

MINUTES OF THE HOUSE FEDERAL & STATE AFFAIRS COMMITTEE

The meeting was called to order by Chairperson Doug Mays at 1:35 p.m. on February 18, 2002 in Room 313-S of the Capitol.

All members were present except: Representative Judy Morrison, Excused

Committee staff present: Mary Torrence, Revisor of Statutes
Russell Mills, Legislative Research Department
Shelia Pearman, Committee Secretary

Conferees appearing before the committee:

Representative Melany Barnes
Representative Dale Swenson
Nikki Flynn, Producer/Reporter KWCH, Wichita
Major General Gregory Gardner, Director of Emergency Management
Mike Kautsch KU Media, Law & Policy Director
Harriet Lange, Kansas Association for Broadcasters
Amanda Olson, Wichita Search & Rescue Handler
Rick Thames, Wichita Eagle Editor
Bill Wepler, Wichita Search & Rescue Handler

Chairman Mays opened the hearing on **HB 2741 - Inflicting harm, disability or death to a search and rescue (SAR) dog.** Representative Barnes introduced this bill which would punish any individual who intentionally harms/kills a SAR dog. She stated although an elderly neighbor was located in a cornfield by an SAR dog, most Americans have become more aware of the service the dogs and their trainers provide the public since the tragedies of September 11.

Mr. Wepler stated tragedies such as the Oklahoma City bombing and the terrorist attack on the World Trade Center have increased awareness and appreciation for the dogs roles in locating people. However, the potential increase to harm or destroy the dogs has greatly increased. SAR dogs are utilized in locating victims of natural disasters and/or homicides, the increase awareness has greatly added to the potential for the dogs to be harmed or destroyed. With more than \$2,500 expenses and 200-250 hours annually to train/maintain a dog utilized in volunteer service to their communities, a trainer could easily spend more than \$25,000 during ten years which is an average life expectancy of a dog. Except for two states, few if any insurance policies would cover these pets or their trainer and his/her equipment. (Attachment #1)

Representative Swenson thanked the committee for its continued effort during the last three sessions in attempting to pass legislation covering SAR dogs. In addition to cookies, he also delivered written testimony submitted by Joseph Fehrenbacher, Kansas Search & Rescue Director, which pleaded that the SAR dogs receive the same protection that police and arson dogs because of the work they perform for the public despite being publicly owned. (Attachment #2)

Major General Gardner urged his support of **HB 2741**. He stated the volunteer members of the Kansas Search and Rescue Dog Association have responded in 32 counties to various disaster areas. This nationally certified group assist local law enforcement, KBI and FBI and are trained in evidence handling and preservation as well as have passed background checks. With medical professionals and CPR training, this volunteer group of individuals is a tremendous asset to the citizens of Kansas. (Attachment #3)

Ms. Olson stated she and her all-American dog, Poncho, undergo approximately 25-45 hours per month of training (Attachment #4). As a full-time student and employee, she cited the various local and national seminars which enhance the education and training the handlers and the dogs experience in order to train for rescue and recovery. The more commonly utilized breeds are Labrador & Golden Retrievers, Rottweilers, Bloodhounds, Newfoundlands and German Shepherds although other breeds are also used.

No additional conferees appeared before the committee. The hearing on HB 2741 was closed. Representative Barnes moved that the committee recommend HB 2741 favorable for passage. Representative Peterson seconded the motion. The motion passed unanimously.

Chairman Mays opened the hearing on **HB 2798 - Press shield law**. Ms. Lange informed the committee the qualified privilege for journalists not required to disclose confidential sources is similar to language in four other states. (Attachment #5) She cited TV stations in Pittsburg, Topeka and Wichita have received numerous subpoenas each during the past five years. The Association urged the committee to support **HB 2798**.

