

MINUTES OF THE HOUSE LOCAL GOVERNMENT COMMITTEE

The meeting was called to order by Chairman Jene Vickrey at 3:30 p.m. on January 29, 2004 in Room 519-S of the Capitol.

All members were present except:

Representative Deena Horst- excused

Committee staff present:

Martha Dorsey, Legislative Research Department
Mike Heim Legislative Research Department
Theresa Kiernan, Office of the Revisor of Statutes
Maureen Stinson, Committee Secretary

Conferees appearing before the committee:

John Douglass, City of Overland Park
Eric Sartorius, City of Overland Park
Kim Gulley, League of Kansas Municipalities
Harriet Lange, Kansas Association of Broadcasters
Doug Anstaett, Kansas Press Association
Mike Merriam, Kansas Press Association
Rick Thames, Kansas Press Association

Others attending:

See Attached List.

Bill Introductions

None

The Chairman opened the hearing on:

HB 2489 **open meetings act, closed meetings for discussing security issues**

AND

HB 2490 **open records act, closed records, security issues**

John Douglass, Chief of Police, City of Overland Park, testified in support of both bills (Attachment 1). He stated that the bills provide exceptions to the Open Records Act and the Open Meetings Act to allow for matters of Homeland Security to be discussed privately with elected governing bodies and to protect sensitive written documents from disclosure. He testified that these changes would clarify for state and local public entities the instances in which records and meetings concerning homeland security could be shielded.

Eric Sartorius, Legislative Consultant for the City of Overland Park, testified in support of the bills (Attachment 2). He explained that the language used in the bills came from **HB 2959** as amended by the Senate. **HB 2959** was, eventually, signed into law as **House Substitute for SB 112** and included language that dealt with records that could affect the security of utilities.

Kim Gulley, Director of Policy Development and Communications, League of Kansas Municipalities, appeared in support of the bills (Attachment 3). She stated that the changes which have been proposed in **HB 2489** and **HB 2490** are necessary in order to continue the process of reviewing and updating our security procedures at the local level.

Mike Pepoon, Director, Government Relations, Sedgwick County, testified in support of the two bills (Attachment 4). He explained that HB 2489 amends the Kansas Open Meetings Law to allow a public

CONTINUATION SHEET

MINUTES OF THE HOUSE LOCAL GOVERNMENT COMMITTEE at 3:30 p.m. on January 29, 2004 in Room 519-S of the Capitol.

body to go into closed or executive sessions for matters relating to security measures "...if the discussion of such matters at an open meetings would jeopardize the safety and security of the lives, physical safety or property of the citizens of the state." He stated that **HB 2490** uses similar language to exempt records from public disclosure under the Kansas Open Records Act, and in accordance with the same criteria.

Danielle Noe, Intergovernmental Relations Coordinator, Johnson County, submitted written testimony in support of both bills (Attachment 5). She stated that Johnson County believes that the new language offered in both **HB 2489** and **HB 2490** provides a clear guideline for local units of government to follow when making the important decisions of whether or not to meet in executive session or to close certain records.

Judy Moler, General Counsel/Legislative Services Director, submitted written testimony in support of the bills. She stated that the Kansas Association of Counties would like to see the language in the bills broadened to include meetings and records which deal with potential actions taken or discussed in the event of terrorism or dealing with homeland security (Attachment 6). She advised that this broadened approach would extend to the records needed to make such decisions.

Harriet Lange, Kansas Association of Broadcasters, appeared in opposition to the bills (Attachment 7). She said the legislation in both bills has unintended consequences by allowing for broad interpretation of what constitutes "security measures."

Doug Anstaett, Executive Director, Kansas Press Association, presented testimony in opposition on behalf of John Montgomery, President, Kansas Press Association (Attachment 8). He said that they feel the legislation is a knee-jerk reaction to fears of terrorism, or, worse, another attempt to take advantage of these fears and further close the door to the people's access to their government's activities.

Mike Merriam, a Topeka attorney, appeared on behalf of the Kansas Press Association in opposition to the bills (Attachment 9). He stated that they agree that the Terrorist War has awakened us all to a new sensitivity to security measures but if we effectively reject the principle of an informed electorate as a consequence, we only exchange one evil for another.

Rick Thames, editor, *The Wichita Eagle* and legislative chair, Kansas Press Association, appeared before the committee (Attachment 10). He said the bills would conceal measures that might help "prevent" terrorism.

Written testimony was submitted by:

M.A. "Mike" Kautsch, Kansas Sunshine Coalition for Open Government (Attachment 11)

The Chairman closed the hearing.

Rep. Campbell made the motion to approve the minutes of the January 22, 2004 meeting. Rep. Lane seconded the motion. The motion carried.

The meeting was adjourned.

The next meeting is scheduled for February 3, 2004.

HOUSE LOCAL GOVERNMENT

DATE 1-29-04

NAME	REPRESENTING
<i>Ronald Liebman</i>	<i>Kansas Health Institute</i>
<i>Ron Seiber</i>	<i>Hen Law Firm</i>

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To: Chair Jene Vickrey and House Transportation Committee Members
From: Overland Park Police Chief John Douglass
Date: Thursday, January 29, 2004
RE: Testimony Supporting HB 2489 and HB 2490

Chairman Jene Vickrey and Members of the House Local Government Committee.

I am here today in support of HB2489 and HB2490, which provides exceptions to the Open Records Act and the Open Meetings Act to allow for matters of Homeland Security to be discussed privately with elected governing bodies and to protect sensitive written documents from disclosure. These changes would clarify for state and local public entities the instances in which records and meetings concerning homeland security could be shielded.

It is obvious that when the framers of these statutes envisioned the limited circumstances in which the public's business could be conducted outside the public view, the idea of the need for discussing homeland security was not yet even a consideration. September 11 opened our eyes to the fact that in many ways we are a vulnerable society living in extraordinarily dangerous times.

This time last year the United States was preparing to go to war in Iraq. Across the Country, cities such as Overland Park were making detailed plans for the protection of its citizens for the potential of terrorists' attacks. Since Overland Park is my only real point of reference, I will use it as an example. In our City, we created detailed plans and

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analysis designed to protect the public against potential terrorists' strikes in response to hostilities. Detailed deployment strategies were devised. Staff allocations were designed. In doing all of this we came to realize that the best laid plans of the City were totally vulnerable to disclosure. We could not discuss them with the Governing Body

because to do so was to make them accessible to public record. We could not go into executive session to protect them because the Open Meetings Act did not allow it. We were also very cautious about what could be written down because the Open Records Act did not protect it.

Our need to withhold this information from the public purview is not based upon a desire to withhold the public's business from the public. Rather, the certain knowledge that this very limited and sensitive information, should it be known to our adversaries would render it helpless and ineffective. Ironically, the mechanisms we have in place for review by the people ensured that no review by its elected officials could safely occur.

Though I strongly believe that the public's business should be conducted in the public, I equally believe that there are limited instances where exceptions must be made for the safety of that very public. These bills impact not only municipal governments, but also private corporations, religious institutions, hospitals, schools and others that we partner with on contingency planning and additional security matters. For example, we have worked with Sprint World Headquarters, Black and Veatch, the Jewish Community Center, St. Luke's South Hospital, and the three public school districts within our boundaries. Consequently, I request your serious consideration on this matter and urge you to adopt these very necessary changes.

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Testimony Before
The House Local Government Committee
Regarding
Homeland Security – HB 2489 and HB 2490

January 29, 2004

Mr. Chairman and members of the committee, thank you for allowing me to appear before you this afternoon. I am Erik Sartorius, Legislative Consultant to the City of Overland Park. My testimony provides additional information beyond that presented by John Douglass, the City's Chief of Police.

I wanted to make you aware of the history behind the language used in HB 2489 and HB 2490. The revisor's office drew from language passed in 2002. This language was contained in House Bill 2959 as amended by the Senate and eventually was signed into law in House Substitute for Senate Bill 112. This language dealt with records that could affect the security of utilities.

In researching the history of this language, I discovered that the peanut of the language in House Bill 2959 was actually language requested by the Kansas Press Association. This language can be found in HB 2489 on page 2, lines 22-27, and in HB 2490 on page 6, lines 24-33.

I have attached testimony from Rick Thames of the Wichita Eagle submitted to the Senate Utilities Committee on March 13, 2002 regarding HB 2959. As you will note, Mr. Thames, on behalf of the Kansas Press Association, encouraged the committee to adopt the language placed in HB 2959, calling it "specific language that focuses squarely on security issues."

The City of Overland Park worked closely with the revisor's office to make use of language that previously had been through the legislative process; language, it turns out, put forward by the Kansas Press Association. Curiously, the Kansas Press Association and Mr. Thames now have problems with the very language they sought.

The City of Overland Park requests that you report House Bill 2489 and House Bill 2490 favorably for passage, and that in doing so you keep in mind the previous support of this language by opponents of the legislation.

House Local Government
Date: 1-29-04
Attachment # 2

To: Kansas Senate Utilities Committee
From: Rick Thames, representing the Wichita Eagle and the Kansas Press Association
Subj: HB 2959 (Open Records Act exception for records related to security of utilities)
Date: March 13, 2002

Thank you for this opportunity to discuss House Bill 2959. I am the editor of The Wichita Eagle. I am also speaking to you today on behalf of the more than 200 newspapers that comprise the Kansas Press Association, as I am a member of its board of directors and chair of its legislative committee.

We're not here today to discourage you from taking some action on this issue. Having talked to the chair of the House Utilities Committee, Carl Holmes, I recognize that you have some legitimate concerns regarding security.

What we are asking is that you adopt language that appropriately addresses those concerns, while preserving the public's right to monitor the operation of these vital utilities.

As this proposal is now worded, we believe that KDHE, the KCC and other state agencies could be inclined to withhold many, many records that should remain open in the best interest of the public. It is simply too broad in its scope. And unnecessarily broad for its intended purpose.

To explain what I mean by that, I'll first review the wording of HB 2959:

"Records the disclosure of which may jeopardize the security of systems, facilities or equipment used in the production, transmission or distribution of energy or communications services."

Here are some examples of the unintended harm possible under this wording.

The Hutchinson gas explosion.

Under this law, Kansas Natural Gas conceivably could have declined to explain:

- Locations of underground pipelines
- The amount and type of gas stored in the salt caverns
- The pressure at which the gas was stored
- What safeguards were established to find leaks in the gas system
- What measures were being put into place to prevent this from ever happening again

All of this data was obtained from the KCC and other public agencies as city officials and journalists simultaneously worked to determine exactly what happened between Yaggy Field and Hutchinson. All were working in the public's interest. People had been killed and thousands of residents were justifiably panicked. What they needed was information.

Jim Bloom, the publisher of the Hutchinson News, told me yesterday that this exemption, as worded, could have significantly hampered that effort to inform the public. And he asked me, on his behalf, to register his opposition to it.

Other potential environmental hazards.

Pipeline safety inspection reports could fall under this exemption. So could environmental reports that explain what caused leaks and accidents.

Will farmers and other property owners be informed about the location of utility lines that could affect their safety and property values? This exemption may well prevent that.

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Suppose the nuclear industry begins trucking power plant waste across the state to disposal sites. Could it claim a security risk in disclosing its route to the public that is endangered by this operation? It appears entirely possible.

Lack of important public notice.

Where are cell phone and microwave towers planned for your community? Will they be located disproportionately on a particular side of town? You could be told that disclosure is a security risk.

Where are the gas and electric substations? Can't tell you. Can we see the permits for them? No. How many state inspectors oversee them and what do their checks show? It's a matter of security.

Are the power company's generating facilities adequately staffed to provide power and be run safely? Staffing could also be termed a matter of security.

There are dozens more examples, but we hope we've raised enough here to demonstrate that a narrower focus clearly is in the public's best interest. We propose more specific language that focuses squarely on security issues. It reads as follows:

"Records the disclosure of which would pose a substantial likelihood of revealing security measures that protect systems, facilities or equipment used in the production, transmission or distribution of energy or communications services. For purposes of this provision, security means measures that protect against criminal acts intended to intimidate or coerce the civilian population, influence government policy by intimidation or coercion or to affect the operation of government by disruption of public services, mass destruction, assassination, or kidnapping."

We believe this language actually reflects the intentions of the House bill. It's also more rational, more logical.

