine labs as well as other crimes. The recent Kansas Supreme Court case of State v. Anderson, 71404, will hamper the police in their efforts to halt the manufacture of methamphetamine in the State of Kansas. In the Anderson case an Overland Park police officer searched Anderson's car incident to the arrest of one of the occupants. The trunk of the vehicle contained red phosphorus and iodine crystals, two highly dangerous chemicals used in the manufacture of methamphetamine. In addition to the two adult occupants, a two year old child was also present in this car. Based upon the Court's interpretation of K.S.A. 22-2501, all of the State's evidence was suppressed.

Had the proposed change to K.S.A. 22-2501, which this committee is considering, been in effect at the time Mr. Anderson was stopped, the State's evidence would have been admissible.

Thank you for your time.

S Welch

Sara Welch, Assistant District Attorney
Johnson County, Kansas

A:LEGISLATION:SW96.WP

SEN JUD
2-26-96
ATTACH 2

#3

American **C**ivil **L**iberties **U**nion
of Kansas and Western Missouri
706 West 42nd Street, Suite 108
Kansas City, Missouri 64111
(816) 756-3113

Wendy McFarland, Lobbyist
575-5749

FEBRUARY 26, 1996

TESTIMONY IN OPPOSITION
TO SENATE BILL 700 WHICH
CONCERNS SEARCH & SEIZURE

SENATE BILL 700 PROPOSES TO CHANGE CURRENT KANSAS STATUTE K.S.A. 22-2501 BY STRIKING THE "THE" AT THE END OF LINE 29 AND REPLACING IT WITH THE WORD "ANY". THE STATEMENT PROVIDED IN WRITTEN TESTIMONY PRESENTED BY KYLE SMITH OF THE KBI WHEN HE PROPOSED THIS CHANGE TO THE HOUSE JUDICIARY LAST WEEK, EXPLAINED THE CHANGE WAS "NECESSITATED" BY A RECENT KANSAS SUPREME COURT CASE.

HIS AND ANY OTHER PROPONENT'S REQUEST FOR THIS CHANGE SHOULD BE VIEWED AS NECESSARY ONLY IF YOU WISH TO PROVIDE LAW ENFORCEMENT WITH A STATUTORY DEFENSE WHEN THEY FAIL TO MEET THE CONSTITUTIONAL REQUIREMENT THAT SEARCHES ARE TO BE CONDUCTED ONLY AFTER PROBABLE CAUSE HAS BEEN ESTABLISHED.

WE WISH TO POSE A VIABLE QUESTION AS TO THE STATED "NECESSITY" OF CHANGING CURRENT STATUTE WHICH APPEARS TO HAVE THE SUPPORT OF THE ATTORNEY GENERAL, THE KBI AND THE KANSAS COUNTY AND DISTRICT ATTORNEY ASSOCIATION.

THIS AMENDMENT WAS ACTUALLY REQUESTED BECAUSE THE KANSAS SUPREME COURT HANDED THESE INTERESTS A RATHER STINGING DEFEAT ONE MONTH AGO IN STATE OF KANSAS VS. DANIEL W. ANDERSON IN WHICH THE COURT HELD THAT THE STATE HAD FAILED TO PROVE THE SEARCH OF MR. ANDERSON'S CAR WAS LAWFUL.

SO, RATHER THAN ACCEPTING THIS DECISION AND USING IT TO EFFECT BETTER TRAINING FOR POLICE ON HOW TO MAKE THEIR SEARCHES LEGAL, THEY INSTEAD BRING THEIR SINGLE CASE DEFEAT ACROSS THE STREET AND ASK YOU FOR RELIEF FROM THE GREAT BURDEN OF OPERATING WITHIN THE LAW.

THEY ARE ASKING YOU TO MAKE LEGAL WHAT HAS BEEN HELD TO BE ILLEGAL IN KANSAS SINCE 1970. THIS STATUTE HAS SERVED THE PEOPLE OF KANSAS WELL IN ESTABLISHING REASONABLE GUIDELINES FOR POLICE TO FOLLOW IN CONDUCTING SEARCHES.