Written testimony from Kevin Pope, KSNT (Channel 27 Topeka) discussed the importance of "off the record" comments whether on videotape or on paper and urged the committee to support **HB 2798**. (Attachment #6)

Mr. Thames rose in support of **HB 2798**. He cited the Supreme Court 1972 case *Branzburg v. Hayes* which ruled that the forced disclosure of information to the government must be weighed against the First Amendment protections of a free and independent press. Because the press relies on the public's assistance in gathering the news, those who are reluctant to identify themselves for fear of retribution by employers or others are less likely to provide details that may be in the best interest of the public. He urged Kansas to join 31 other states in adopting shield laws to help keep the press in Kansas independent, free and fully capable of reporting all of the news its citizens need to hear. (Attachment #7)

Professor Kautsch stated shield laws are designed to aid the media serve the public which helps insure a democratic system of government. He noted the media's role is to inform the public via an adequate means to understand the judicial, administrative and legislative methods of democracy. The legal tests of subpoenas calling for compelled disclosure can be daunting thus requires the determination by the media to experience reallocation of resources rather than their function of gathering and reporting news. He stated the preamble in this bill is important to note citing the purpose of the privilege is to permit information to flow to the public. In states where this law exist, if there is evidence that the privilege is being invoked in a way that would not serve the public interest and lead to a disclosure that privilege would not be attached. He clarified this differs from attorney-client privilege because the client holds the privilege versus this proposed legislation permitting the reporter versus the source of the reporter. The Kansas Supreme Court has made note of presumed benefit of an increased flow of communication to the public leading to an increased public trust, thus he believes **HB 2798** should be viewed as an instrument of increasing the flow of information which also increases the public's understanding of government. (Attachment #8)

Ms. Flynn is producer of KWCH's I-team (Investigative team). The promise of confidentiality of a source in her organization is presently limited to receiving a court subpoena. She stated the public's right-to-know if publicly paid and financed program is not being run properly created the need for the Edison School project's source to be unidentified. She urged the committee to support this legislation. (Attachment #9)

No other conferees appeared before the committee. The hearing on **HB 2798** was closed.
Chairman Mays appointed Representative Tony Powell (Chair), Representative Daniel Williams and Representative Rick Rehorn to a subcommittee to further study this legislation.

The committee meeting adjourned at 3:15 p.m. The next scheduled meeting is February 19, 2002.

State of Kansas
Federal and State Affairs Committee
Topeka, KS

February 18, 2002

Re: HB 2741

Dear Sir or Madam:

I am a member of a group of volunteer individuals that collectively provide trained search dogs and personnel to find persons who are missing, trapped, or incapacitated from any cause. We respond only at the request of an official governmental agency day or night, under any and all conditions where we can operate in an effective manner. We have air-scenting dogs trained for wilderness, urban and disaster settings and dogs trained to find victims of drowning. We have specialty-trained dogs that do trailing and one human remains/forensic detection canine.

As aforementioned, we respond to find persons missing from any cause. Some are missing as a result of foul play. We do not search for or apprehend criminals and our dogs are not trained for this type of work. We do, however, consider every lost person incident as if it had a criminal element involved unless proven otherwise. Our human remains and forensic detection dogs have been called to find suspected homicide victims. Our tracking dogs have been called to retrace the route of a previously apprehended suspect in an attempt to locate discarded evidence.

Our members are dedicated individuals who own, maintain, and with assistance of other members, train their own dogs. On average it takes between twelve and fourteen months to train and certify a handler/canine team. Our team members are provided a minimum of 200 – 250 hours of scheduled training per year. As handlers we spend many hours, on our own, training our dogs to maintain a high level of proficiency. All handler/dog teams must be re-certified yearly.

Conservatively speaking, most handlers will spend between \$2500.00 to \$3500.00 per year on canine search and rescue supplies, clothing and expenses. Each will drive at least 5000 miles for training and in responding to call-outs. It is not unusual for a handler to drive in excess of 10,000 miles in one year.

Since the Oklahoma City bombing and the 9-11 attack on the WTC there has been a tremendous increase in public awareness and appreciation of search dogs and their roles in locating people and crime scene material. Unfortunately, the criminal and terrorist element has also become more aware. I feel that this has greatly added to the potential for our dogs to be harmed or destroyed so they will not find some victims or evidence. Therefore, more than ever I urge you to pass House Bill 2741.