As an analogy, consider the federal government's efforts to make airline flights more secure. If those efforts followed the broad-brush approach of HB 2959, airlines might avoid telling you in advance your departure and arrival times. They might delay your luggage by a day. Deliberately, I mean.

Instead, they only keep secret their actual security *measures*, such as how they profile passengers, or specifically how their metal detectors and other screening procedures work.

To best protect the public's interest all around, we urge that the Legislature also focus on actual security measures. That is the spirit of the new language proposed here.

Thank you for your time and your consideration.

Sincerely,



Rick Thames

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Kansas Press Association alternative language:

(45) Records the disclosure of which would pose a substantial likelihood of revealing security measures that protect systems, facilities or equipment used in the production, transmission or distribution of energy or communications services. For purposes of this provision, security means measures that protect against criminal acts intended to intimidate or coerce the civilian population, influence government policy by intimidation or coercion or to affect the operation of government by disruption of public services, mass destruction, assassination, or kidnapping.

2959

2-4



League of Kansas Municipalities

300 SW 8th Avenue
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To: House Local Government Committee
From: Kim Gulley, Director of Policy Development & Communications
Date: January 27, 2004
Re: Support for HB 2489 & 2490

Thank you for the opportunity to appear today on behalf of the 555 member cities of the League of Kansas Municipalities (LKM). We appear today in support of HB 2489 and HB 2490.

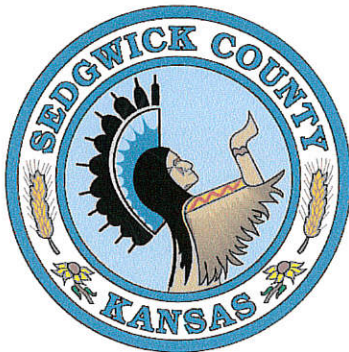
As we all know, recent years have posed new and difficult challenges for cities with regard to homeland security issues. City elected officials, law enforcement professionals, and many others at the local level are working together to address these new security concerns and to protect the citizens of Kansas to the best of their ability.

The changes which have been proposed in HB 2489 and HB 2490 are necessary in order to continue the process of reviewing and updating our security procedures at the local level. Because the League and our member cities are strong advocates for open government, we do not take the language of the Kansas Open Meetings Act or the Kansas Open Records Act lightly.

Some may argue that the existing language which was adopted a few years ago is sufficient to cover the security issues that cities have raised. However, to take that interpretation would be to stretch the language of KOMA and KORA beyond the plain meaning of the words. The cities who appear before you today asking for a change or doing so because they believe strongly in supporting the open government provisions which have been adopted by the Kansas Legislature. We believe that the most appropriate course of action would be to amend the language so that the meanings are clear and that cities may take the necessary steps to protect their citizens.

For these reasons, we stand in support of HB 2489 and 2490 and respectfully request that you recommend them favorably for passage. I would be happy to stand for questions at the appropriate time.

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Date: 1-29-04
Attachment # 3



GOVERNMENT RELATIONS

Sedgwick County Courthouse
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Michael D. Pepoon
Director

TESTIMONY ON HB 2489 and HB 2490
Before The House Committee on Local Government
January 29, 2004

Chairman Vickrey and members of the committee, I appreciate the opportunity to testify in support of two bills that give local governments increased flexibility to address issues of security and public safety for the benefit of the citizens of the state of Kansas. HB 2489 amends the Kansas Open Meetings Law to allow a public body to go into a closed or executive sessions for matters relating to security measures "...if the discussion of such matters at an open meeting would jeopardize the safety and security of the lives, physical safety or property of the citizens of the state." HB 2490 uses similar language to exempt records from public disclosure under the Kansas Open Records Act, and in accordance with the same criteria. Both the Kansas Open Meetings Law and the Kansas Open Records Act currently provide for security exemptions relating to public bodies, buildings and facilities. These proposed bills will expand this protection to the people of the state of Kansas.

Like all cities and counties in Kansas, Sedgwick County has had to adapt and react to a post September 11th world. Sedgwick County has taken a number of steps to prepare itself for terroristic attacks. Whenever the security threat goes from yellow to orange, we assemble a group of representatives from the local security community, including but not limited to: the FBI, local law enforcement (Sheriff and police), Fire, EMS, Emergency Management, Transportation security (Mid Continent Airport) and the Secret Service. If they determine that a credible threat exists to the citizens in our area, they go through a checklist of proposed measures. Obviously, if they were to determine that official government action was necessary, the Board of County Commission would need to be apprised and involved in making these decisions. It is of critical importance that these decisions not be made in public and available to the very people we are trying to protect the public against. So far we have not had to take this action to the County Commission, but it is important to have these steps available if needed.

The proposed legislation before you is not unique to the state Kansas. Attached to my testimony is a review of open meetings laws in other states from a book entitled Open Meetings Laws, by Ann Taylor Schwing. This book came out in 1994, so you can imagine the increase in the number of states that now have such laws.

In summary, HB 2489 and 2490 are necessary pieces of legislation and Sedgwick County urges you to support both bills.

"Sedgwick County...working for you."

House Local Government
Date: 1-29-04
Attachment # 4

VII EXECUTIVE SESSIONS

§ 7.82 9. Emergency Communications and Security Issues

A number of states authorize executive sessions to discuss matters relating to emergency and safety issues. The language of the authorizations varies from state to state, but the essence of the various grounds for permitted executive session remains much the same.

§ 7.84 a. Natural Disasters, Health and Public Safety

A number of states authorize executive sessions to address natural disasters and public health and safety issues. The California Earthquake Prediction Evaluation Council and other bodies appointed to advise the Director of Emergency Services or the Governor as to volcanic or earthquake predictions may meet in executive session to consider the evaluation of possible predictions.³⁴ Delaware authorizes executive sessions for discussion of "potential or actual emergencies related to the preservation of the public peace, health and safety."³⁵ Hawaii authorizes closed sessions for discussion of "sensitive matters related to public safety or security."³⁷ Louisiana provides for executive sessions for discussion of emergency limited to natural disaster, threat of epidemic, civil disturbances, and the like.³⁸ Maryland provides for closed sessions to "discuss public security, if the public body determines that public discussion would constitute a risk to the public or to public security, including (i) the deployment of fire and police services and staff; and (ii) the development and implementation of emergency plans."³⁹ Mississippi provides for executive session for "extraordinary emergency which would pose immediate or irrevocable harm or damage to persons and/or property within the jurisdiction of such public body."⁴⁰ Montana excepts from the open meeting and notice requirements "an agency decision that must be made to deal with an emergency situation affecting the public health, welfare, or safety."⁴¹ Vermont permits consideration of

34. Fla.Stat. Ann. § 119.07(5) (West 1993 Cum. PP) ("An exemption from [the public records act] does not imply an exemption from or exception to [the open meeting law]. The exemption from or exception to [the open meeting law] must be expressly provided.")
35. Cal. Ann. Gov't Code § 11125(y) (West 1993 Cum. PP).
36. Del. Code Ann. tit. 29, § 10004(b)(11) (1991).
37. Haw. Rev. Stat. § 92-5(a)(5), (6) (1985).
38. La. Rev. Stat. Ann. tit. 42, §§ 6.1(A)(5), 6.2(A)(6) (West 1990).
39. Md. Ann. Code State Gov't § 10-508(a)(10) (1983). Maryland also excepts the Appalachian States Low Level Radioactive Waste Commission. Md. Ann. Code State Gov't § 10-502(b)(3) (1993).
40. Miss. Code Ann. § 25-41-7(4)(d), (f) (1991).
41. Mont. Code Ann. § 2-3-112(1) (1993).

a "closed session" § 7.88

security; suppression; information; except public; except executive; prevent

42. Vt. Stat.
43. See generally Official Information Interest, Information Specified in 652(b)(7)(D) of Information Enforcement Investigator (1973).

44. Hyde v. S.Ct. 1233 Publishing

45. Cal. An. crime conditions enforcement Ann. § 50 Investigative Page Corp., law and the investigative act; Ga. Op. excepted from officials"; exempted agencies; &

46. E.g., matters affecting buildings as Cal. Ann. Gov't safety and as used by the sessions for disclosure of committing (West 1993) of security (West 1993)

EXECUTIVE SESSIONS VII

a "clear and imminent peril to the public safety" in executive session.⁴²

§ 7.88 b. Internal Security, Police Investigations and the Like

Another common exception is drawn for issues of internal security, confidential police sources, and the like.⁴³ Efficient suppression and punishment of crime, protection of victims and informants, effective investigation and similar purposes underlie exceptions from the open meeting requirements and from parallel public records requirements in many states.⁴⁴ States may simply exempt law enforcement personnel or agencies⁴⁵ or provide for executive session for matters relating to crime detection and prevention.⁴⁶ In addition, states may include specialized exceptions

42. Vt.Stat. Ann. tit. 1, § 313(a)(5) (1998 Cum.Supp.).

43. See generally Annot., Court's Power to Determine, upon Government's Claim of Privilege, Whether Official Information Contains State Secrets or Other Matters Disclosure of Which Is Against Public Interest, 82 A.L.R.2d 391 (1953); Annot., What Constitutes "Confidential Source" Within Freedom of Information Act Exemption Permitting Non-Disclosure of Identity of Confidential Source and, in Specified Instances, of Confidential Information Furnished Only by Confidential Source (5 U.S.C.S. § 552(b)(7)(D)), 59 A.L.R.Fed. 550 (1985); Annot., What Are "Enforcement Proceedings" Within Freedom of Information Act Exemption from Disclosure of Investigatory Records That Would Interfere with Enforcement Proceedings (5 U.S.C.S. § 552(b)(7)(A)), 55 A.L.R.Fed. 593 (1981); Annot., What Constitute Investigatory Files Exempt from Disclosure under Freedom of Information Act, 17 A.L.R.Fed. 522 (1973).

44. Hyde v. City of Columbia, 637 S.W.2d 251, 259-64 (Mo.App. 1982), cert. denied, 459 U.S. 1026, 108 S.Ct. 1233, 75 L.Ed.2d 467 (1983) (collecting examples from many states); Caledonian Record Publishing Co. v. Walton, 154 Va. 15, 573 A.2d 296 (1990).

45. Cal. Ann. Gov't Code § 11126(d) (West 1993 Cum.FP) (Board of Corrections may consider reports of crime conditions in closed sessions); Del. Code Ann. tit. 29, § 10004(b)(3) (1991) ("[a]ctivities of any law-enforcement agency in its efforts to collect information leading to criminal apprehension"); Ga. Code Ann. § 50-14-3(c) (1993 Cum.Supp.) (executive session for meetings of the Georgia Bureau of Investigation or any other law enforcement agency, including grand jury meetings); see Kilgore v. R.W. Page Corp., 261 Ga. 410, 405 S.E.2d 655 (1991) (a coroner's inquest is a meeting under the open meeting law and the coroner is not a law enforcement agency; there is no exception for pending criminal investigations); Napper v. Georgia Television Co., 257 Ga. 156, 356 S.E.2d 640 (1987) (public records act); Ga. Op. Atty. Gen. US6-35 (Nov. 3, 1988) (meetings of the Organized Crime Prevention Council are exempted from the open meeting requirement); Miss. Code Ann. § 25-41-3(a) (1991) ("law enforcement officials"), construed in Miss. Op. Atty. Gen. 353 (May 3, 1991) (the Metro Narcotics Task Force is exempted as "law enforcement officials"); N.C. Gen. Stat. § 143-313.15(5) (1993) (law enforcement agencies); Va. Code Ann. § 2.1-345 (Michie 1993 Cum.Supp.) (Virginia State Crime Commission).