THE REQUEST TO CHANGE "THE CRIME" TO "ANY CRIME" IN K.S.A. 22-2501, AS INNOCUOUS AND INNOCENT AS PROPONENTS WOULD HAVE YOU BELIEVE, WILL ALLOW LAW ENFORCEMENT ALMOST UNLIMITED POWER TO GO ON FISHING EXPEDITIONS IN PLACES THEY HAVE NO BUSINESS BEING IN.

SEN JUD
2-26-96
ATTACH 3

THE CASE THAT PRECIPITATED THIS REQUEST, KS. VS. ANDERSON, INVOLVED A TRAFFIC STOP IN OVERLAND PARK, KANSAS. A POLICE OFFICER OBSERVED A CAR MAKE AN UNSAFE LANE CHANGE. THE CAR WAS STOPPED AND THE OFFICER ASKED TO SEE THE DRIVER'S LICENSE AND A PLASTIC FILM CONTAINER HE SAW IN THE VEHICLE. BOTH WERE PROVIDED TO HIM.

THE PASSENGER IN THE CAR WAS DANIEL ANDERSON, THE PLAINTIFF IN THIS CASE.

THE FILM CONTAINER WAS EMPTY. THE OFFICER THEN RAN A RECORDS CHECK ON BOTH THE DRIVER AND THE PASSENGER. THE DRIVER'S CHECK REVEALED THAT SHE WAS DRIVING WITH A SUSPENDED LICENSE AND THAT THERE WAS AN OUTSTANDING WARRANT FOR HER ARREST IN CONNECTION WITH OPERATING A VEHICLE WITH NO CHILD RESTRAINT. THE CHECK RUN ON THE PASSENGER DANIEL ANDERSON REVEALED NOTHING.

WITH THE INFORMATION OF THE TWO VIOLATIONS ON THE DRIVER, THE OFFICER RETURNED TO THE CAR AND ARRESTED HER. THE OFFICER THEN CONDUCTED A THOROUGH SEARCH OF THE CAR AND TRUNK AND DISCOVERED DRUG PARAPHERNALIA. THE OFFICER THEN ARRESTED THE PASSENGER, DANIEL ANDERSON. UPON BEING BOOKED INTO JAIL, A MOTEL ROOM KEY WAS FOUND ON MR. ANDERSON. AN EVENTUAL SEARCH OF THE MOTEL ROOM REVEALED DRUG RELATED ITEMS.

THE ISSUE THE KANSAS SUPREME COURT HAD TO DECIDE WAS WHETHER THE OFFICER HAD A RIGHT TO SEARCH THE INTERIOR OF THE CAR. NO EVIDENCE TO SUPPORT THE CRIMES OF DRIVING WITH A SUSPENDED LICENSE OR DRIVING A CAR WITHOUT A CHILD RESTRAINT COULD BE REASONABLY EXPECTED TO BE FOUND IN THE CAR AND THAT IS WHERE THE OFFICER FAILED TO MEET THE SIMPLE AND FAIR REQUIREMENT OF PROBABLE CAUSE.

THE FRUITS OF A WARRANTLESS OR UNLAWFUL SEARCH CANNOT BE ALLOWED TO ESTABLISH PROBABLE CAUSE FOR THE SEARCH AFTER THE FACT AND THE KANSAS SUPREME COURT RECOGNIZED THAT. THE PROPONENT'S CONTENTION THAT THIS DECISION DEPARTED FROM PAST DECISIONS AND DID NOT FOLLOW A RECENT U.S. SUPREME COURT CASE WERE DISMISSED BY THE KANSAS SUPREME COURT. THE JUDGES CLEARLY SAID THAT THEY DID FOLLOW THE CASE AND STATED THAT THEY ALWAYS MAKE SURE THEIR IS A PURPOSE BEHIND ANY SEARCH.