Sincerely,



William R. Wepler

Sedgwick Co. Emergency
Management K-9 Team

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KANSAS SEARCH AND RESCUE DOG ASSOCIATION

3438 Hiram, Wichita, Kansas, 67217
Phone (316) 946-0114

February 17, 2002

To Whom It May Concern:

The Kansas Search and Rescue Dog Association would like to see search and rescue dogs added to Kansas Statute 21-4318 for the following reasons. More and more search and rescue dogs are being utilized by state and local law enforcement/fire agencies, either by calling an outside SAR agencies or by using trained dogs owned by the law enforcement/fire agencies. These dogs should receive the same protection that police and arson dogs receive, because of the type of work they perform for the public. Most SAR dogs are privately owned and the cost of acquiring and training these dogs can be up to \$5000 initially. In addition the citizens of the United States being subjected to terrorist activity and the need for search and rescue dogs is vital. If a search and rescue dog is taken out of service because of malicious harm that vital service to the public can be jeopardized. The criminal who does harm to a police, arson and search and rescue dog should be punished to the fullest extent of the law. Please take the time to consider these dogs and add them to KS 21-4318. Thank you

Respectfully

Joseph Fehrenbacher
Director
Kansas Search and Rescue Dog Association

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Major General Greg Gardner
Testimony on House Bill 2741
House Committee on Federal & State Affairs
February 18, 2002

Mr. Chairman, thank you for the opportunity to testify on behalf of House Bill 2741. The bill proposes to supplement KSA 21-4318, making it a misdemeanor to harm, disable, or kill a "search and rescue dog." It is already an offense to harm police and arson dogs; this simply adds search and rescue dogs to the list.

Apparently several years ago, one of these specially trained dogs was killed in California prompting the creation of the law in that state. I understand similar statutes have been added in Idaho and Pennsylvania plus there are other states working on similar legislation.

Most of the search and rescue dogs in our State are organized in a volunteer organization called the Kansas Search and Rescue Dog's Association founded several years ago by a retired Kansas Air National Guardsman, David Meek. I believe David is out of the State today, otherwise I am sure he would be here to testify. Volunteer members of the association have responded in 32 counties including the DeBruce Grain Elevator Emergency, and all of the Presidential Disasters declared for tornadoes in Kansas since I became Adjutant General - Wichita/Haysville in May 1999, Parsons in April 2000, and Hoisington in April 2001.

Today they are ready to respond 24 hours a day, 7 days a week with 15 teams to include Disaster (or Collapsed Structure) Search, Cadaver Search, Wilderness Search, and Water Search. Their dogs and trainers are nationally certified and belong to the National Association of Search and Rescue (NASAR).

Their teams assist local law enforcement, KBI, and FBI. All members are submitted to background checks and are trained in evidence handling and preservation. They also provide self-contained medical support on scene including the use of published protocols. Their members include 1-MD, 1-Physician Assistant, 2-R.N.'s, 3-Paramedics, 2-EMTI's, 2-EMT's, 2-First Responders, and all members have CPR and basic first-aid training. Remember, we get all of this at no cost to the State, because of the incredible volunteerism we enjoy here in Kansas.

As the Director of Emergency Management for Kansas, I depend on these great volunteers and their very special search and rescue dogs. Passing this bill goes a long way toward saying how much you appreciate what these volunteers do for the people of Kansas during times of disaster and emergency. Please support House Bill 2741; in doing so, you will be protecting valuable Kansas assets (these highly trained search and rescue dogs) and encouraging even better disaster preparedness for the future.

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To Whom It May Concern:

I am a member of the Sedgwick County Emergency Management K-9 Search Team as the handler and trainer of a search and rescue dog. As a Search and Rescue (SAR) team, we assist in the location of lost or missing persons, live or deceased, at the request of Public Service Agencies such as, but not limited to Law Enforcement and the Fire Department. We aid in locating lost persons in wilderness settings and urban environments. The team also has the capability to perform Human Remains Detection and Forensic/Evidence searches in water or on land. Every call-out is considered a potential crime scene until proven otherwise. In the event of a natural or man-made disaster, the SAR team is called out and given the daunting task of locating possible survivors and victims.