46. E.g., Cal. Const. Art. 4, § 7(c)(1) (California Legislature may meet in closed session to consider matters affecting the safety or security of a member or employee and the safety or security of the buildings and grounds used by the Legislature); Cal. Ann. Gov't Code § 54957 (West 1993 Legis. Serv.); Cal. Ann. Gov't Code § 90229(a)(2) (West 1992) (executive sessions to consider matters affecting the safety and security of members of the state legislature and its employees and any buildings and grounds used by the legislature); Colo. Rev. Stat. Ann. § 24-6-402(3)(a)(IV) (West 1993 Cum.Supp.) (executive sessions for state public bodies to discuss "[s]pecialized details of security arrangements where disclosure of the matters discussed might reveal information that could be used for the purpose of committing, or avoiding prosecution for, a violation of the law"); Colo. Rev. Stat. Ann. § 24-6-402(4)(d) (West 1993 Cum.Supp.) (local public bodies may enter executive session to discuss "[s]pecialized details of security arrangements or investigations."); Conn. Gen. Stat. Ann. §§ 1-16a(e)(3), (e)(5), 1-19(b)(3) (West 1993 Cum.FP) (executive sessions for "matters concerning security strategy or the deployment of



Johnson County, Kansas

OFFICE OF THE COUNTY MANAGER

Written testimony in support of HB 2489 & HB 2490
presented to the

House Local Government Committee

by
Danielle Noe
Intergovernmental Relations Coordinator

January 29, 2004

Thank you for the opportunity to present testimony in support of HB 2489 and HB 2490.

Johnson County believes that openness in county government is essential to building public confidence. Nevertheless, there are times when privacy or other legitimate reasons require executive sessions or the closing of certain records.

Since September 11, 2001, the role of county government – as emergency planner, coordinator, financier, and first responder – has taken on heightened significance. It is imperative that local officials have the option to keep certain sensitive information private. In order to safeguard the public, Johnson County supports clarifying the Kansas Open Meetings Act to authorize executive sessions to discuss certain sensitive information which if released may jeopardize the safety of citizens. Likewise, Johnson County supports clarifying the Kansas Open Records Act to prevent the release of certain documentation or records, which if released may jeopardize the safety of citizens.

Both HB 2489 and HB 2490 provide an important safeguard for citizens. While current law has some safeguards for protecting information which relate to the security of the public body or public buildings etc., it is not clear that information which may also protect the citizenry at large could be excluded from the open meetings and open records requirements.

Johnson County believes that the new language offered in both HB 2489 and HB 2490 provides a clear guideline for local units of government to follow when making the important decision of whether or not to meet in executive session or to close certain records. Therefore, we request your favorable consideration of both HB 2489 and HB 2490.

House Local Government
Date: 1-29-04
Attachment # 5



KANSAS
ASSOCIATION OF
COUNTIES

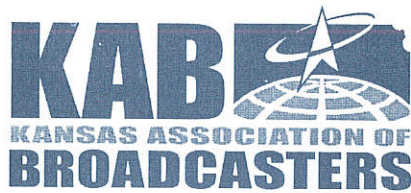
Written Testimony on HB 2489 and HB 2490
Before the House Committee on Local Government
By Judy A. Moler
General Counsel/Legislative Services Director
January 29, 2004

The Kansas Association of Counties supports legislation that would amend the Kansas Open Meetings Act and the Kansas Open Records Act to provide for a exemptions that would allow for the discussion of matters and records “ relating to the security of a public body or agency, public buildings or facility or information system of a public body or agency, if the discussion of such matters at an open meeting would jeopardize the security of such public body, agency building, facility or information system.” The Kansas Association of Counties would like to see the language broadened to include meetings and records which deal with potential actions taken or discussed in event of terrorism or dealing with homeland security. This would extend to the records needed to make such decisions. The ability for county commissions to meet and discuss sensitive issues of security is essential for the protection of our Kansas citizens. Since the tragic events of September 11, 2001, these security issues have come to the forefront and make it essential for this legislation to be in place for the protection of our local communities.

The Kansas Association of Counties, an instrumentality of member counties under K.S.A. 19-2690, provides legislative representation, educational and technical services and a wide range of informational services to its member counties. Inquiries concerning this testimony should be directed to Randy Allen or Judy Moler by calling (785) 272-2585.

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House Local Government
Date: 1-29-04
Attachment # 6



1916 SW Sieben Ct, Topeka KS 66611-1656
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Testimony before House Committee on Local Government
Regarding HB 2489 and HB 2490
January 29, 2004
Harriet Lange
President/Executive Director

Mr. Chairman, Members of the Committee, I am Harriet Lange with the Kansas Association of Broadcasters. KAB serves a membership of radio and television broadcast stations in Kansas. We appreciate the opportunity to appear before you today on HB 2489 and HB 2490.

Although well-intentioned, we think that HB 2489 and HB 2490 are overly broad, unnecessary, and would result in erosion of the public trust in our governmental agencies. When government conducts the people's business in secret, or withholds records about the functioning of government, it only increases the chances for mistrust and misinformation. The public should have access to information about potential threats to its safety, whether through terrorism or otherwise; and the public should have access to information about how it is being protected, at least to the extent that current law provides.

HB 2489 and HB 2490 have unintended consequences by allowing for broad interpretation of what constitutes "security measures" and our fear is that the result will be, not a more safe Kansas, but a less free and open Kansas.

It is impossible to legislate away all of the risks of living in an open and free society. When we do, we no longer have a free and open society. We encourage you to reject these far-reaching bills in favor of a more reasoned approach.

Thank you for your consideration.

House Local Government
Date: 1-29-04
Attachment # 7

THE HAYS DAILY NEWS

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John D. Montgomery
Editor & Publisher
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To: Members of the House Committee on Local Government
From: John D. Montgomery, president, Kansas Press Association
Date: Jan. 29, 2004
Re: Testimony on HB 2489 and 2490

Thank you for hearing opposition by the Kansas Press Association on HB 2489 and 2490. Our interest is the public interest, and we fear that this legislation is a knee-jerk reaction to fears of terrorism, or, worse, another attempt to take advantage of these fears and further close the door to the people's access to their government's activities.

We understand the good intent here, to protect information that might enable terrorists. But what small risk that presents once again is outweighed by the encroachment on the rights of the law-abiding citizenry.

As you know, the Legislature has begun a process to re-evaluate the many exemptions to the Kansas Open Records Act, a process that concludes next year with the hopeful expiration of many of these. KPA, along with the Kansas Association of Broadcasters and organizations representing cities, counties and school boards presently are working together to try to agree on a reasonable set of exemptions and some logical revisions therein.

Meanwhile, along comes a proposal to add yet another exemption to KORA. As well, the other bill heard today proposes yet another basis for governmental bodies to enter executive session closed to the public, another rationale sure to be as prone to abuse as the "personnel" or "attorney-client privilege" executive sessions. These proposals run counter to efforts to strengthen open government.

It is not that the intent of Overland Park is in question, nor that other local government officials advocating for such closure do not mean well. We do live in a different world post-9/11. However, we have to be careful not to overreact. And we must consider that, if anything, we should be expanding, not constricting, the public's freedom to information.

Again, thank you for your careful consideration of this legislation.

House Local Government
Date: 1-29-04
Attachment # 8



Kansas Press Association, Inc.

Dedicated to serving and advancing the interests of Kansas newspapers

5423 SW Seventh Street • Topeka, Kansas 66606 • Phone (785) 271-5304 • Fax (785) 271-7341 • www.kspress.com

To: Members, House Local Government Committee

From: Kansas Press Association

Re: Editorial from The Manhattan Mercury, Sunday, January 25, 2004:

Reject Proposals to Close Records

If Americans aren't careful, we could protect ourselves right out of access to vital information about how our government operates.

A legislative committee is expected Thursday to consider a proposal by Overland Park to add yet another - the 47th - exemption to the Kansas Open Records Act. And though Overland Park officials might mean well, their proposed exemption is not just harmful, it's insidious.

The proposal would close from the public all records of public agencies "related to security measures if disclosure would jeopardize the safety and security" of Kansans or their property.

"Security measures" are defined as "preparing or responding to criminal acts intended to intimidate or coerce the civilian population, influence government by intimidation or coercion or to affect the operation of government by disruption of public services, mass destruction, assassination or kidnapping." Such measures could include "intelligence information, tactical plans, resource deployment, responses to actual events or vulnerability assessments."

Sounds reasonable on its face; no one wants to aid terrorists. But a 2002 exemption closing records pertaining to the security of utility systems, facilities and equipment also sounded harmless. Yet that exemption and a subsequent law now keep from Kansans information about increases in electric and natural gas rates that fund security improvements. Kansans will pay the increases, but without being able to find out how much they are or whether the money is spent wisely, squandered or pocketed.

This proposed amendment goes further. It could be used to keep secret the planning and funding of security for just about anything a public agency does, perhaps including traffic flow or security for an event such as the Country Stampede or a KSU football game.

The act also could be used to withhold records pertaining to almost any criminal act, regardless of whether it was committed by terrorists or common criminals or demonstrators. Among security measures that the public could be kept in the dark about is information on items ranging from snow removal routes to the storage of anhydrous ammonia and hazardous chemicals or medicines.

And as was the case with utility security, the public also could be prohibited from inspecting records on the funding for such measures.

Behind this drive for secrecy is the conviction that the less the public knows, the less terrorists know. That might be true. But the less the public knows, the less democratic our form of government becomes. We must confront the threats our nation faces, but we must do so without excessive secrecy that impairs our democratic institutions.

After terrorists struck New York and Washington, D.C., President Bush declared, "Freedom and fear are at war." It is fear that guides this proposal, a proposal that would restrict our freedom.

Legislators should recognize this proposed exemption for what it is: a threat to open government that's less spectacular than a terrorist act but no less real.

Edward Seaton, Manhattan Mercury



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To: House Local Government Committee

From: Kansas Press Association

Re: Wichita Eagle editorial, Wednesday, Jan. 28, 2004

Security need not demand secrecy

It's not surprising in these post-9/11 days that some would use secrecy to try to improve security. But state legislators should strongly resist the urge to try to keep still-more information from citizens in the name of keeping it from terrorists.

The argument that the need for security trumps the public's need to know is behind two bills being pushed this session by Overland Park officials, who want new exemptions to the open-meetings and open-records laws relating to "security measures" in cases where opening the meeting or documents "would jeopardize the safety and security of the lives, physical safety or property of the citizens of the state."

There's no denying the potential for such information on security measures to be sensitive. But especially as written, with their references to "criminal acts," the measures seem ripe for overuse by prosecutors, judges and government officials simply looking for new excuses to shut out the public and media. Define "security" broadly enough, and the legislation could be used to cloak almost anything government, the courts and law enforcement do.

There's the potential for a disturbing pattern here, too. It was the homeland-security argument that coaxed state legislators last year into letting utility companies charge customers more to cover increased costs of security without -- unbelievably -- having to reveal how much more on what and why.

The House Local Government committee will hear testimony on the security-related bills Thursday. Later, legislators will review all of the exceptions to the open-records law, which are set to expire in 2005 and should be scrutinized and newly justified -- or scrapped.

Government cannot be held accountable for its actions if the law lets it hide those actions from citizens. For that reason, lawmakers' goal this session should be reducing, rather than increasing, the ways that information can be kept from Kansans.

Rhonda Holman, Wichita Eagle

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January 29, 2004

House Committee on Local Government

Statement in opposition to HB 2489 AND HB 2490

Chairperson Vickrey
Ladies and Gentlemen:

I am Mike Merriam, a lawyer in Topeka. My clients include many newspapers, broadcasters, wire services, media associations, and other newsgathering interests. I have been practicing media law for over 27 years, and answering open records questions from reporters and citizens around the State on three legal telephone hotlines as well. I have represented the press in litigation under the Kansas Open Records Act at least ten times, and in innumerable KORA requests for access. Today I appear on behalf of the Kansas Press Association.

I will limit my focus today to the technical problems we perceive in these bills, leaving the impractical consequences they present for the testimony of others. Because HB 2489 is really just a companion to HB 2490, incorporating the same language as a justification for executive sessions under the Open Meetings Act, I direct my attention to HB 2490 and incorporate the same reasoning as to HB 2489. Without belaboring the point, we certainly agree that the Terrorist War has awakened us all to a new sensitivity to security measures. But if we effectively reject the principle of an informed electorate as a consequence, we only exchange one evil for another.

1. HB 2489 is obviously redundant of K.S.A. 45-221(a)(45) to some extent, so the first question must be what this new proposal adds, or conversely, what Exception 45 is lacking. First, the standard for evaluating the record is changed. Exception 45 permits exception to disclosure based on a "substantial likelihood of revealing security measures . . ."; whereas Proposed 47 would refer to records that only "relate to security measures . . .". The difference is critical. Many Kansas court decisions use the phrase "substantial likelihood," which has a generally accepted meaning: it means the predicted result has authority and sound legal reasoning, and it is most likely to succeed procedurally, substantively, and factually. "Relate," by contrast, is a vague term that is defined by the judgment and biases of the individual doing the relating. It is a term lawyers try to avoid when asking questions because it asks the responder to make his own judgments about what is relative.

