Approved: April 4, 2008
Date

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:33 A.M. on March 10, 2008, in Room 123-S of the Capitol.

All members were present except:
Barbara Allen arrived, 9:37 A.M.
Donald Betts- excused
Greta Goodwin- excused
David Haley arrived, 9:52 A.M.
Julia Lynn arrived, 9:37 A.M.

Committee staff present:
Bruce Kinzie, Office of Revisor of Statutes
Athena Andaya, Kansas Legislative Research Department
Karen Clowers, Committee Assistant

Conferees appearing before the committee:
Mike Kautsch, University of Kansas
Doug Anstaett, Executive Director, Kansas Press Association
Kent Cornish, Kansas Association of Broadcasters
Stuart Little, Kansas Association of Addiction Professionals
Barbara Burks, Johnson County Mental Health Center
Chris Buck, Enterprise Leasing
Don McNeeley, Kansas Automobile Dealers Association
Joe Self, Joe Self Chevrolet, Wichita
Jeff Longbine, Longbine Auto
Ed Klumpp, Kansas Chiefs of Police Association; Kansas Peace Officers

Others attending:
See attached list.

The Chairman opened the hearing on **SB 313–Providing journalist with privilege concerning the disclosure of certain information**.

Mike Kautsch spoke in support, stating **SB 313** would clarify current Kansas law and it would be a significant advancement in maintaining accountability, transparency and honesty in government (Attachment 1). The bill would be consistent with actions that several states have taken to codify a reporter's privilege and provide trial judges clear direction in resolving disputes over reporter's privilege. The bill has been modeled on California law.

Doug Anstaett testified in support, reviewing testimony submitted by Ric Anderson of the *Topeka Capital Journal* (Attachment 2). Testimony related an example of personal experience of citizens assisting with an investigation without the protection of shield law.

Kent Cornish appeared in support, stating the public needs the assurance of protection when assisting in the reporting of wrongdoing (Attachment 3). The bill will protect reporters' ability to report on the workings of government and keep the public informed.

Written testimony in support of **SB 313** was submitted by:
Doug Anstaett, Executive Director, Kansas Press Association (Attachment 4)
Senator Derek Schmidt (Attachment 5)

There being no further conferees, the hearing on **SB 313** was closed.

The Chairman called for final action on **SB 64–Small claims; counter claim must be filed not less than two business days prior to the trial**. The Chairman indicated his desire to use **SB 64** as a vehicle to give **SB 546–Family dispute resolution fund, grants, docket fees** another chance at passage. Senator Vratil felt the bill failed on the floor of the Senate due to a funding amendment made by the Senate Judiciary Committee.

MINUTES OF THE Senate Judiciary Committee at 9:33 A.M. on March 10, 2008, in Room 123-S of the Capitol.

Senator Donovan moved, Senator Lynn seconded, to amend **SB 64** by striking its contents to create a substitute bill containing the contents of **SB 546** as originally drafted. Motion carried.

Senator Donovan moved, Senator Lynn seconded, to recommend **Sub SB 64** as amended, favorably for passage. Motion carried.

The Chairman opened the hearing on **SB 590–Establishing the substance abuse policy board**.

Senator Phil Journey spoke in support, indicating **SB 590** would establish a Substance Abuse Policy Board as an continuing effort by the legislature to improve the Kansas Criminal Justice System in dealing with offenders with substance abuse problems (Attachment 6). The intended goals would be to reduce recidivism, break the cycle of addiction, reduce multiple DUI convictions and help offenders become productive citizens. Success in this area could result in savings to Kansas taxpayers and savings to the State..

Stuart Little appeared in support, stating creation of a substance abuse policy board would be a valuable tool to the members of the Kansas Association of Addiction Professionals that work directly with substance abuse offenders (Attachment 7).

Barbara Burks spoke as a proponent and urged inclusion of two substance abuse professionals appointed by the Kansas Association of Addiction Professionals (Attachment 8).

Written testimony in support of **SB 590** was submitted by:
Roger Werholtz, Secretary, Kansas Department of Corrections (Attachment 9)
Don Jordan, Secretary, Kansas Department of Social & Rehabilitation Services (Attachment 10)

There being no further conferees, the hearing on **SB 590** was closed.

The hearing on **HB 2707–Theft, intent to deprive, leased or rented motor vehicles** was opened.