It takes about two years to successfully train a SAR dog, but the continuation of the training is mandatory throughout the dog's career. A canine/handler team spends an average of twenty-five hours a month in team training in addition to approximately twenty hours a month in individualized training. A voluntary K-9 handler can count on spending around three thousand, five hundred dollars per year on equipment and training. Getting to and from training and call-out sights also takes time and extensive travel.

These dogs are needed and used all over the world. Unfortunately, while providing a great service, SAR dogs are working in dangerous and volatile situations. The SAR dogs provide a valuable community service and in doing so deserve the same consideration for protection that other canines working in Law Enforcement have been awarded.

Thank you for your time and consideration,



Amanda Olson
SCEM K-9 Handler/Trainer

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February 18, 2002

Testimony Before House Committee on Federal and State Affairs
HB 2798 / By Harriet Lange

Mr. Chairman and Members of the Committee, I am Harriet Lange, president and executive director of Kansas Association of Broadcasters (KAB). KAB is a trade association serving a membership of free, over-the-air radio and television stations in Kansas. We appreciate the opportunity to appear before you today in support of HB 2798.

The bill states that it is the policy of the state to "ensure that news and other information flows freely to the public and that those who gather, write or edit information for the public or disseminate information to the public perform these functions in an uninhibited atmosphere."

In order to maintain credibility with the public and their sources, news organizations must be independent from the government or from a particular side in a dispute. Compliance with subpoenas may have the effect of turning news outlets into an investigative arm of the government, thus threatening the outlet's independence and credibility. And challenging subpoenas results in costly litigation and might result in a contempt citation - meaning jail time for the reporter or fines.

HB 2798 provides a qualified privilege to journalists in not disclosing nonconfidential sources or information obtained in news gathering, and an absolute privilege in not disclosing confidential sources and information. We believe that this bill with the proposed amendments, will provide consistency in protection of journalists' sources and information, reduce the number of demands for disclosing sources and information, and make it less expensive to resolve such requests.

HB 2798 primarily reflects model language found in "An Analysis of Shield Laws", a research project undertaken by the University of Kansas Media Law Clinic. The model draws on statutory language from New Jersey, Maryland, South Carolina, and Texas House Bill 54.

Bill Analysis as provided in the research study:

- The bill declares the purpose of the statute is to ensure that journalists receive and provide information in an unfettered atmosphere. The bill provides a legislative mandate for a reporter's privilege that strengthens case law and the Kansas and U.S. Constitutions.
- The bill defines medium of communication broadly, identifying media that are recognized by the statute.

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- The news person's privilege is extended to any person engaged in or connected with a medium of communication in disseminating news for the general public, and includes all work products of the person. A reporter is given the privilege to refuse to disclose information in any legal or quasi-legal proceeding or before any investigative body. Publication or broadcast of the information would not waive the privilege.
- For a reporter to claim a privilege under the statute, he or she must show that he/she was connected with or employed by a medium of communication while gathering the information; and that the purpose in gathering the information is to distribute newsworthy information to the general public and not for personal purposes or with a purpose to defeat the policy of the statute.
- The bill codifies a three-part test which must be met before disclosure of nonconfidential sources/information may be compelled. The three-part test as set forth in the U.S. Supreme Court's decision in *Branzburg v. Hays*, is that the disclosure is material and relevant, that the information cannot be obtained by alternative means, and the disclosure is of a compelling and overriding interest to the party seeking the disclosure.
- *In camera* inspection is required before disclosure may be compelled. If a party seeking disclosure meets the three-part test, then the court will examine the materials *in camera*.
- To discourage frivolous subpoenas, the court will award costs and/or counsel's fees against the party seeking the enforcement of a subpoena if it finds there is no reasonable basis for the request.

Television stations in Kansas have been the target of hundreds of subpoenas during the last five years. Wichita television stations have averaged 100 or more subpoenas each over the last five years. Topeka and Pittsburg television stations have experienced fewer, ranging from 15 to 60 subpoenas during the last five years. The subpoenas have requested a wide variety of information such as all material broadcast on a particular story, reporters' notes, unedited video, out-takes, names of sources, and internal memos.

Responding to these subpoenas - either through providing material that has been broadcast, or challenging the subpoenas - requires huge amounts of staff time or legal costs when a challenge is mounted. We urge you to support passage of HB 2798 to bring consistency to a journalist's protection of sources and information obtained in news gathering, to reduce the number of demands for disclosing sources and information, and make it less expensive to resolve such requests.