Exception 45 excepts records that would reveal security measures that protect specific public infrastructures: systems, facilities and equipment. Proposed 47 would expand the list to any security

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measures that address the "lives, physical safety or property of the citizens of the state." This description is nothing more than a shorthand way of describing the general police power of the state. Law enforcement agencies at all levels are already charged with the duty of protecting the lives, safety and property of the citizens, so the ability to refuse access to records could mean that no law enforcement records of any kind at any time must be disclosed. The difference is that Exception 45 addressed public infrastructure; whereas Proposed 47 would address private persons and property. The policy reasons for opposing this are addressed by others, but the short answer is that private records are not subject to disclosure anyway, and if the purpose is to exempt public records about protection of private persons and property, it is an ill-considered law that keeps the people ignorant of the means of their own protection.

2. Proposed 47 would expand the definition of security measures, as they affect these private matters, from the "protect against" language currently in Exception 45, to "preparing for, preventing or responding." Probably there is no practical distinction to be made between *protecting against* something and *preparing for* or *preventing* it, other than someone's preference of words. So the new issue in defining "protect against" contained in this proposal is the notion of response. Response, in the language of the proposal (copied in this instance from Exception 45), is response to "criminal acts." In the United States, government response to crime is not secret. The public interest in the core governmental function of law enforcement can never be served, for example, by secret arrests, trials, convictions and sentences. As discussed later, Exception 10, excepting criminal investigation records, already protects legitimate law enforcement records that would prejudice effective police functioning.

3. The antepenultimate sentence in Proposed 47 includes an illustrative list of security measures. Others will address the practical problems with the various measures listed. The question I address is how Proposed 47 would change existing Exception 45. Some of these terms are technical, and judgments could be made about whether the various elements listed are necessary to address the threat posed against security. But apart from matters of degree, the one element listed that cannot fit within the notion of "protect against" is "responses to actual events". For the same reasons set forth before, government response in any public manner must remain public. Should the focus be shifted to secret methods and means a public agency might develop for future events in reaction to current events, they are already protected by other exceptions.

For example, suppose that in response to the terrorist attacks of 2001, secret failsafe measures are installed at Wolf Creek that operate automatically to shut down the reactor upon the unauthorized approach of certain aircraft. This may be a response to the actual events of September 11, 2001, but it is already protected from disclosure by Exceptions 45, 12, and 18 (as well as the fact that KORA does not apply to this privately owned facility). And if a public facility was involved, it would be further protected against disclosure by Exceptions 10(d) and 20. What if the expertise and assistance of a public agency was part of the protection plan? Again, existing exceptions such as 10(D), 12, 18, 20 and 45 cover the situation.

4. Other provisions of law already address the legitimate concerns in Proposed 47. Exception 10 excepts criminal investigation records and has a well-defined procedure for allowing disclosure. To the extent Proposed 47 would create a greater level of denial of access for records already covered by 10, it is not only redundant, but dangerous. Exception 12, some of which was part of the original 1984 KORA, is not limited to security for *public* facilities, but extends to “any building or facility which is used for purposes requiring security measures . . .” and protects information, procedures, plans, drawing, specifications or related information. Exception 18 excepts plans prepared by private persons which are private property. Exception 20 covers recommendations “or other records” in which “policies or actions are proposed” which is probably broad enough to cover emergency response and security plans, at least for public agencies. Exception 45 is already broad enough to cover public infrastructure. No attempt has been made here to discuss the non-KORA statutes that may apply (e.g., K.S.A. 66-1234-1236 on secret utility rates for security).

Thank you for the opportunity to present my statement.



Michael W. Merriam



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Jan. 29, 2004

To: House Committee on Local Government

From: Rick Thames, editor, The Wichita Eagle and legislative chair, Kansas Press Association

Re: House Bills 2489 and 2490

I assume that the people behind this bill have the best intentions. We all support effective safeguards against terrorism. But House Bills 2489 and 2490 would remove the most important safeguard we have in Kansas: the public scrutiny that ensures that government agencies, indeed, *are* protecting us. And not just from terrorism, but from threats that are much more likely to maim or kill us.

The good news, as you will hear later from attorney Mike Merriam, is that it is not necessary to give up this precious safeguard. Based on our understanding of what triggered these bills, we believe that the Kansas Open Records Act already provides exemptions that address those concerns. But if these sweeping bills become law, there is no end to how it could be abused under a thinly veiled guise of protecting us all from terrorism. Consider how the bills define “security measures” to be concealed from the public. It is absolutely anything that can be loosely construed as “preparing for,” “preventing” or “responding to” presumed acts of terrorism.

How do our communities now prepare for terrorism? We inoculate our health care workers against small pox. We fund a bio-terrorism center at Kansas State University. We assess the ability of our local hospitals to handle mass casualties through drills for all kinds of disasters (terrorism being the least likely among them). Are we prepared to tell Kansans that they have no right to know how well these efforts are going? These bills certainly appear to allow that. How could that be in the state’s best interest?

The bills would conceal measures that might help “prevent” terrorism. Again, the categories of information that could be withheld are endless. Citizens could be denied the right to know the staffing levels of police in their neighborhoods, or the level of highway patrol staffing in rural western counties. How about the response times of emergency medical services? Or disclosures about dangerous chemicals being hauled through your town? You have every reason to know. But an agency could withhold all such information under the premise that it might be helpful to terrorists.

These bills would conceal measures related to our “response” to terrorism. To accept this restriction is to dismiss the importance of the instructive reviews now under way on this

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nation's response to the events of 9-11. Only yesterday, on the front page of The Wichita Eagle, a commission reported that airport personnel identified nine of the Sept. 11 hijackers as possible security risks, yet still allowed them to board those aircraft. In this case, the government's security measures simply did not work. Making this public in retrospect isn't a security risk. It's the first step toward ensuring that it doesn't happen again! Yet, should we ever experience an actual terrorist act in Kansas, these bills appear to allow the government to block any disclosure of what went right and what went wrong in our response to the event.

There is another troubling aspect to the bills. You will notice that they do not refer to the term "terrorism," but rather they describe activities that many would commonly prescribe to be terrorism. The problem is, these activities also describe many criminal acts unrelated to terrorism. Note that these are "acts intended to intimidate or coerce the civilian population, influence government policy by intimidation or coercion or to affect the operation of government by disruption of public services."

Public intimidation and coercion are common to many kinds of criminals, including gang members, bank robbers, organized crime syndicates and even serial killers. Are we prepared to allow authorities to withhold information that normally would be public about homicides, drive-by shootings, extortion, bribery and other crimes? Under these provisions, it appears that they have permission to do so.

A few days ago, Chaplain Fred Holloman opened the Senate with a prayer for wisdom which said, in part:

*"Help us consider carefully
The laws that we will make.
So that farther down the road
We'll not find some mistakes."*

We are right to make it more difficult for terrorists to attack us. But these bills will do far more harm than we could ever expect them to help. I urge you to set aside H.B. 2489 and 2490, and consider alternatives that leave intact a true safeguard: The right of Kansans to be fully aware of the threats they face — and what their government is doing to keep them safe.

The Wichita Eagle

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'Time is running out,' Bush says

TOP DEVELOPMENTS

- The CIA director sends a memo to the rest of the agency demanding improved coordination. 12A
- Stopping the flow of money to terrorists won't be easy. Questions have been raised about the United States' ability to keep track of financial transactions. 12A
- Recovery efforts continue at the World Trade Center as the Pentagon turns its attention to reconstruction. 13A

■ His warning comes as officials say that military action may begin this week.

Eagle news services

WASHINGTON — Assured of logistical and political support from several partners in the region, President Bush warned the Taliban government of Afghanistan on Saturday that "full warning has been given, and time is running out."
Senior administration officials told Knight Ridder that military action might begin this week.

AMERICA PREPARES

Defense Secretary Donald Rumsfeld returned to Washington early Saturday morning from military consultations with five of the region's supportive nations in as many days, and immediately went to confer with the president and senior advisers.

As anti-aircraft fire was reported over the Afghan capital of Kabul, possibly aimed at an unmanned reconnaissance drone, the Taliban offered to free eight foreign aid workers, including two Americans, it has jailed — but only if the United States backed

down from its threats of a military strike.

The Bush administration rejected the offer and restated its insistence that its demand that terrorist Osama bin Laden be handed over was not negotiable.

Dangerous flights

Meanwhile, air drops of food to hungry Afghans, beginning as early as today, could require major military protection and even lead to the first known shots being fired at U.S. forces in the campaign against terrorism.

Please see TALIBAN, Page 12A

MID-CONTINENT AIRPORT SECURITY

Failing the safety tests

■ More than six dozen violations were found at Wichita's airport by FAA investigators during the past decade.

BY RON SYLVESTER
The Wichita Eagle

Undercover federal inspectors slipped three dynamite bombs through security at Mid-Continent Airport during the past decade.

In other tests designed to grade security, agents with the Federal Aviation Administration also smuggled three weapons, a toy pistol and six other test objects undetected through the Wichita airport.

Such lapses were among more than six dozen FAA security violations inside Mid-Continent, ranking it among the worst 22 percent of the nation's airports. Infractions include any violation of federal aviation security regulations, from the failed tests to passengers caught carrying weapons or improper record keeping.

Airport officials do not oversee the private security teams hired by the airlines and are not told of the FAA test failures.

Although the FAA sets training standards, one Wichita woman who worked security at Mid-Continent described her preparation program as minimal. And the FAA found four violations relating to the training of security screening employees during the 1990s.

The federal General Accounting Office found that airport security employees nationwide need better training and pay, changes that may be on the way in the wake of the Sept. 11 terrorist attacks. Congress is wrestling with whether to put airport security in federal hands and hopes to have a bill to President Bush within weeks.

With 75 violations from 1990 to 1999, Mid-Continent ranked 94th out of 430 airports, according to the

Please see AIRPORT, Page 10A



Adrian Bernhardt and other security workers on the concourse at Mid-Continent Airport are employed by Texas-based Globe Services.



Airport safety officer Lloyd Youel checks the trunk of Marlene Riley's car as she enters the short-term parking lot at Wichita Mid-Continent Airport.

Cost hikes add to city trash woes

■ Many collectors in Wichita raise their rates, pushing up a cost that is among the highest with comparable areas.

BY JEAN HAYS
The Wichita Eagle

Bracing for Tuesday's closing of Brooks Landfill, nearly every trash company in the city raised its residential collection rates last week to cover the cost of shipping the city's trash to Oklahoma.

With those increases — between \$1 and \$5 a month — Wichitans now pay more to throw away their trash than residents of nearly any other city in the region.

A survey by The Wichita Eagle of 13 cities that Wichita is regularly compared with in economic develop-

INSIDE, 6A

What you can do with your trash.

ment studies showed that most Wichitans pay more for comparable services.

The price increase couldn't come at a worse time for some families.

With 7,000 aircraft workers expected to be laid off by the end of 2002 and other families bracing for tough financial times, many households are watching their budgets.

Consumers can save money by shopping around and negotiating with trash companies.

In response to complaints about the high trash bills, the Sedgwick County Commission is re-examining how trash is picked up and disposed of.

Please see TRASH, Page 6A

Curiosity fueled a life of examining snakes

BY ROY WENZL
The Wichita Eagle

Take a look at Joseph Bruno Slowinsky. In this photograph, he's a 12-year-old boy, holding a snapping turtle by the tail. Tom Sawyer in a T-shirt. Look at the eyes and that look-at-me look of triumph.

A child at play, and something more. A scientist, one of Joe's professors would later say, is no more than a child who refused to grow up, who refused to stop asking "Why?"

Three years after his father took that picture, Joe was bitten by a rattlesnake. By this time, Joe was already roaming the sandbars of the Kaw River with his mom, finding ancient elk antlers, bison skulls and mastodon teeth.

Later, he went to the University of Kansas, drank beer, cheered the Jayhawk basketball team and collected fossils for the school's Natural History Museum. He



Courtesy of Ron Slowinsky
Joe Slowinsky as a boy in Loose Park, Kansas City, Mo.