IN THIS ONE CASE, THE OFFICERS DID TURN UP OTHER EVIDENCE OF CRIMES UNRELATED TO THE REASON FOR THE TRAFFIC STOP AND ARREST...BUT PLEASE DO NOT ALLOW ONE UNLAWFUL SEARCH THAT UNCOVERED EVIDENCE OF FURTHER CRIME TO CAUSE YOU TO BELIEVE THAT THE ENDS ALWAYS JUSTIFY THE MEANS.

THE HYPOTHETICALS I COULD DESCRIBE TO YOU ARE ENDLESS THAT WOULD REMIND YOU THAT THE POTENTIAL FOR ABUSE OF POLICE POWERS WILL BE EVER SO MUCH GREATER IF YOU ALLOW THIS AMENDMENT. POLICE ALLREADY HAVE ALMOST UNLIMITED LATITUDE IN MAKING TRAFFIC STOPS.

WERE YOU AND YOUR FAMILY, FOR INSTANCE, EXCEEDING THE SPEED LIMIT IN AN ATTEMPT TO MAKE IT TO A MOVIE ON TIME, YOU MIGHT BE STOPPED AND ISSUED A TICKET FOR THIS. DURING THIS STOP, LET'S SAY A LICENSE CHECK BY THE OFFICER REVEALS A NUMBER OF UNPAID PARKING TICKETS YOU HAD FORGOTTEN ABOUT. WITH THE PROPOSED CHANGE TO THE STATUTE THAT YOU ARE BEING REQUESTED TO MAKE, YOU COULD THEN BE PLACED UNDER ARREST AND HANDCUFFED. THE OFFICER WOULD THEN HAVE THE RIGHT TO FORCE YOUR FAMILY FROM THE CAR, SEARCH THE VEHICLE INCLUDING YOUR WIFE'S PURSE, YOUR HUSBAND'S WALLET, YOUR CHILD'S BOOK BAG, YOUR CHILD AND ANYTHING ELSE UP TO AND INCLUDING A BODY SEARCH.

AS THE LAW NOW STANDS WITHOUT THE PROPOSED AMENDMENT, THE OFFICER WOULD HAVE TO LIMIT THE SCOPE OF HIS SEARCH TO THE VIOLATIONS OF SPEEDING AND UNPAID PARKING TICKETS SINCE A REASONABLE OFFICER SHOULD KNOW THAT NO EVIDENCE OF THESE OFFENSES WOULD BE FOUND IN THE CAR TO SUPPORT THESE CHARGES. IN THIS INSTANCE, THE CAR COULD NOT LAWFULLY BE SEARCHED.

AND THAT IS HOW IT SHOULD BE.

THE KBI'S EXAMPLE IN EARLIER TESTIMONY OF WHY THEY NEEDED THIS CHANGE, STATED THAT A SAWED OFF SHOTGUN DISCOVERED UNDER THE SEAT OF A CAR DURING A SEARCH FOR DRUGS ON A LAWFUL ARREST WOULD HAVE TO BE IGNORED. ACCORDING TO WASHBURN UNIVERSITY LAW PROFESSOR MICHAEL KAYE, "AS LONG AS THAT POLICE OFFICER WAS WHERE HE WAS SUPPOSED TO BE, AND IN THIS EXAMPLE, HE HAD PROBABLE CAUSE TO SEARCH THE CAR FOR DRUGS, THEN THE DISCOVERY OF THIS WEAPON IN THE PROCESS WOULD BE LEGAL AND THE GUN COULD AND SHOULD BE CONFISCATED."

IS IS IMPORTANT FOR YOU TO REALIZE THAT THIS STATUTEIS NOT LIMITED TO CAR SEARCHES. THE PROPOSED AMENDMENT WILL ALLOW ALMOST UNLIMITED ACCESS TO YOUR HOME AS WELL. THE KBI'S CITING OF THE NEW YORK V. BELTON CASE AS JUSTIFICATION FOR THIS CHANGE IS MISLEADING AND NARROW SINCE BELTON ONLY ADDRESSES CAR SEARCHES.