Thank you for your consideration.

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To Members, House Federal and State Affairs Committee:

I am Kevin Pope, news director of KSNT-TV, an over-the-air broadcast television station licensed to operate in Topeka, Kansas. I appreciate the opportunity to submit this letter in support of HB 2798.

The qualified privilege afforded journalists under this bill is important in protecting the free flow of information between a journalist and his source. This privilege also protects information gathered in the process, but ultimately not used in the news story.

It is vital this information be protected to maintain a news organization's neutrality and preserve its credibility. Sources are often reluctant to talk when they know anything they tell a reporter may be subject to subpoena. "Off the record" comments may be noted in a reporter's notebook or may appear on videotape, but cannot appear in the news story because the information is "off the record." However, that information is subject to being revealed in court if not for this protection. That source never meant for that information to become public or if it did, never wanted it traced back to them.

Unedited videotape is just like a reporter's notes. Many times, photographers gather more videotape than is necessary for that particular story. Just last week, I received a request from investigators looking into a fatal fire. They were seeking all of our unedited videotape. I denied their request and told them they could have anything that aired if they sought it using a subpoena. So far, I have not heard from them regarding this matter. But the fact remains, that unedited tape could still be sought through the courts. Journalists are not investigative arms of the police or fire departments. We are neutral parties and should never have the appearance of working for law enforcement in their investigations.

I urge you to support HB 2798 and the free flow of information in Kansas.

Sincerely,

Kevin Pope
News Director
KSNT-TV
Topeka, KS

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To: Members of the Federal and State Affairs Committee
From: Rick Thames, editor, The Wichita Eagle
Subj: Testimony in support of a press shield law
Date: Feb. 18, 2002

The newspaper you opened today is only possible in a country like the United States, a country that recognizes that the free flow of information is what keeps us free.

All that you read in that paper was the result of hundreds of interviews with people who talk to the press as a means of communicating to one another. By sharing information and opinions, communities are able to work together to solve problems, resolve differences, point out danger and move forward for the common good.

The nation's founders believed this so strongly that they sought specifically to shield the press, along with religion and free speech, in the First Amendment to the Constitution:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press"

Over the years, our courts and state legislatures have added protections to ensure that the flow of information remains as unrestricted as possible. That's what the proposed law before you today is all about.

This law will help preserve the important -- but separate -- missions of the government and the press in Kansas.

Every time that authorities issue a subpoena to the press, they effectively turn your newspaper, TV station or radio station into an investigative arm of government. Co-mingling the missions of the government and the press in this way is so inherently dangerous that the courts have consistently ruled that subpoenas of this sort should rarely, if ever, be enforced.

This law spells out an orderly procedure for determining if a subpoena is truly in the public's best interest. It is based largely on a landmark ruling of the United States Supreme Court, *Branzburg Vs. Hayes*. In that 1972 ruling, the court found that the forced disclosure of information to the government must be weighed against the First Amendment protections of a free and independent press.

Every day, you read about governments that control the press in their countries. Cuba. The Sudan. Iraq. North Korea. Their citizens can not trust anything they read in the papers or watch on TV. Nor can they confide in journalists without fear that they will be turned in to the authorities. As a result, NO ONE speaks for them.

That's the extreme, certainly. But consider the newspapers and broadcast stations in Kansas. They rely on the public's help in gathering the news. But many people with important things to tell them are much less likely to come forward each time they learn that reporters have been threatened with fines or jail unless they disclose confidential sources or other sensitive details.

Attached you will find just one recent example of how the responsible use of confidential sources can benefit all of us. Had teachers not confided in a reporter at *The Eagle*, the public would still be unaware that a corporation managing several schools in Wichita apparently was notified of cheating on standardized tests long before the school system knew about it.

You do not want these people silenced. I urge you to join 31 other states (including Colorado, Oklahoma and Nebraska) that have adopted shield laws similar to the one before you today.

Help keep the press in Kansas independent, free and fully capable of reporting all of the news its citizens need to hear.

Thank you.