Please see SNAKES, Page 7A

Laid-off may face retraining, lower pay

IN BUSINESS & MONEY

■ The outlook for some of the area's biggest nongovernment employers, 1C

BY NOVELA SOMMERS
The Wichita Eagle

Where will Wichita's displaced avia-

But no sector matches the scope of aviation. Four aviation companies employed more than 42,000 in Wichita at the year's start. The other eight or-



10-3

The health care industry is one of few that is hiring. Sonia Perrin, pediatric intensive care technician

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AIRPORT

From Page 1A

Eagle's review of public records. When compared with 20 other airports of similar size, Wichita ranked fourth.

The 75 violations included 36 instances in which the system worked and caught passengers trying to carry firearms onto flights. At least five people were arrested, including one person with an unspecified incendiary device.

Mid-Continent had fewer total security citations per 100,000 boarded passengers than Tulsa and Oklahoma City, but more than Kansas City, Los Angeles and Chicago.

Who's watching?

Airport director Bailis Bell said most of the FAA reports bypass his office and go directly to the airlines. The airlines hire Globe Aviation Services of Irving, Texas, to handle security checkpoints at Mid-Continent.

The airlines pay for Globe's mistakes, too.

United Airlines paid the most in fines, \$8,500. Most of that came from failing to detect weapons in FAA tests.

Mid-Continent paid more than \$4,000 from 1990 through mid-2000 for allowing unauthorized people to roam restricted areas.

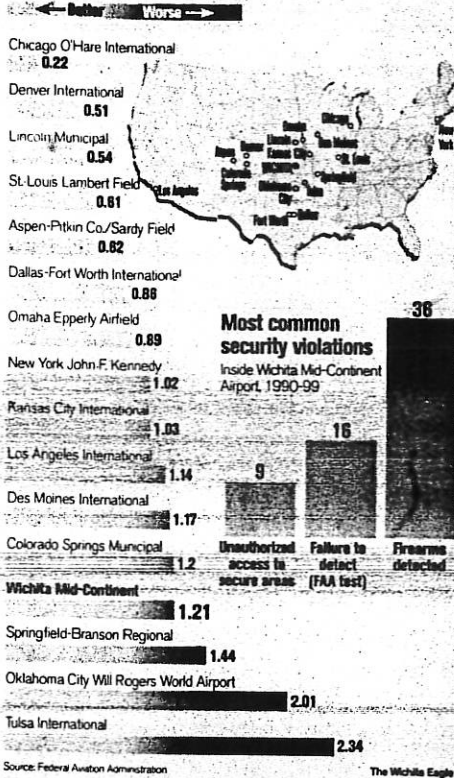
"Unfortunately, all those things got through," Bell said. "But we took remedial steps to make sure it didn't happen again."

FAA security records don't become public until a year after a case is closed. But the most recent violations on record at Mid-Continent included: an inspector sneaking a weapon through a security checkpoint on Oct. 25, 1999; airport police arresting a passenger with a loaded weapon on April 19, 2000, and an FAA agent gaining unauthorized access to a cargo facility on May 23, 2000.

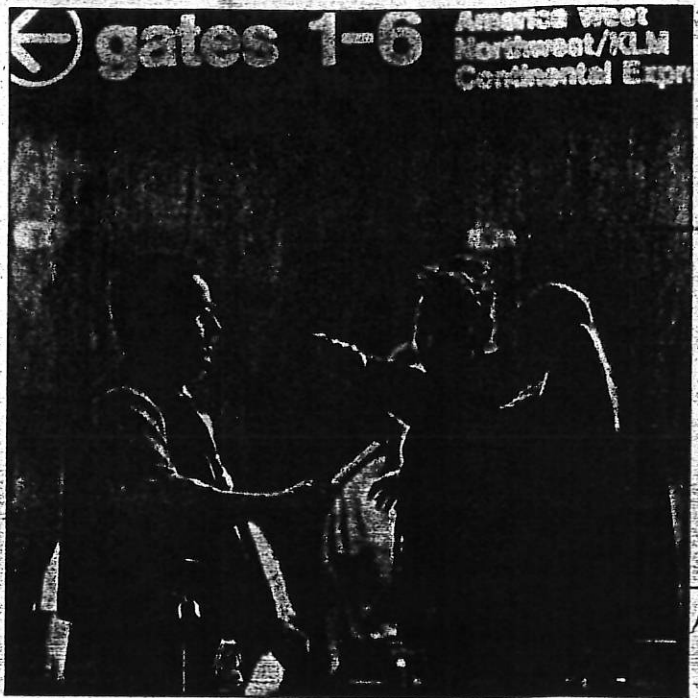
Gerard Joyce, deputy chief of air-

Tracking airport security

FAA security violations per 100,000 departed passengers, for midwest airports and major hubs around the U.S., 1990-1999



port safety, said Mid-Continent, had seen no reports of discovered weapons or made any arrests since security was tightened Sept. 11. Bell said he doesn't want to talk too specifically about airport security. "My general philosophy is if you talk too much about security, you won't have it," he said.



Tighter security measures, such as searches with metal-detecting wands, are the norm at Wichita Mid-Continent and other airports since the Sept. 11 terrorist attacks.

Officials at Globe and United did not return repeated phone calls by The Eagle seeking comment. FAA officials say the size of the fine doesn't always reflect the seriousness of the infraction, because final totals are sometimes reduced through negotiations. "They are violations of federal law," FAA spokeswoman Elizabeth Isham Cory said. "We work with the parties when possible, but we do take a very firm stand when it comes to these issues." FAA actions range from civil penalties, such as fines, to counseling. In more than half the cases, violations resulted in a warning letter. The FAA takes that action, often to point out unintentional violations in policies or procedures, and then follows up to make sure problems are corrected. The FAA routinely checks airports

"My general philosophy is if you talk too much about security, you won't have it."

Bailis Bell, director of Mid-Continent Airport

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AIRPORT

From Page

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Veva Capp firsthand. A former s Continent, C workers naps She watched the FAA tests

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SECURITY V: Federal Aviat security violator, cited at V Airport from 1 with summary

Name United Mid-Continent Air Midwest TWA Atlantic SE

Simmons Air Mesaba Aviat Corner

FROM PAGE ONE

AIRPORT

From Page 10A

by sending undercover inspectors to test access to secure areas and screenings of passengers and luggage. Frequency varies by the needs of individual airports.

"For instance, LAX (Los Angeles International) has several terminals in the shape of a horseshoe but Atlanta has only one gate that leads to several terminals," Cory said. "In other words, some airports have more access points to secure areas than others simply because of airport design."

Where are the holes?

FAA inspectors repeatedly proved they could get weapons through Mid-Continent's security web of X-ray machines, metal detectors and manual luggage searches. It happened a dozen times in 10 years.

Although Mid-Continent security caught some weapons outside the FAA tests, there's no way to know how many weren't detected.

But the government has known airports were vulnerable to terrorists for more than a year.

The General Accounting Office issued a string of reports questioning the effectiveness of airport security systems whose employees have minimal training and pay.

The latest report, released in summer 2000, warned, "Because screeners check thousands of passengers and their baggage yet rarely see dangerous objects being brought through airport checkpoints, remaining vigilant is difficult."

Veva Capps saw the problems firsthand.

A former security worker at Mid-Continent, Capps said she saw workers napping at checkout points. She watched security personnel fail the FAA tests.

"I saw accidents just waiting to happen," said Capps, who resigned about a year ago for personal reasons. "I always thought it was my responsibility to make sure people got home safe. But I think the airport needs more people who take that responsibility."

Capps, a former reserve officer with the Sedgewick County Sheriff's Department, said she received minimal training for her airport job.

"It lasted only a couple of days and mostly involved watching videos," she said of a job paying \$6 an hour.

The GAO report reflected nationwide what Capps saw locally.

The report said most security screeners could make a higher salary at an airport's fast-food restaurant.

The FAA requires American security screeners to have a minimum of a high school education, 12 hours of classroom training and 40 hours of on-the-job training — less than other countries such as Canada and

France. And it's tough to keep employees. The GAO found some airports can have as many as four people quit from the same job in one year.

In America, "screeners are placed on the job who do not have the necessary knowledge, skills, or abilities to perform the work effectively and who then find the duties tedious and unstimulating," the GAO reported.

What's being done?

In the aftermath of Sept. 11, the government is scurrying to mend

the system. Kansas Gov. Bill Graves, at the urging of President Bush, has ordered the National Guard to help beef up airport security. They arrived Friday at Mid-Continent.

Bush, meanwhile, is pushing for more government control of security, and Congress has been struggling with those issues the past two weeks.

Rep. Jerry Moran, R-Hays, has been working on the House Transportation and Infrastructure Committee's aviation subcommittee in crafting a bill for improved security.

The bill would create a new agency under the Department of Transportation. The Transportation Security Administration would decide how to staff airport checkpoints.

The bill would put law enforcement personnel at every airport security point and deploy federal air marshals on the planes.

A new aviation oversight board would involve input from various federal departments, including Defense, Treasury and Justice.

Rep. Todd Tiahrt, R-Goddard, a member of the House Appropriations Committee's trans-

portation subcommittee, said Congress will have new security measures to the president within the next month.

"We need to restore people's confidence in air travel," he said.

Meanwhile, travelers have noticed extra attention as they pass through airports.

"The metal detectors are set so low," Tiahrt said, "that I've set it off by the foil on my lifesavers."

Reach Ron Sylvester at 268-6514 or rsylvester@wichitaeagle.com.

Contributing: Hunt Laviana of The Eagle



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SAVINGS



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Sit back,
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SECURITY VIOLATIONS

Federal Aviation Administration security violations, by name of violator, cited at Wichita Mid-Continent Airport from 1990 through fall 2000, with summary of sanctions imposed:

Name	No.	Sanction
United	15	\$8,500
Mid-Continent	6	\$4,060
Air Midwest	3	Warning
TWA	2	Corrected
Atlantic SE	2	\$5,500
Simmons Air	1	Warning
Mesaba Aviation	1	Warning
Comair	1	\$5,500
American Eagle	1	Corrected
Other	34	\$7,412

*Some violators' names are expunged from FAA records.



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Reg. 599.00 each

Lane "Blom" recliner in floral.



Airbus to design wing in Wichita

■ The company plans to employ 50 to 60 people here, source says

BY MOLLY McMILLIN
The Wichita Eagle

The arch rival of Boeing, the city's largest employer, is landing in Wichita. Airbus SAS officials have decided

to open a wing design facility in Wichita, a source close to the deal said late Tuesday.

The site initially will employ 50 to 60 engineers and support staff to work on the design of the wing of Airbus' new enormous passenger jet, the A380.

Despite the relatively small number of jobs, the decision could be significant for the Wichita economy, according to Janet Harrah, director

of Wichita State University's Center for Economic Development and Business Research.

She said that if Airbus has in fact decided to locate a facility here it would provide two important boosts to the Wichita economy.

Airbus' arrival would mean "we have another company moving to Wichita that believes in the local economy and the future of aircraft manufacturing," she said.

The second and more long-term economic impact would be the expansion of the aerospace cluster in Wichita, she said. The new aircraft would build upon the city's long history of aircraft manufacturing, she said.

"We have a large labor pool of highly skilled manufacturing employees," Harrah said. "It's important to build upon that."

Airbus jobs would be good-paying ones, which would work to keep highly skilled engineers in Wichita, she said.

Airbus decided earlier this year to go ahead with development of A380, the 550-seat jetliner that would eclipse Boeing's 747 as the world's largest jetliner.

City officials are expected to announce Airbus' decision at a news conference this afternoon. Mayor Bob Knight

announced the commitment Tuesday night. An Airbus spokeswoman also declined comment.

Airbus officials visited Wichita last summer and met with officials from the city of Wichita, Sedgwick County and the Wichita Area Chamber of Commerce to see whether Wichita would be a good fit and to look at possible sites. They

Please see AIRBUS, Page 8A

Oreta Burnham of Rose Hill says she doesn't want anyone to pay ransom to her son's captors because that would encourage more kidnappings.



File photo

Burnhams oppose ransom to guerrillas

BY ALEX BRANCH
The Wichita Eagle

Despite a public offer from the leader of a Philippine guerrilla group to release their son and daughter-in-law in exchange for a ransom, Paul and Oreta Burnham say they still oppose paying one.

"We don't support it because it just makes it all the more dangerous for everyone else there, not just missionaries," Oreta Burnham said. "It leads to more kidnappings."