AND FINALLY, REMEMBER THAT THE KANSAS SUPREME COURT HAS NO OTHER OBLIGATION CONCERNING THE DECISIONS OF THE UNITIED STATES SUPREME COURT THAN TO COMPLY WITH THE MINIMUM DIRECTIVES OF EACH DECISION.

FORMER KANSAS SUPREME COURT JUSTICE HAROLD HERD SAID REPEATEDLY FROM THE BENCH THAT KANSAS LAW DOES NOT HAVE TO FOLLOW THE BROADER INTERPRETATIONS OF THE U.S. SUPREME COURT AND QUITE OFTEN YOU WILL FIND OUR STATE SUPREME COURT TO HAVE BEEN FAR MORE RESTRICTIVE IN THEIR DECISIONS. THEY ARE TO BE CONGRATULATED FOR THEIR INDEPENDENCE.

THE FRAMERS OF OUR BILL OF RIGHTS CLEARLY INTENDED TO LIMIT THE POWERS OF POLICE SO THAT THEY WOULD NOT ABUSE THEM ON THE CITIZENRY. IN A COUNTRY WHERE GOVERNMENT IS BY THE PEOPLE AND FOR THE PEOPLE, YOU, AS REPRESENTATIVES OF THE PEOPLE, MUST CONSISTENTLY WEIGH THE INTERESTS OF CERTAIN GROUPS AGAINST THE INTERESTS OF THE PEOPLE. A FAIR BALANCE OF POWERS MUST BE MAINTAINED TO PROTECT THE PEOPLE FROM UNREASONABLE INTRUSIONS BY GOVERNMENT WHILE ALLOWING REASONABLE INTRUSIONS FOR THE SAKE OF LAW AND ORDER. K.S.A. 22-2501 STANDS TALL TO SERVE BOTH THE INTERESTS OF THE PEOPLE AND THE INTERESTS OF LAW ENFORCEMENT. WE RESPECTFULLY ASK YOU TO MAINTAIN THIS STATUTE IN ITS ORIGINAL FORM. IT CONTINUES TO SERVE THE INTERESTS OF ALL.

SB708

Kyle Smith 2-26-96

American Civil Liberties Union
of Kansas and Western Missouri
706 West 42nd Street, Suite 108
Kansas City, Missouri 64111
(816) 756-3113

Wendy McFarland, Lobbyist
575-5749

RESPONSE TO THE PROPOSED AMENDMENT ATTACHED
TO HOUSE BILL 3026 THAT WILL CHANGE K.S.A. 22-2501

THANK YOU FOR THIS OPPORTUNITY TO RESPOND TO THE PROPOSED AMENDMENT ON HB 3026 WHICH WOULD STRIKE THE "THE" AT THE END OF LINE 29 AND REPLACE IT WITH THE WORD "ANY". THE STATEMENT PROVIDED IN WRITTEN TESTIMONY PRESENTED BY KYLE SMITH OF THE KBI WHICH EXPLAINED THE CHANGE WAS "NECESSITATED" BY A RECENT KANSAS SUPREME COURT CASE SHOULD BE VIEWED AS NECESSARY ONLY IF YOU WISH TO PROVIDE LAW ENFORCEMENT WITH A STATUTORY DEFENSE WHEN THEY FAIL TO MEET THE CONSTITUTIONAL REQUIREMENT THAT SEARCHES ARE TO BE CONDUCTED ONLY AFTER PROBABLE CAUSE HAS BEEN ESTABLISHED.

This case, and this statute, have nothing to do with the probable cause requirement. Federal and state courts have always recognized some exceptions to the probable cause requirement, e.g. open fields, consent, abandoned property and incident to a lawful arrest.

WE WISH TO POSE A VIABLE QUESTION AS TO THE STATED "NECESSITY" OF CHANGING CURRENT STATUTE WHICH APPEARS TO HAVE THE SUPPORT OF THE ATTORNEY GENERAL, THE KBI AND THE KS. COUNTY AND DISTRICT ATTORNEY ASSOCIATION.