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THE WICHITA EAGLE

TEACHERS: EDISON WAS WARNED -- THREE FORMER EDISON TEACHERS SAY THEY TOLD THE COMPANY ABOUT TESTING IRREGULARITIES, BUT SCHOOL OFFICIALS SAY THAT ISN'T SO.

Sunday, February 3, 2002

Section: MAIN NEWS

Edition: main

Page: 1A

BY JOSH *FUNK*, The Wichita Eagle

At least three former Ingalls-*Edison teachers* say they told *Edison* executives about testing irregularities last spring, months before the Wichita school district learned of problems on a test taken last fall.

The *teachers*, who spoke with two *Edison* vice presidents during exit interviews, said test rules were ignored on state and district assessments, not just on the national Metropolitan Achievement Test Seventh Edition, or MAT-7.

Ingalls' top two administrators were removed in December after an investigation found time limits were ignored and questions read aloud when the MAT-7 was given in October.

Edison's spokesman said last fall that the company did not know of any earlier testing problems. Last week, *Edison* spokesman Adam Tucker repeated that position.

"No *teachers* raised any questions or concerns about testing issues or irregularities," Tucker said.

But the *teachers* interviewed by The Eagle disagreed. Most asked that their names not be used because they are concerned about their careers or about problems with former coworkers.

"I know that I mentioned testing protocols," said one former *teacher*, who recalled watching another *teacher* correct students' answers on the district's fifth-grade math test last March.

Betty Cox, an *Edison* vice president who *teachers* said led the exit interviews last year, referred questions to Tucker. It was not clear which other vice president participated in the interviews. Former Ingalls principal Stephanie Hollimon did not return calls late last week.

BOE takes control

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The Wichita school board voted last week to take back Ingalls and another nearby elementary, Isely, from *Edison*, which has run them under contract since 1997.

Edison, a for-profit company, operates 136 schools across the country and is seeking a multi-million-dollar contract to run 40 to 100 schools in Philadelphia.

The company will continue to operate Dodge elementary and Jardine middle school in Wichita. The district said it has no reason to suspect the validity of test results at those schools.

Superintendent Winston Brooks cited declining enrollment, high *teacher* turnover and unimpressive test scores as reasons for taking back Ingalls and Isely.

Brooks and other district administrators met with Cox and other *Edison* officials after the exit interviews last spring. He said *Edison* did not share *teachers'* concerns about testing or a hostile work environment. The private school company took no apparent action.

"My hope would have been that they would have come to us if *Edison* didn't act, but I can't predict human behavior," Brooks said of the teachers.

He said he plans to contact Edison to get more information about the exit interviews.

In its investigation of last fall's MAT-7s, Brooks said, only one of 25 teachers mentioned problems with earlier tests, so the district did not seek out past staff.

"To some extent knowing if it happened in the past was irrelevant with the principal removed," he said.

About 20 teachers, current and former Ingalls and Isely staff, were interviewed by Edison officials last spring.

The Eagle spoke to seven Ingalls teachers who went through the interviews. Of those, three said they were sure they raised concerns about testing procedures. Another thinks she did but can't say for certain.

The other three said they spent most of their interviews talking about the hostile work environment at Ingalls, which was an ongoing concern. Two of them said they did not raise testing concerns because they were not directly involved with testing or because they were not very familiar with test rules.

Breaking the rules

Four of the teachers said they were told to do whatever it took to make sure

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students succeeded on standardized tests, including ignoring time limits, reading questions from a reading comprehension test aloud and in some cases correcting answers during a test.

"The rules just never applied to us," was the message from Ingalls administration, said Jeanette Falley, who spent four years at Ingalls before moving to Colvin Elementary.

Another teacher who went through an exit interview said Hollimon tried to find ways around the test rules, such as scheduling 90 minutes for a 45-minute test.

"You had to do what you had to do just short of doing the test for them," that teacher said.

One teacher said she followed testing rules and then was looked down upon when her class' scores were not as high as others'.

"I looked like a piece of scum because my kids didn't do well, but that was only because I didn't cheat," said that teacher, who also did an exit interview.

All the teachers said they were told Cox would share their concerns with Brooks and Edison's New York headquarters.