The leader of the Abu Sayyaf group holding hostage Rose Hill missionaries Martin and Gracia Burnham in the Philippines made the offer in a videotape Monday filmed by a Philippine news station. At one point, the leader, Abu Sabaya, said he was ready to "negotiate for their release."

The video also showed Martin and Gracia's deteriorating health. Martin has grown gaunt, and Gracia's eyes are swollen since their abduction in May. She said she has suffered chest pains, and both have developed mouth sores from lack of nutrients.

Abu Sayyaf has already killed one American hostage, whose remains were found last month.

The images are troubling, Oreta Burnham said, but giving the group more money that it could use for future kidnappings is not the

Please see BURNHAMS, Page 2A

WAR ON TERRORISM: IN AFGHANISTAN



U.S. Marines load weapons Tuesday into a Humvee near the airstrip the Marines seized in southern Afghanistan. U.S. officials say 800 to 1,100 troops eventually will occupy the outpost.

U.S. leaders say they are hot on trail of bin Laden

■ "There is no place to go," Gen. Tommy Franks says. "There is no place to hide."

Eagle news services

KARUL, Afghanistan — More Marines poured into Afghanistan on Tuesday, and Defense Secretary Donald Rumsfeld said America was

"tightening the noose" around Osama bin Laden and his Taliban allies. Taliban control in their southern stronghold appeared to be crumbling.

"We'll pursue them until they have nowhere else to run," Rumsfeld told reporters at the U.S. Central Command headquarters in Tampa, Fla.

He also said the Pentagon ordered air strikes Tuesday against a compound southeast of Kandahar after learning that it was being used by senior leaders of the Taliban, al-Qaida and Wafa, a Saudi humanitarian group that was among several groups named by the United States as aiding bin Laden and his network.

Rumsfeld said he did not know who was in the compound, but "it clearly was a leadership area. Whoever was there is going to wish they weren't."

U.S. F-16 jets and B-1B bombers attacked with precision-guided weapons, military officials said.

Northern Alliance soldiers said Tuesday that, backed by American and British special operations forces, they had

INSIDE, GA

■ The government is detaining 603 people in its terrorism investigation, including some alleged members of Osama bin Laden's network.

■ The government will not meet a January deadline for screening all checked airline baggage, even though Congress has ordered it to do so.

■ The former king of Afghanistan has emerged as the first choice to lead an interim government.

Please see BIN LADEN, Page 7A

Mock disaster takes on new importance

BY KAREN SHIDLER AND JEAN HAYS
The Wichita Eagle

Two C-130s landed in Wichita on Tuesday, carrying 100 patients moved from New York City hospitals to make room for people injured in an earthquake there.

Well, not really. The planes, the patients and the earthquake were all make-believe, but the scenario gave Wichita hospital and emergency teams a chance to see whether they were prepared to handle the real thing. They mostly were, though a few

pieces of communications equipment didn't work as they were supposed to and a "patient" was forgotten in a hallway for a while.

Each year, hospitals test their readiness with a citywide disaster drill.

In previous years they've responded to local "emergencies" such as mass exposure to hazardous materials or a bus crash in which many people were injured. This year, the drill tested "forward movement of patients," a

Please see DISASTER, Page 8A



Dave Williams/The Wichita Eagle

Resident chaplain Doug Tribolet checks on mock patient Joe Bullins at Wesley Medical Center during Tuesday's disaster drill, which was designed this year to test the movement of patients from one city to another.

Brownback clone ban gets frosty reception

BY ALAN BJERGA
Eagle Washington bureau



Brownback's efforts to introduce anti-cloning bills failed Tuesday.

WASHINGTON — Snubbed and shut out from Senate debate Tuesday by Majority Leader Tom Daschle, Sen. Sam Brownback continued his battle to ban human cloning.

"I'd like to ask a question of the majority leader before he goes," Brownback said to Daschle's back as the South Dakota Democrat walked off the Senate floor — without acknowledging Brownback's repeated attempts to bring up legislation banning human cloning.

In morning debate, Daschle discussed economic stimulus and energy policy for more than an hour with other senators

Please see BROWNBACK, Page 9A

DISASTER

From Page 1A

term used by the National Disaster Medical System to describe the coordinated movement of stable patients from one city to another.

In a real disaster, patients in stable condition could be moved to 120 other cities to make room for trauma victims. After the Sept. 11 terrorist attacks, Wichita went on alert to receive out-of-town patients, but that did not occur.

Tuesday's drill began at Ballard Aviation, where hospital representatives decided where each patient should go once planes landed.

"You want to do the neuro things while we do the burn things?" physician Brian Katan of Via Christi Regional Medical Center asked Randy Davidson, a counterpart at Wesley Medical Center.

The patients, portrayed by students from Hadley Middle School, ranged in age from 22 to 103 and in diagnosis from heart attack to pneumonia to a broken leg. Some patients also had tuberculosis, one was HIV-positive, one was dead, one was blind, and one weighed 372 pounds.

A few had bacterial infections resistant to antibiotics, so they needed to be in isolation.

As Mike Buchanan of Emergency Medical Services dispatched imagi-



Mika Hutmacher/The Wichita Eagle

Brian Katan of Via Christi Regional Medical Center gives instructions to nurses Rita Gurnm, standing, and Mary Mayhew, left, during a disaster drill in which 100 imaginary New York patients were dispatched to Wichita hospitals.

nary ambulances, student "patients" were showing up at the hospitals in school buses.

While students waited to be sent to the emergency room, they played games and discussed their medical problems.

Chad Giles, an eighth-grader, played the part of Edith, a 53-year-old paraplegic recovering from a heart attack the day before. "Edith" arrived in Wesley's emergency room experiencing severe chest pains.

A triage nurse announced that Edith needed immediate care and a gurney. A chaplain rushed to her

side, but no gurney, nurse or doctor arrived.

Ten minutes later, a hospital employee observing the exercise announced that Edith was getting progressively worse.

"I think I died," Chad said, sounding somewhat delighted at the news. Chaplain Robert Fabrin assured him he would arrange a miraculous recovery.

Edith's near-death was perhaps the biggest glitch in caring for 24 patients in less than an hour.

During the evaluation, hospital employees announced that they needed more staff, a faster way to

assign beds, better communication with EMS and better coordination to avoid such problems as assigning two patients to the same bed.

Overall it was a good exercise, said Diana Lippoldt, a Wesley representative on the Metropolitan Medical Response System committee, a group of public and private health and emergency representatives working on Sedgwick County's plan for dealing with disasters.

"I have seen a lot more cooperation from the staff since 9-11," she said. "I think they understand the reality of this."

This is the seventh year Hadley students have participated in the drill.

It started out as a community service project, said Jonda Walter, a science teacher.

"With Sept. 11, I wanted the students to be even more comfortable that our city is prepared and give them a sense of peace," she said.

Reach Karen Shideler at 268-6674 or kshideler@wichitaeagle.com.

Reach Jean Hays at 268-6557 or jhays@wichitaeagle.com.

LEGAL PUBLICATION

Published in The Wichita Eagle November 21 & 28, 2001 (R1151728) RESOLUTION NO. R-91-462 A RESOLUTION FIXING A TIME AND PLACE AND PROVIDING FOR NOTICE OF A HEARING BEFORE THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, AT WHICH THE OWNER, HIS AGENT, LIENHOLDERS OF RECORD AND OCCUPANTS OF PROPERTY LEGALLY DESCRIBED AS: LOT 4, WEST PARK GARDENS, SEDGWICK COUNTY, KANSAS, MAY APPEAR AND SHOW CAUSE WHY SUCH STRUCTURE SHOULD NOT BE CONDEMNED AND ORDERED REPAIRED OR DEMOLISHED AS A DANGEROUS STRUCTURE. WHEREAS, the enforcing officer of the City of Wichita, Kansas, did on the 20th day of November, 2001, file with the governing body of said city, a statement in writing that certain structure(s), hereinafter described, is/are unsafe or dangerous. NOW THEREFORE, be it Resolved by the Governing Body of the City of Wichita, that a hearing will be held on the 8th day of January, 2002, before the governing body of the city at 9:30 A.M. or soon thereafter, in the council room, City Building at which time the owner, his agent, any lienholders of record or any occupant of property, legally described as Lot 4, West Park Gardens, Sedgwick County, Kansas, may appear and show cause why such structure should not be condemned as an unsafe or dangerous structure or repaired or demolished. The structure is a one-story frame dwelling about 24 x 28 feet in size. Vacant and open. The structure has a cracking and shifting concrete block foundation; rotten and missing wood siding; exposed, rotted framing members; collapsing rear wall, and rotted wood trim. Be it further resolved that the City Clerk shall cause this Resolution to be published and shall give notice of the aforesaid hearing in the manner provided by K.S.A. 17-732. Adopted this 20th day of November, 2001. BOB KNIGHT, MAYOR ATTEST: PAT BURNETT, CITY CLERK (SEAL)

LEGAL PUBLICATION

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AIRBUS

From Page 1A

also visited other cities.

Airbus did not require tax abatements or other incentives from the city in reaching its decision, according to the source, who didn't want to be named.

The company has been considering space in the Old Town area, sources said.

Airbus' arrival could change Wichita's business dynamic by increasing demand for Wichita's design engineers.

Boeing, Cessna Aircraft Co., Raytheon Aircraft and Bombardier

employ more than 40,000 people in all in Wichita, including thousands of engineers.

The news also comes at a time when three of Wichita's four large aircraft manufacturers are cutting thousands of jobs.

Boeing Wichita plans to cut 5,100 jobs by the middle of next year. Raytheon Aircraft and Bombardier Aerospace also are cutting their work forces.

Boeing does not do any wing design work here.

The head of Boeing's second-largest union, the Society of Professional Engineering Employees in Aerospace, said he had heard the rumors that Airbus was considering Wichita.

If Airbus is locating in Wichita,

said SPEEA executive director Charles Boffording, it is "because they know some of the best engineers are there."

The facility likely would provide some job opportunities to engineers who may be losing their jobs at other aircraft manufacturers, Boffording said.

Airbus is based in France and operates subsidiaries in the United States, China and Japan in addition to its European facilities.

In the United States, the company operates a training center in Miami, a sales and service office in Herndon, Va., and a spare parts center in Ashburn, Va.

Reach Molly McMillin at 269-6708 or mcmillin@wichitaeagle.com.

FAITH & VALUES Every Saturday The Wichita Eagle

LEGAL PUBLICATION

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LEGAL PUBLICATION

Published in The Wichita Eagle November 21 & 28, 2001 (R1151732) RESOLUTION NO. R-91-464 A RESOLUTION FIXING A TIME AND PLACE AND PROVIDING FOR NOTICE OF A HEARING BEFORE THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, AT WHICH THE OWNER, HIS AGENT, LIENHOLDERS OF RECORD AND OCCUPANTS OF PROPERTY LEGALLY DESCRIBED AS: LOTS 75 AND 77, ON PALLASDE AVENUE IN EUREKA OR ROCK ISLAND ADDITION TO WICHITA, SEDGWICK COUNTY, KANSAS KNOWN 1647 1/2 PALLASDE AS MAY APPEAR AND SHOW CAUSE WHY SUCH STRUCTURE SHOULD NOT BE CONDEMNED AND ORDERED REPAIRED OR DEMOLISHED AS A DANGEROUS STRUCTURE. WHEREAS, the enforcing officer of the City of Wichita, Kansas, did on the 20th day of November, 2001, file with the governing body of said city, a statement in writing that certain structure(s), hereinafter described, is/are unsafe or dangerous. NOW THEREFORE, be it Resolved by the Governing Body of the City of Wichita that a hearing will be held on the 8th day of January, 2002, before the governing body of the city at 9:30 A.M. or soon thereafter, in the council room, City Building at which time the owner, his agent, any lienholders of record or any occupant of property, legally described as Lot 138, Wichita, Street, Munser's Original Town of Wichita, Sedgwick County, Kansas, known as 722 N. Wichita, may appear and show cause why such structure should not be condemned as an unsafe or dangerous structure or repaired or demolished. The structure is a one-story frame dwelling about 29 x 45 feet in size. Vacant and open, this structure has a cracking and shifting concrete block foundation; deteriorated composition roofing; rotten roof; rotted wood trim, and the 8 x 8 foot accessory shed is deteriorated. Be it further resolved that the City Clerk shall cause this Resolution to be published and shall give notice of the aforesaid hearing in the manner provided by K.S.A. 17-732. Adopted this 20th day of November, 2001. BOB KNIGHT, MAYOR ATTEST: PAT BURNETT, CITY CLERK (SEAL)

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LEGAL PUBLICATION

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BROWN

From Page 1A while Bri lectern, u to speak. Later it didn't any anti-year. "We ou decision; citing ec farm bill. The Senat Christmas Despit the man da, Brown? His spok repeated down the takes to l "We ha Hotmire cares en rules and to make p it." Brown ate congre cloning M, Massachu announce cessfuly r Brownba cloning b; backs, a H By pass Senate ca President Bush sai' House bil' But the obstacles is only on After D' Brownba House an Senate r bypass th

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Senators reach deal on tankers

NEWSUPDATE

A deal to lease 100 Boeing 767 tankers has been held up by the Senate Armed Services Committee. Approval of the deal could mean up to 1,000 new jobs for Boeing Wichita.