THIS AMENDMENT WAS ACTUALLY REQUESTED BECAUSE THE KANSAS SUPREME COURT HANDED THESE INTERESTS A RATHER STINGING DEFEAT ONE MONTH AGO IN STATE OF KANSAS VS. DANIEL W. ANDERSON IN WHICH THE COURT HELD THAT THE STATE HAD FAILED TO PROVE THE SEARCH OF MR. ANDERSON'S CAR WAS LAWFUL.

SO RATHER THAN ACCEPTING THIS DECISION AND USING IT TO EFFECT BETTER TRAINING FOR POLICE ON HOW TO MAKE THEIR SEARCHES LEGAL, THEY INSTEAD BRING THEIR SINGLE CASE DEFEAT ACROSS THE STREET AND ASK YOU FOR RELIEF FROM THE BURDEN OF OPERATING WITHIN THE LAW.

THEY ARE ASKING YOU TO MAKE LEGAL WHAT HAS BEEN HELD TO BE ILLEGAL SINCE 1970. THIS STATUTE HAS SERVED THE PEOPLE OF KANSAS WELL IN ESTABLISHING REASONABLE GUIDELINES FOR POLICE TO FOLLOW IN CONDUCTING SEARCHES.

False. Until Anderson law enforcement officers in Kansas, indeed the whole country, operated under New York v. Belton guidelines saying that it is constitutional to search the immediate area around an arrested person, regardless of the existence of probable cause. Anderson changed the rules last month; not based on the constitution but because this statute is drafted in this way. We want to restore the law to what it has been since 1970.

THE REQUEST TO CHANGE "THE CRIME" TO "ANY CRIME" IN K.S.A. 22-2501, AS INNOCUOUS AND INNOCENT AS PROPONENTS WOULD HAVE YOU BELIEVE IT TO BE, WILL ALLOW LAW ENFORCEMENT ALMOST UNLIMITED POWER TO GO ON FISHING EXPEDITIONS IN PLACES THEY HAVE NO BUSINESS BEING IN.

Sen. Jud
2-26-96
Attach 4

THE CASE THAT PRECIPITATED THIS REQUEST, KS. VS. ANDERSON, INVOLVED A TRAFFIC STOP IN OVERLAND PARK, KANSAS. A POLICE OFFICER OBSERVED A CAR MAKE AN UNSAFE LANE CHANGE. THE CAR WAS WTOPPED AND THE OFFICER ASKED TO SEE THE DRIVER'S LICENSE AND A PLASTIC FILM CONTAINER HE SAW IN THE VEHICLE. BOTH WERE PROVIDED TO HIM.

THE PASSENGER IN THE CAR WAS DANIEL ANDERSON, THE PLAINTIFF IN THIS CASE.

THE FILM CONTAINER WAS EMPTY. THE OFFICER THEN RAN A RECORDS CHECK ON BOTH THE DRIVER AND THE PASSENGER. THE DRIVER'S CHECK REVEALED THAT SHE WAS DRIVING WITH A SUSPENDED LICENSE AND THAT THERE WAS AN OUTSTANDING WARRANT FOR HER ARREST IN CONNECTION WITH OPERATING A VEHICLE WITH NO CHILD RESTRAINT. THE CHECK RUN ON THE PASSENGER, DANIEL ANDERSON REVEALED NOTHING.

WITH THE INFORMATION OF ONLY THOSE TWO VIOLATIONS, THE OFFICER RETURNED TO THE CAR AND ARRESTED THE DRIVER. THE OFFICER THEN CONDUCTED A THOROUGH SEARCH OF THE CAR AND TRUNK AND DISCOVERED DRUG PARAPHERNALIA. THE OFFICER THEN ARRESTED THE PASSENGER, DANIEL ANDERSON. UPON BEING BOOKED INTO JAIL, A MOTEL ROOM KEY WAS FOUND ON MR. ANDERSON. AN EVENTUAL SEARCH OF THE MOTEL ROOM REVEALED DRUG RELATED ITEMS.