During the interviews, five teachers said Cox and the other vice president sympathized with them and acted shocked by their concerns.

"Apparently it was not that dramatic for them because nothing was done," one of them said.

The teachers said they were not surprised Edison would deny their comments now, given that the company did not act on them last spring.

"Coming into this school year, a lot of us were surprised Hollimon was still there," one teacher said.

Teachers said they were assured the interviews would be confidential, but that the principal knew within days what they had said. That breach made the last month of the school year unbearable, they said.

Falley said she now wishes she had taped her hour-long interview as proof, but that never occurred to her last spring.

"I felt abandoned totally and completely by Edison New York," Falley said.

Despite the problems at Ingalls, some teachers who went through the exit interviews said they still believe in the Edison model and curriculum, if the school is managed properly.

For this and other stories, The Eagle contacted 18 of the 21 teachers who left

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ingalls at the end of the last school year. Not all of them went through the exit interviews. One failed to return three calls and four declined comment. Two said they did not share the concerns of the others.

All seven teachers who went through the interviews, and four others, acknowledged that the work environment at the school was difficult. They said the principal would yell at a teacher, even in front of a class. Shouting matches between teachers in the halls were not rare, they said.

Although they did not go through the exit interviews, Tina Banks and Kirk Olson confirmed other teachers' concerns about the work environment and testing. They were lead teachers at Ingalls last year and now are at other district schools.

"We should have been talking with the district because they seem to have more power," Banks said. "Edison just sugar-coated it."

Reach Josh Funk at 268-6573 or jfunk@wichitaeagle.com.

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Date: Monday, Feb. 18, 2002

To: Chairman Mays and members of the House Federal and State Affairs
Committee

From: Mike Kautsch, professor, University of Kansas School of Law;
board member, Sunshine Coalition

Re: HB 2798, shield law

Shield laws, such as the one proposed by HB 2798, are designed to help the news media serve the public. When the media gather and report news about government, they operate as an independent source of information for the public. Through their independent effort to inform the public, the media play a role that is constitutionally assured. Moreover, it is essential to the workings of our democratic system of government. Without an independent media, the public would not have adequate means to understand the judicial, administrative and legislative actions that constitute the workings of democracy.

Protecting the media's ability to report on government is consistent with the policy that the Legislature has declared, in the Kansas open meetings and open records acts. That policy strongly is in favor of open government and makes information about government accessible. Keeping the public informed about government is a prerequisite to maintaining public confidence in government.

The media's ability to keep the public informed, however, is jeopardized by subpoenas and court-compelled disclosures of information. A subpoena has a chilling effect. Information that reporters have not published is their work product. When reporters are required to divulge that information, their integrity and credibility are threatened. Reporters who are under subpoena can be made to appear as, or even actually become, in some sense, agents of the government. As a result, the public, including the sources of news upon whom reporters rely, are discouraged from trusting the media. The flow of news and information from the media to the public then diminishes. The public is not informed fully about government.

Concerns related to the chilling effect include the costs that the media incur when they must respond to subpoenas and court-ordered disclosures. The media have a right and an obligation to comply only with subpoenas that are proven to be valid. So, the media must devote substantial resources to legal testing of compelled disclosures of unpublished information. The costs can be daunting. Not long ago, a Kansas newspaper had to decide whether to disclose a reporter's notes to prosecutors or suffer a daily fine. Litigation costs and fines require the media to allocate valuable resources away from news gathering and reporting.

Shield laws have been enacted in thirty-one states and the District of Columbia, according to national survey findings studied by one my students, Ann Premer. By protecting journalists against compelled disclosure of sources' identities and published or unpublished information, shield laws, like the proposed law in HB 2798, can significantly reduce the chilling effect on the media. Ultimately, a shield law helps the media fulfill their responsibility to the public and aid importantly in the effective functioning of democratic government.

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**Testimony before House Committee on Federal and State Affairs
HB 2798**

By Nickie Flynn, KWCH TV I-Team, Wichita, Kansas

Mr. Chairman and honorable Members of the Committee: I am Nickie Flynn, producer of the KWCH TV 12 Eyewitness News investigative unit known as I-Team12. I am a member of the Society for Professional Journalists and an active member of IRE, Investigative Reporters and Editors, headquartered at the University of Missouri. I'm appearing here today as a working journalist at the request of the Kansas Association of Broadcasters. I appreciate the opportunity to appear before you in support of HB 2798, which would establish a shield law for Kansas reporters.