WHAT'S NEW
Leaders of the committee have approved a plan that would have the Air Force lease 20 of the planes and buy the next 80.

WHAT'S NEXT
The committee still needs to vote on the new plan before it goes before Congress as a whole for its approval.



File photo

BY ALAN BERGA
Eagle Washington bureau

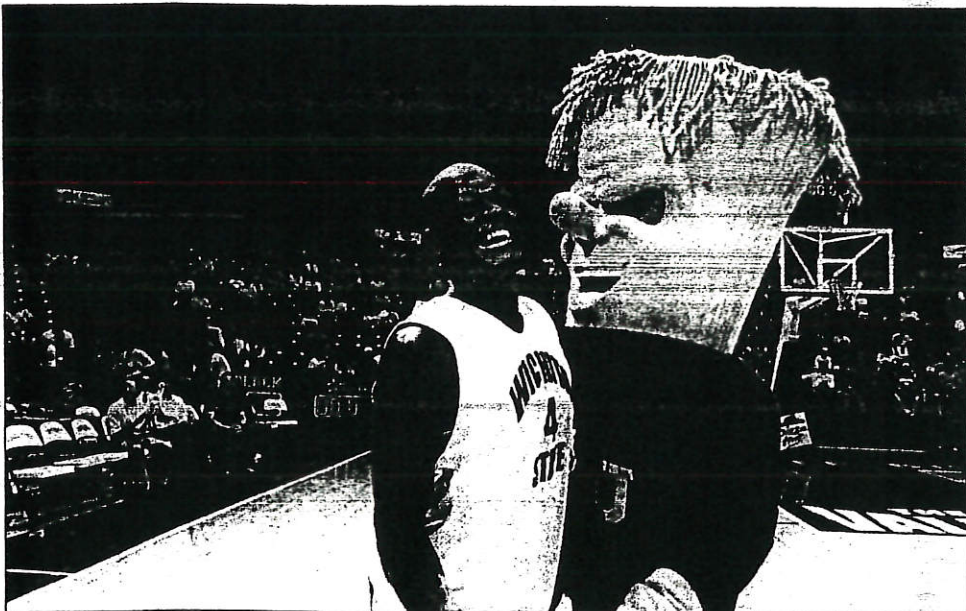
WASHINGTON — The leaders of the Senate Armed Services Committee agreed Thursday to propose leasing 20 Boeing 767s as military refueling tankers, then purchasing 80 more of the planes.
If it holds, the agreement removes a significant hurdle for the program, which could create more than 1,000 jobs at Boeing Wichita.
The committee still needs to vote on

the agreement before the program can come before Congress as a whole.
Kansas tanker backers reacted Thursday night with cautious optimism toward the plan, which could cut up to \$4.2 billion from the program's overall \$2.1 billion price tag.
Sen. Pat Roberts called the agreement "a significant step in getting these critical tankers to the war fighter."
But he stopped short of calling the compromise crafted by Senate Armed Services Committee Chairman John

Warner, R-Va., and ranking Democrat Carl Levin, D-Mich., the final deal.
"I am going to continue to work to ensure that the final tanker program meets the needs of the (Defense) department and fits within the framework of the budget," he said.
The Warner-Levin deal significantly changes the controversial proposal for the Air Force to lease all 100 of the 767 tankers over a 10-year period.
That would have been the largest.

Please see TANKERS, Page 5A

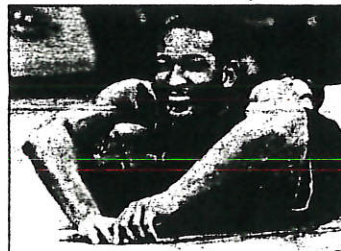
SLAMMIN' SHOCKERS



Photos by Larry Smith/Correspondent



Wichita State University basketball player Jamar Howard, above, celebrates Thursday night with WuShock after winning the slam dunk contest at Shocker Madness. About 4,000 fans attended the public exhibition, which showcased WSU's men's and women's teams in the new Koch Arena. The festivities included a talk by men's coach Mark Turgeon, left, and the slam dunk contest, which brought a smile to Shocker Nick Rogers, right.



K-State breaks ground on institute for biosecurity



Courtesy of Kansas State University

Kansas State's Biosecurity Research Institute will protect the nation's food supply. K-State president Jon Wefald called the facility "vital to our national security interests."

BY STEVE PAINTER
Eagle Topeka Bureau

TOPEKA — Last year, the rumor of a highly contagious cattle disease in northeast Kansas swept through the nation's markets.
Cattle prices plummeted. Farmers and ranchers lost \$50 million before the report could be proven false.
Today, Kansas State University breaks ground on a new research facility that could quickly head off

economic chaos from such reports, whether they are true or false.
The mission of the K-State Biosecurity Research Institute is to protect against — and respond to — threats to the nation's food supply.
In keeping food supplies safe from intentional or accidental contamination, the institute could prevent huge losses in the multibillion-dollar industry and keep consumer



Jeax
The K-State researcher says the bioterrorism threat is real.

Please see BIOSECURITY, Page 5A

DA to look at Payne and Trail's activities

BY DIAN LEFLER
The Wichita Eagle

District Attorney Nola Foulston has opened a criminal investigation into the actions of two former city of Wichita employees who spent thousands of dollars of taxpayer money on trips to resorts, extravagant meals and fine wine.
The district attorney's investigation is being done at the request of city officials.
Foulston announced the investigation in a statement late Thursday. It will focus on the actions of former city finance director Ray Trail and former city risk manager Mike Payne, she said.
Trail and Payne could not be contacted for comment late Thursday.
Trail was forced to retire, and Payne was fired shortly after a Sept. 28 investigative report by The Eagle and KWCH 12 Eyewitness News.



Trail



Payne

Please see DA, Page 5A

Dad charged in death of toddler left in hot SUV

BY TIM POTTER
The Wichita Eagle

Prosecutors on Thursday charged a Valley Center man with child endangerment in the death of his 22-month-old daughter, left in a vehicle for eight hours on the hottest day of the year.
William J. "Joe" Dillman, 35, faces a misdemeanor charge carrying a possible sentence of up to a year in a county jail and a \$2,500 fine. His trial has been set for Nov. 6.
State records show that Alyssa Nicole Dillman's death prompted her father to request that his foster care license be terminated.
The criminal charge, filed more than three months after Alyssa's death, alleges that her father did



William J. Dillman

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FROM PAGE ONE

BIOSECURITY

From Page 1A

prices from skyrocketing.

"We are already leaders in this field, and I think K-State will be the epicenter of that kind of research," said U.S. Sen. Pat Roberts, who was instrumental in getting federal funding and pushed state lawmakers to invest in research.

The facility will be one of a kind, particularly in the livestock sector, K-State officials say. It will include state-of-the-art slaughter and processing equipment that will allow researchers to cover threats to the meat industry from hoof to plate.

The key, they say, is to have laboratories secure enough to safely handle diseases and organ-

isms without threatening the nearby crops and livestock they are designed to protect.

National interest in biological threats soared after the Sept. 11 terrorist attacks, especially when it was revealed that leaders of the al-Qaida terrorist network tried to buy a crop-dusting plane.

The implication, though never verified publicly, is that terrorists could target crops by spreading hard-to-control diseases.

"These are issues that we can't afford to say, 'I just hope this doesn't happen,'" said Jerry Jaax, a K-State researcher. "I wouldn't say it's inevitable that we will have some event, but it approaches that."

Jaax was a key player in dealing with the 1989 Ebola outbreak, topic of the best-selling book "The Hot Zone" by Richard Preston, and served 26 years in

the U.S. Army Veterinary Corps.

The possibility of a bioterror crisis is real, said Bob Zeigler, head of K-State's plant pathology department.

A disease called soybean rust, he said, is causing major damage to South American fields. The fast-moving pathogen defoliates the plants, sharply reducing yields.

Because the spores are carried by the wind, Zeigler said, it could arrive in U.S. fields on its own or it "could certainly be deliberately introduced."

Once here, it could sweep through much of the United States in a single season, he said. The nation has not developed the ability to respond to such threats, Zeigler said.

"Certainly law enforcement can't do this. The military can't do this. The kinds of problems we are looking at are scientific and

educational," he said.

Kansas is known as wheat country, and a disease called Karnal bunt that has surfaced in Texas is a major worry.

Though it does not destroy the grain's food value, millers, bakers and foreign customers don't want it because it gives wheat a fishy odor.

Roughly half of Kansas' wheat crop is exported. The market value of this year's crop to farmers alone is \$1.5 billion.

That's before it passes through the hands of the grain-elevator operators, truckers, millers and bakers who get the grain from field to supermarket.

Karnal bunt "could devastate the Kansas wheat industry pretty quick if we ever did get it," said Brett Myers, executive vice president of the Kansas Association of Wheat Growers.

Beyond wheat, Kansas is well-

situated to research threats to agriculture through the nation's midsection, researchers say.

The state's primary crops and meat animals — wheat, corn, soybeans, cattle and hogs — are the staples of Midwestern and High Plains agriculture.

Plus, Kansas is in the heart of the cattle-feeding and processing industry.

Last year's scare was foot-and-mouth disease, eradicated from this country decades ago.

Highly contagious, it could arrive on the shoe of an overseas visitor and enter the highly mobile beef industry. An animal may move from a Texas pasture to a western Kansas feedlot before slaughter, spreading the disease along the way.

"The accidental aspect is almost as dangerous as the intentional," said Todd Domer, spokesman for

the Kansas Livestock Association.

Funding for the \$50 million research center comes mostly from the state. The Kansas Legislature authorized \$40 million last year.

Another \$5 million comes from the Armed Forces Medical Intelligence Center at Fort Detrick, Md., and \$5 million is awaiting congressional approval, said Cheryl May, a K-State spokeswoman.

Construction is scheduled to begin in the spring and take two years.

K-State president Jon Wefald called the research facility "vital to our national security interests."

Added Ron Trewyn, K-State vice provost for research, "There's nothing like this anywhere that we're aware of."

Reach Steve Painter at (785) 296-3006 or spainter@wichitaeagle.com.

DEATH

From Page 1A

"unlawfully, intentionally and unreasonably cause or permit her to be in a situation that might injure or endanger her."

A defense lawyer said prosecutors declined to comment about the case. But Dillman's sister, Ronnie Leonard, said people should not rush to judgment.

"Joe is a wonderful man who cherishes all of his children, including Alyssa," Leonard said. "He was a foster parent to numerous children who no one else wanted... and made a difference in their lives. Due to a tragic accident, his life has been forever changed."

According to records of the Kansas Department of Health and Environment, which licenses foster-care homes, Dillman was a foster parent for three years, from Aug. 31, 2000, until his past Aug. 27, after six weeks after his daughter's death.

The license had been renewed each year.

Dillman and his wife requested that the license end because of their child's death, said Christine Ross-Baze, KDHE's director of child-care licensing.

Questions of how many foster children had been in Dillman's

ONLINE EXTRAS

To read The Eagle's coverage of the events surrounding Alyssa Nicole Dillman's death in July, go to Kansas.com and click on "Online Extras."

care over the three years and in the six weeks following his daughter's death could not be answered Thursday. But KDHE records show the Dillmans were licensed to care for up to three foster children — from infants to teenagers — at a time.