THE ISSUE THE KANSAS SUPREME COURT HAD TO DECIDE WAS WHETHER THE OFFICER HAD A RIGHT TO SEARCH THE INTERIOR OF THE CAR. NO EVIDENCE TO SUPPORT THE CRIMES OF DRIVING WITH A SUSPENDED LICENSE OR DRIVING A CAR WITHOUT A CHILD RESTRAINT COULD BE EXPECTED TO BE FOUND IN THE CAR AND THAT IS WHERE THE OFFICER FAILED TO MEET THE SIMPLE AND FAIR REQUIREMENT OF PROBABLE CAUSE.

Again, this case does not have anything to do with probable cause or the Carroll doctrine. 'Fruits' never justify a search, there must be a constitutional basis first.

THE FRUITS OF A WARRANTLESS OR UNLAWFUL SEARCH CANNOT BE ALLOWED TO ESTABLISH PROBABLE CAUSE FOR THE SEARCH AFTER THE FACT AND THE KANSAS SUPREME COURT RECOGNIZED THAT.

IN THIS ONE CASE, THE OFFICERS DID TURN UP OTHER EVIDENCE OF CRIMES UNRELATED TO THE REASON FOR THE TRAFFIC STOP AND ARREST...BUT PLEASE DO NOT ALLOW ONE UNLAWFUL SEARCH THAT UNCOVERED EVIDENCE OF FURTHER CRIME TO CAUSE YOU TO BELIEVE THAT THE ENDS ALWAYS JUSTIFY THE MEANS.

THE HYPOTHETICALS I COULD DESCRIBE TO YOU ARE ENDLESS THAT WOULD REMIND YOU THAT THE POTENTIAL FOR ABUSE OF POLICE POWERS WILL BE EVER SO MUCH GREATER IF YOU ALLOW THIS AMENDMENT.

The true standard in traffic stops is "reasonable suspicion."

POLICE HAVE ALMOST UNLIMITED LATITUDE IN MAKING TRAFFIC STOPS. WERE YOU AND YOUR FAMILY, FOR EXAMPLE, TO FIND YOURSELF SPEEDING TO MAKE IT TO A MOVIE YOU WERE RUNNING LATE FOR, YOU MIGHT BE STOPPED AND ISSUED A TICKET FOR THIS. DURING THIS EVENT, A SUBSEQUENT RECORDS CHECK BY THE OFFICER MIGHT REVEAL A NUMBER OF UNPAID PARKING TICKETS YOU HAD FORGOTTEN ABOUT. WITH THIS AMENDMENT IN PLACE, YOU COULD THEN BE HANDCUFFED AND PLACED UNDER ARREST AND THE OFFICER WOULD THEN HAVE THE RIGHT TO FORCE YOUR FAMILY OUT OF THE CAR, SEARCH THE VEHICLE INCLUDING YOUR WIFE'S PURSE, YOUR HUSBAND'S WALLET, YOUR CHILD'S BOOK BAG AND ANYTHING ELSE UP TO AND INCLUDING A BODY SEARCH.

Unlike many bills, we know what abuses occur (or did not occur) if this language is adopted because that was the law from 1970 to January 1996. We would suggest the scare tactics and fantasy used here have not been occuring in the real world.

AS THE

4-2

AS THE LAW NOW STANDS WITHOUT THE PROPOSED AMENDMENT, THE OFFICER WOULD HAVE TO LIMIT THE SCOPE OF HIS SEARCH TO THE VIOLATIONS OF SPEEDING AND UNPAID PARKING TICKETS SINCE THE OFFICER SHOULD KNOW THAT NO EVIDENCE WOULD BE FOUND IN THE CAR TO SUPPORT THESE CHARGES. IN THIS INSTANCE, THE CAR COULD NOT LAWFULLY BE SEARCHED.

AND THAT IS HOW IT SHOULD BE.

← The A.C.L.U.'s opinion, not that of the U.S. Supreme Court.