As members of the Fourth Estate we are representatives of the public and its right to a free flow of information. We get information the public normally wouldn't acquire, except through news reports. The acquisition of information places special responsibilities upon us, which we cannot - nor would we wish - to ignore. It also places special burdens on us that can at times stem the flow of information that the public needs to know. Why? The high cost of legal advice and the potential of going to jail to protect the identity of a confidential source can place enormous pressure on a reporter and his or her newsroom. In fact, we don't know how many reporters or news managers have backed away from the very stories the public needs to know for these reasons.

Perhaps the best way to demonstrate this is to use a few examples from my 25 years of experience as a journalist and as the supervisor of Wichita's only broadcast investigative, reporting team. Under current Kansas law, no journalist should make a blanket promise of confidentiality to any source. That's because without a shield law there is little or no protection from our being forced to divulge a source's identity. I advise those with whom I work to talk with their sources and to forge an agreement that the source's identity will be protected up to the point of being compelled to testify in a court of law. Currently, we can offer confidential sources no more protection. And yet, they call and e-mail us regularly, expecting protection and wanting to share important information. Some examples:

In the last two months the KWCH Eyewitness News I-Team received tips from employees and former employees at a manufacturing business. The sources worked in quality assurance. With their jobs being threatened, they said they were being forced to pass products that did not meet the manufacturer's or the government's safety standards, possibly threatening the lives of people who use the product.

Another example ... former teachers at a local Edison-run school told us last fall of cheating on standardized tests. They also told us that they had informed Edison executives. For weeks, we cajoled at least 14 different sources, all teachers, who witnessed the cheating. At least

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half said they had complained about it in exit interviews with Edison. They wanted assurances of confidentiality: assurances that in most cases we could not give to their satisfaction. They were afraid that in speaking out publicly their teaching careers in USD 259 might suffer, that administrators might target them in the future. Imagine, teachers afraid to speak out about cheating in our classrooms ... on a standardized achievement test.

And one last example: a major Wichita company allegedly laid off non-union employees without properly following Federal notification requirements. One such employee sent us the computer files documenting the allegations. Without the added security that HB 2798 would provide, we cannot promise the confidentiality they seek.

Why do sources call us, instead of a government agency? Sometimes they call both. But we're in their living rooms night after night and for whatever reasons, they trust us. Sometimes, even if they know they're going to complain to a government agency about something, they want the added assurance the media can provide: that matters *won't* be kept secret, that the public *will* know of their concerns.

When first asked to testify here today, I thought about the number of times I personally was aware of a subpoena having been served that could have been avoided, if Kansas had a strong shield law. Fortunately, it doesn't come up often. Usually, the lawyers find a way to work out a deal with a reasonable judge. But what happens when a judge isn't so reasonable? What happens when you have shoddy police work in a criminal case and an anxious, politically posturing prosecutor who wants to make a name for herself figures she can cover the police lapses with information that a local reporter has gathered, but not fully reported. In such a case, the independence of the press is threatened by being used as an investigative arm of the very government for which it is to be a check and a balance.

The Reporters Committee for Freedom of the Press, a national industry group, studied the number of subpoenas issued for information related to confidential sources in 1997 and in 1999. There were a total of 4,051 nationwide. In Kansas, there were only 14. But 10 were to broadcast stations. Each subpoena represents the expenditure of \$500 minimum, for lawyer's fees.

Last year, we were one of the few stations in the country to launch an investigative reporting unit. Some managers look at the expense and decide it's just too high. And when it comes to Kansas not offering journalists the protection of a shield law, the costs for many - especially small, independent newspapers or radio stations - are just too high. As a result, important stories may go untold.

The question is, can we as a state afford that? Can Kansans who need to know what's going on, afford it? This state is known for openness in government. Make sure the kinds of stories I've related to you today *do* get told by as many media outlets as possible. Thank you for your time and your attention.

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