KDHE apparently was notified about Alyssa's death immediately, Ross-Baze said. But she said she was not sure how the notice came.

She said foster parents must notify foster-care officials of any injury or illness that results in the death of a foster child.

There is no requirement that foster parents inform KDHE of the death of their own child. But she said that would be an issue a foster parent and his sponsoring agency would likely discuss.

A conviction on certain crimes, whether a felony or misdemeanor, would prohibit a person from being a foster parent, she said.

To become a foster parent, a

person must meet requirements that include taking parenting classes, maintaining a safe home environment, and passing criminal history and child abuse background checks.

Dillman's own children remain in his custody, said Steven Mark, a lawyer assisting in Dillman's defense.

Around 9:30 a.m. on July 14, Dillman's wife Alyssa and her 4-year-old brother in a GMC Suburban at their uncle's house near Park City, investigators said. Dillman, who was loaning the Suburban to the other family, left in another vehicle.

Alyssa's brother apparently went into the house. When asked where his sister was, the brother said she was sleeping, so the uncle might have thought she was at home, investigators said.

The girl's mother, Sara Dillman, found her still strapped into her safety seat about 5:30 p.m.

The temperature reached 109 degrees that day. Authorities said the temperature in the vehicle measured 142 degrees.

The girl had a faint pulse but was pronounced dead at a hospital. An autopsy concluded that she died from hyperthermia.

Reach Tim Potter at 268-6684 or tpotter@wichitaeagle.com.

DA

From Page 1A

The report showed that taxpayers paid between \$52,300 and \$73,800 on a series of out-of-town meetings between the two city finance officials and California insurance consultant David McCleery.

The meetings took place during a 14-month period of 2002 and this year at various resort destinations, including Borrego Springs, Calif., Hilton Head, S.C., and the Florida Keys.

Foulston's statement said that she met with officials of the city's legal department Thursday and that she agreed to conduct the investigation to determine whether Trail and Payne's actions violated state law.

"Our community wants to know what happened, and they are certainly entitled to a report," Foulston said. "This investigation will probe the issues and present the facts and legal conclusions."

Foulston said her office will work with Wichita Police Department investigators and go beyond an in-house audit that had been ordered earlier by City Manager Chris Cherches.

"This investigation will consist of review of significant financial audits and documents generated

"Our community wants to know what happened, and they are certainly entitled to a report. This investigation will probe the issues and present the facts and legal conclusions."

District Attorney Nola Foulston

in connection with the city's inquiry," Foulston's statement said. "Law enforcement has the ability to call upon additional resources that may be utilized for interviews, evidence collection, subpoenas power and other legal processes that may be deemed necessary."

Cherches did not return a message left at his home late Thursday night.

Until his resignation, Trail headed one of City Hall's most powerful departments, overseeing the city's \$500 million budget.

Trail had worked for the city since 1973 and made \$122,492 a year. Payne was a midlevel manager in the finance department, earning about \$74,000 a year.

On one 2002 trip to meet with McCleery, who advised the city on insurance issues, Payne spent eight days and seven nights in the Florida Keys. The pair stayed in a series of oceanfront resorts starting in Key Largo and making their way to Key West.

Including expenses and con-

sulting fees, the trip cost Wichita taxpayers between \$9,300 and \$15,300.

In an April 2002 trip to California, Trail stayed five days and paid for a \$557 dinner in Newport Beach. The majority of the charges were for alcoholic beverages, include one \$190 bottle of wine.

As a result of The Eagle-KWCH investigation, Cherches now reviews all of his employees' travel expenses, and Vice Mayor Sharon Fearey reviews Cherches'. In addition, Cherches is drafting an ethics policy for city government that will be presented to the council.

Foulston's statement Thursday said she would not discuss the matter further until the investigation is concluded.

Her investigation is "going to take a long time" because of the "complicated research into financial matters," she said. "But in the end, we'll be in a better position (to) tell you what happened."

Reach Dion Laffer at 268-6527.

TANKERS

From Page 1A

lease of its type in U.S. military history. Sen. John McCain, R-Ariz., and others had blasted it as a "sweetheart deal" for Boeing.

Warner and Levin called the lease-purchase plan, which resembled an idea they put forth more than a month ago, a more honest approach to getting the planes.

McCain said the plan isn't perfect but is a workable alternative to the earlier plan.

By buying the last 80 planes, the Air Force keeps the job-creating tanker program's production schedule on track and preserves plans to put the new tankers on U.S. air bases over the next 10 years.

Keeping Boeing's production schedule on track is a key consideration for cities such as Wichita that are counting on the tankers for jobs.

The first 767 tanker would be available to the Air Force in 2006.

Cutting the program's cost from \$21 billion to about \$17 billion

also pleases congressional opponents and taxpayer groups who balked at the cost.

Numerous federal studies have shown that leasing, once estimated to cost as much as \$30 billion, was more expensive than buying outright.

The plan would also begin the process of buying more tankers beyond the first 100. Taking that step would require a thorough analysis of alternatives to the 767.

That opens the possibility that Boeing may not get future tanker orders, softening criticism from the deal's opponents that the program is corporate welfare for Boeing.

The Air Force's current fleet of KC-135 tankers is 43 years old on average, and more than 400 will have to be replaced.

Rep. Todd Tiahrt, R-Goddard, reserved final judgment on the program Thursday, not having seen the compromise details.

If it truly does follow the same production schedule, and if the Air Force can make the program work, then it's a cause to celebrate, he said.

Tiahrt also chided McCain, Warner and Levin for trumpeting a lease-buy agreement he said

Boeing and the Air Force could have worked out on their own.

"If that's what makes them happy, I'm happy for them," he said.

Bob Brewer, contract administrator for the Society of Professional Engineers in Aerospace at Boeing Wichita, said: "We know (the agreement) is going to be positive. We know the modification work will be done here."

With Warner, Levin and McCain on board, the Senate Armed Services Committee is now expected to approve the deal, which would be included in future defense authorization bills.


Armed Services approval was the last hurdle before bringing the tanker program before Congress for full authorization. Three other committees have already approved the 100-lease proposal. It was not immediately clear how those committees would react to the Armed Services plan.

Boeing and the Air Force declined to comment on the agreement.

Reach Alan Bergs at (202) 383-6006 or abergs@hwaswashington.com.

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Terrorists' visas bogus, report says

BY HOPE YEN
Associated Press

WASHINGTON — The U.S. government fumbled repeated opportunities to stop many of the men responsible for the Sept. 11 terrorist attacks from entering the country, missing fraudulent passports and other warning signs that should have attracted greater scrutiny, according to a preliminary report released Monday.

Government officials have said the 19 hijackers entered the country legally, but the National Commission on Terrorist Attacks Upon the United States said its investigation found at least two and as many as eight had fraudulent visas. Five of the hijackers aroused enough suspicion that they were questioned individually by customs agents or immigration inspectors, but were eventually allowed to enter the United States. None of the hijackers filled out his visa application correctly, and three clearly lied on the forms, according to the report.

Please see **TERROR**, Page 5A

TERROR

From Page 1A

For example, Saeed al Ghamdi was referred to immigration inspection officials in June 2001 after he provided no address on his customs form and only had a one-way plane ticket and about \$500. Al Ghamdi was able to persuade the inspector that he was a tourist.

The panel also found that six of the hijackers violated immigration laws by overstaying their visas or failing to attend the English-language school for which their visas were issued.

The newly disclosed findings challenge previous claims by top CIA and FBI officials that the hijackers' records and paperwork were so clean that they could not have aroused suspicion.

At the start of a two-day hearing on border and aviation security, the commission staff issued a statement Monday saying FBI Director Robert Mueller had testified that all of the hijackers came "lawfully from abroad," while CIA Director George Tenet described 17 of the 19 hijackers as "clean."

"We believe the information we have provided today gives the commission the opportunity to re-evaluate those statements," the commission staff said.

The panel said part of the problem was a lack of coordination among immigration officials and a focus on keeping out illegal immigrants rather than potential terrorists.

The bipartisan panel was created by Congress to study the nation's preparedness before Sept. 11 and its response to the attacks, and to make recommendations for guarding against similar disasters.

"There were many opportunities to stop the 9/11 plot," said commission member Jamie Gorelick, a former Justice Department official in the Clinton administration.

Several current and former government officials who testified Monday disputed such assertions, arguing little more could have been done to detect the plotters. "I don't believe that in a visa interview, you would ever uncover a terrorist," said Mary Ryan, former assistant secretary for consular affairs in the State Department.

The panel has held six hearings to [redacted] information. Among the [redacted] heard from Monday was customs agent Jose Melendez-Perez. He said that Sept. 11 ring-leader Mohammed Atta raised enough red flags — including having the wrong student visa — that he should have been blocked from entering the United States.

He explained that Atta's age and impeccable clothes appeared to contradict his story about being a student. "I would have recommended refusal," Melendez-Perez said.

Melendez-Perez is credited with stopping a man who U.S. officials think may have planned to be the 20th Sept. 11 hijacker.

The man, identified by federal officials only as al-Qahtani, was stopped at Florida's Orlando International Airport in late August 2001. Melendez-Perez said he became suspicious when al-Qahtani provided only vague answers about what he was doing in the United States.

U.S. officials then put al-Qahtani on a plane back to Saudi Arabia. He wound up in Afghanistan, where he was captured by U.S. forces. He now is being held with other captives at the U.S. naval base at Guantanamo Bay, Cuba.

Meanwhile, facing a May 27 deadline to issue its final report, the panel also agreed Monday to formally ask Congress to extend the deadline by at least two months.

Contributing: Washington Post, Los Angeles Times

10 - 10



Mr. Jene Vickrey, Chair
House Local Government Committee

Re: HB 2490

Ladies and Gentlemen:

Please permit me to submit this written testimony in opposition to HB 2490. I am the designated spokesperson of the Kansas Sunshine Coalition for Open Government on this subject. The mission of this organization is in part the promoting of educational programs and publications to explain the importance of open government, engaging in efforts to strengthen existing open meetings and open records laws, monitoring legislative attempts to weaken citizen access to government. Although I teach at the University of Kansas about laws related to the issue of open government, I am submitting this testimony as a citizen of Kansas who is a member of the Sunshine Coalition. I personally do not doubt that HB 2490 is well-intentioned, but my purpose is to explain why members of the coalition believe that this bill runs counter to the legislative purposes of the Kansas Open Records Act, which recognizes the basic tenet of public access to public records.

In these still early stages of the Terrorist War, few serious citizens will question the need for enhanced measures of security to protect many aspects of our way of life and values as a country. This was recognized in KORA during the 2002 Session, when exception 45 was enacted. This provision was carefully drawn at the time with serious attention to the often vague problem of defining the threat our country and our State were facing. Even though there have been some problems, Sunshine Coalition members think the Legislature got it right the first time.

HB 2490 would create a new exception that is redundant and unnecessary to achieve legitimate goals of public agencies. KORA does not, and should not, extend to records of private persons or entities who are not expending tax monies. Other provisions of law are currently adequate to protect the legitimate concerns of private persons on security matters.

The fundamental problems with this proposal are twofold. The vagueness created by the opening sentence cannot be sensibly cured. Virtually any document of any public agency could

KANSAS SUNSHINE COALITION FOR OPEN GOVERNMENT
P.O. Box 4341 • Topeka, KS 66604
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House Local Government
Date: 1-29-04
Attachment # 11

be construed, in creative imagination, to somehow jeopardize safety and security of lives, safety or property of citizens. Who knows what may be of interest to a terrorist? This provision could in fact be cited to deny access to any record one could name. And the reason this is bad is even more fundamental. One does not protect the lives and property of the public by keeping it ignorant of the way in which that is done.

Secondly, the proposal would allow closure of records of what was done in *response* to criminal activity. Among the infinite issues *that* raises, one can well imagine that even arrests would be considered non-disclosable. Trials? Convictions? The public will be reduced to accepting as its only source of information whatever law enforcement and similar agencies decide to provide.

The Sunshine Coalition does not have the expertise to debate the merits of security issues, but it is aware of unintended consequences, even when worthwhile motives suggest closing public records. Sunshine Coalition members believe the issues contained in HB 2490 are covered by exception 45 of the Kansas Open Records Act.

Thank you for allowing me to present this statement on behalf of the Sunshine Coalition.

M.A. "Mike" Kautsch
Kansas Sunshine Coalition for Open Government