THE KBI'S EXAMPLE OF THE DISCOVERY OF A SAWED OFF SHOTGUN IN THE SEARCH FOR DRUGS DURING A LAWFUL DRUG ARREST, WAS "TOTALLY FALSE" ACCORDING TO WASHBURN UNIVERSITY LAW PROFESSOR MICHAEL KAYE. "AS LONG AS THAT POLICE OFFICER WAS WHERE HE WAS SUPPOSED TO BE, AND IN THIS EXAMPLE, HE HAD PROBABLE CAUSE TO SEARCH THE CAR FOR DRUGS, THEN THE DISCOVERY OF THIS WEAPON IN THE PROCESS WOULD BE LEGAL AND THE GUN COULD BE CONFISCATED."

← The A.C.L.U. mistates the testimony apparently both to the committee and Professor Kaye. I did not say there was probable cause (which always justifies an automobile search under the Carroll doctrine), but that the officer had some information that drugs were supposed to be there. If Anderson stands then a court could suppress the shotgun. Again, they are confused when they discuss probable cause.

IS IS IMPORTANT FOR YOU TO REALIZE THAT THIS STATUTE IS NOT LIMITED TO CAR SEARCHES. THE PROPOSED AMENDMENT WILL ALLOW ALMOST UNLIMITED ACCESS TO YOUR HOMES AS WELL.

← False: Homes require not just probable cause, but a warrant issued by a court unless there are exigent circumstances.

THE KBI'S CITING OF THE NEW YORK V. BELTON CASE AS JUSTIFICATION FOR THIS AMENDMENT IS MISLEADING AND NARROW SINCE BELTON ONLY ADDRESSES CAR SEARCHES.

AND FINALLY, REMEMBER THAT THE KANSAS SUPREME COURT HAS NO OTHER OBLIGATION CONCERNING THE DECISIONS OF THE UNITED STATES SUPREME COURT THAN TO COMPLY WITH THE MINIMUM DIRECTIVES OF EACH DECISION.

FORMER KANSAS SUPREME COURT JUSTICE HAROLD HERD SAID REPEATEDLY FROM THE BENCH THAT KANSAS LAW DOES NOT HAVE TO FOLLOW THE BROADER INTERPRETATIONS OF THE U.S. SUPREME COURT AND QUITE OFTEN YOU WILL FIND OUR STATE SUPREME COURT TO HAVE BEEN FAR MORE RESTRICTIVE IN THEIR DECISIONS.

← Agree, but this would be the first time Kansas differed on search and seizure law and because of the statute - not the constitution.

THE FRAMERS OF OUR BILL OF RIGHTS CLEARLY INTENDED TO LIMIT THE POWERS OF POLICE SO THAT THEY WOULD NOT ABUSE THEM ON THE CITIZENRY.

IN A COUNTRY WHERE GOVERNMENT IS BY THE PEOPLE AND FOR THE PEOPLE, YOU, AS REPRESENTATIVES OF THE PEOPLE, MUST CONSISTENTLY WEIGH THE INTERESTS OF CERTAIN GROUPS AGAINST THE INTERESTS OF THE PEOPLE.

A FAIR BALANCE OF POWERS MUST BE MAINTAINED TO PROTECT THE PEOPLE FROM UNREASONABLE INTRUSIONS BY GOVERNMENT WHILE ALLOWING REASONABLE INTRUSIONS FOR THE SAKE OF LAW AND ORDER.

K.S.A. 22-2501 AS ORIGINALLY ENACTED IN 1970, STANDS TALL TO SERVE BOTH THE INTERESTS OF THE PEOPLE AND THE INTERESTS OF LAW ENFORCEMENT.

WE RESPECTFULLY ASK YOU TO MAINTAIN THIS STATUTE IN ITS ORIGINAL FORM. IT CONTINUES TO SERVE THE INTERESTS OF ALL.