Chris Buck spoke as a proponent (Attachment 11). Current Kansas law requires businesses that lease or rent personal property to wait 10 days before reporting a vehicle stolen. Mr. Buck related an incident where an unreturned vehicle had been involved in criminal activity. The incident might have been avoided if the police had been notified that it was considered stolen. The vehicle was in the fourth day of the ten day waiting period to be reported stolen. The proposed bill would allow for a report to be filed three days after the vehicle is scheduled to be returned. This shortened filing time would possibly allow police to find the vehicle sooner.

Don McNeeley, appeared in support of the House amendment to expand legislation to include dealership demonstrators and service loaner vehicles(Attachment 12).

Joe Self testified in support, relating losses to his company regarding stolen vehicles (Attachment 13).

Jeff Longbine spoke in favor of the bill (Attachment 14).

Written testimony in support of **HB 2707** was submitted by:
Ed Klumpp, Kansas Association of Chiefs of Police (Attachment 15)
Ed Klumpp, Kansas Peace Officers (Attachment 16)
Jim Hatten, President, Don Hatten Chevrolet (Attachment 17)
Michael E. Steven, President, Mike Steven Auto Group (Attachment 18)
Les Eck & Rusty Eck, Midwest Toyota Ford (Attachment 19)

There being no further conferees, the hearing on **SB 2707** was closed.

The meeting adjourned at 10:30 A.M. The next scheduled meeting is March 11, 2008.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: March 10, 2008

NAME	REPRESENTING
Kathy Porter	Judicial Branch
Michael Hooper	Kearney & Assoc.
Rick Gumm	AG's office
Dan Gibb	KSAG
Whitney Damron	KS Attorneys Def. Assn
Don McNeely	KADA
~~JOE~~ SELF	"
~~JEFF~~ LONGBINE	"
Chris Buck	Enterprise
Stuart Little	Ks Assoc. Addiction Prof
Barb Burks	JCCo Mental Health
Ed Klumpp	KACP & KPOA
Jeff Bottenberg	State Farm
Kyle Kessler	KVC
Shamika Stamps	KAAAC

Kansas Press Association, Inc.

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March 10, 2008

To: The Honorable John Vratil, chairman, Senate Judiciary Committee, and committee members.

From: Mike Kautsch, professor of law at the University of Kansas and director of the Media, Law and Policy program at the KU School of Law.

Re: SB 313

Thank you for the opportunity to testify this morning. In my opinion, SB 313 should be enacted for two basic reasons. First, SB 313 would clarify and strengthen an area of law in Kansas that is vitally important and that has been plagued by longstanding uncertainty in the state. Second, SB 313 would be a significant advancement of the Legislature's interest in maintaining accountability, transparency and honesty in government.

My opinion about SB 313 is based on my experience as a journalist and lawyer and as an educator in both journalism and law. I believe that the bill establishes a fair and clear procedure for determining when a journalist has a privilege not to testify in response to a subpoena. The bill provides the protection that journalists need when they rely on a confidential source to serve the public interest, such as when they expose waste of taxpayers' money, abuse of government power or lack of integrity among public officials. Journalists who have no protection against orders to disclose their confidential sources may not even dare to begin an investigation of suspected wrongdoing in government.

SB 313 would provide guidance to trial judges that is not now available in Kansas case law. The key Kansas precedent regarding reporter's privilege is *State v. Sandstrom*, 224 Kan. 573 (1978). In this case, the state Supreme Court said that a "newsperson has a limited privilege of confidentiality of information and identity of news sources." Yet, the Court also said that the privilege is available to the journalist only if the "information sought is not relevant to the defense or could not lead the defendant to information relevant" to the defense. In 2002 and 2003, I served as a member of a Press Shield Advisory Committee that was formed by the Kansas Judicial Council. After reviewing *Sandstrom*, the committee concluded that the Court's decision "does not clearly set out the requirements for overcoming the privilege."

The uncertain and limited nature of reporter's privilege in Kansas made headlines in 2000, after the Wichita Eagle published an article about a parolee who had been charged with first-degree murder. The article, by Tim Potter, was based on a telephone interview he conducted with the murder suspect while the suspect was in jail. The day following publication, a county prosecutor subpoenaed Potter's notes. The Eagle fought the demand for the notes, but a judge found the newspaper in contempt and imposed a fine of $500 a day. The Eagle then surrendered the notes,

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Attachment 1

although only after posting them on its Web site. Rick Thames, the Eagle's editor at the time, wrote that the newspaper "reluctantly decided to comply with the judge's order because our chances of a successful appeal under existing Kansas law appear to be very slim in this case." Unlike other jurisdictions, Thames noted, "Kansas lacks specific laws that prevent government agencies from seizing files of the working press." He said that, by posting the reporter's notes on the newspaper's Web site, the Eagle was giving them to prosecutors as published information. "That may not seem like much of a distinction to many, but we believe it is very important," Thames said.