#5

Session of 1995

SENATE BILL No. 177

By Senators Ranson, Bogina, Bond, Downey, Hardenburger, Harrington, Langworthy, Lawrence, Morris, Papay, Petty, Reynolds, Salisbury and Vancrum

2-1

Proposed Amendments to SB N. 177

AN ACT concerning crimes and punishment; relating to battery; penalties, repeated acts; amending K.S.A. ~~1994 Supp.~~ 21-3412 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

New Section 1. The legislature of the state of Kansas finds that repeated acts of violence have escalated at an alarming rate. Violence in the home and in the streets has risen dramatically thus placing all citizens at risk for victimization. The legislature further finds that the likelihood of engaging in repeated acts of violence is high if the offender is not legally discouraged from continuation of such conduct. In an effort to protect the citizens of the state of Kansas from violent crime, the legislature finds that the punishment for each successive uncontrolled act of violence should increase proportionately so that a clear message is sent to the population of the state of Kansas that violence in any form shall not be tolerated.

Sec. 2. K.S.A. ~~1994 Supp.~~ 21-3412 is hereby amended to read as follows: 21-3412. Battery is:

(a) Intentionally or recklessly causing bodily harm to another person; or

(b) intentionally causing physical contact with another person when done in a rude, insulting or angry manner.

~~Battery is a class B person misdemeanor.~~

(c) (1) Upon a first conviction of a violation of *this section* subsection (a) or (b)*, a person shall be guilty of a class B person misdemeanor.*

(2) If, within five years immediately preceding commission of *the crime* of a violation of subsection (a)*, a person is convicted of a violation of* *this section* subsection (a) *a second time, having at least one time before within such period been convicted for* *such crime* a violation of subsection (a) *or* a violation of a *comparable crime under the laws of any municipality, state, federal government or foreign government, such person shall be guilty of a class A person misdemeanor.*

(3) If, within five years immediately preceding commission of *the crime* a violation of subsection (a)*, a person is convicted of a violation of* *this section* subsection (a) *a third or sub-*

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ATTACH 5

sequent time, such person shall be guilty of a severity level 5, person felony.

Sec. 3. K.S.A. ~~1994 Supp.~~ 21-3412 is hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.

Session of 1995

SENATE BILL No. 177

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2-1

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(a) Intentionally or recklessly causing bodily harm to another person; or

(b) intentionally causing physical contact with another person when done in a rude, insulting or angry manner.

~~Battery is a class B person misdemeanor.~~

(c) (1) Upon a first conviction of a violation of this section, a person shall be guilty of a class B person misdemeanor.

(2) If, within five years immediately preceding commission of the crime, a person is convicted of a violation of this section a second time, having at least one time before within such period been convicted for such crime or comparable crime under the laws of any municipality, state, federal government or foreign government, such person shall be guilty of a class A person misdemeanor.

(3) If, within five years immediately preceding commission of the crime, a person is convicted of a violation of this section a third or sub-

Proposed Amendments to SB No. 177

Section 1.

And by renumbering sections accordingly

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The KANSAS BANKERS ASSOCIATION
A Full Service Banking Association

SB 523

Amending KSA 60-513

(d) A negligence cause of action by a corporation or association against an officer or director of the corporation or association shall not be deemed to have accrued until the act giving rise to the cause of action first causes substantial injury, or, if the fact of injury is not reasonably ascertainable until some time after the initial act, then the period of limitation shall not commence until the fact of injury becomes reasonably ascertainable to the injured party, but in no event shall such an action be commenced more than four years beyond the time of the act giving rise to the cause of action. All other causes of action by a corporation or association against an officer or director of the corporation or association shall not be deemed to have accrued until the act giving rise to the cause of action first causes substantial injury and there exists a disinterested majority of nonculpable directors of the corporation or association, or, if the fact of injury is not reasonably ascertainable until some time after the initial act, then the period of limitation shall not commence until the fact of injury becomes reasonably ascertainable and there exists a disinterested majority of nonculpable directors of the corporation or association, but in no even shall such an action be commenced more than 10 years beyond the time of the act giving rise to the cause of action. For purposes of this subsection, the term "negligence cause of action" shall not include a cause of action seeking monetary damages for any breach of the officer's or director's duty of loyalty to the corporation or association, for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, for liability under KSA 17-5812, 17-6410, 17-6423, 17-6424 or 17-6603, or for any transaction from which the officer or director derived an improper personal benefit.

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