In a follow-up report in 2000 about Potter's subpoenaed notes, the *Eagle* called on the Legislature to "see the need for a shield law to protect journalists from subpoenas of unpublished work" and "'the right of the press to work independently of authorities.'"

SB 313 is an effective response to the call that was expressed by the Eagle and that is shared by other members of the Kansas media. The bill proposes to codify reporter's privilege in a way that successfully has been done elsewhere. For example, SB 313 resembles the commendable approach taken by the U.S. Court of Appeals for the Tenth Circuit in *Silkwood v. Kerr-McGee Corp.*, 563 F.2d 433 (10th Cir.1977) and *Grandbouche v. Clancy*, 825 F.2d 1463 (10th Cir.1987). The Kansas Judicial Council's Press Advisory Committee, which I mentioned previously, noted that the Tenth Circuit Court "recognized a stronger reporter's privilege than Kansas state courts." The Committee also observed that "some state trial court judges have relied" in Kansas on the Tenth Circuit Court's precedents when analyzing reporter's privilege claims.

For years, the issue of reporter's privilege has received attention from Kansas journalists, media lawyers and others. In 2002, the Media Law Clinic that I direct at the University of Kansas School of Law included research of state shield laws. In the course of the research, a Clinic member produced a model shield law, which became the basis for a Kansas shield law proposal in 2002, HB House Bill 2798. The bill's purpose was to establish a qualified reporter's privilege and ensure that news "flows freely to the public." The bill was the focus of the Press Shield Advisory Committee study to which I referred previously and that was done for the Kansas Judicial Council.

Since then, attention to the issue has included an annual Media and the Law Seminar in Kansas City on April 25, 2003. One discussion included Rick Thames, then the Eagle's editor. In June 2005, the University of Kansas Law Review published "Saving the Shield with Silkwood: A Compromise to Protect Journalists, Their Sources, and the Public," by Leita Walker, who became editor of the Law Review. She focused on the possibility that a legislature best could serve the press and public by codifying the kind of qualified privilege that the Tenth Circuit Court had recognized in *Silkwood v. Kerr-McGee Corp.*

Additional consideration was given to the potential for a shield law during a Media Law Seminar on October 20, 2006, sponsored by the Kansas Bar Association in Wichita. The seminar opened with a discussion titled "Reporter's Privilege: Should They Be Jailed?" Sherry Chisenhall, the Eagle's current editor, participated in the discussion, and it included reference to comprehensive studies of shield laws by the Media Law Resource Center in New York.

After SB 313 originally was introduced during the 2007 legislative session, Adam Davis, a former journalist who is now a KU Law student, wrote an analysis that included these points:

• A shield law can streamline the process of evaluating a journalist's privilege claim "by more clearly identifying the circumstances under which journalists would receive protection and the circumstances under which they would not." SB 313 "contemplates a balancing of interests" between the media who aim to expose government wrongdoing with the help of confidential whistleblowers and law enforcement authorities who seek to uncover evidence of criminal acts.

• Journalists are concerned that they may be compelled to disclose their unpublished notes, files, videotapes, photographs and the like. However, "If police have power to indiscriminately acquire journalists' materials, then the journalists become an arm of law enforcement. They will lose their status as an independent source of information." Moreover, journalists' sources "will get a clear signal that anything they say could be discovered by law enforcement. This knowledge might make sources uneasy about speaking with journalists at all, or might make them less forthcoming when they do talk."

• Although a shield law may sometimes seem problematic to law enforcement authorities, they may see it as beneficial. For example, Utah Attorney General Mark Shurtleff has supported a qualified reporters' privilege. As the Salt Lake Tribune reported in early 2007, Shurtleff "thinks sources are more comfortable with reporters rather than police." Shurtleff said, "'The bottom line is, we in law enforcement recognize a need for confidential sources. If there is no privilege (protection) to go to a reporter, they may not report at all.'"

SB 313 would be consistent with actions that most other states have taken to codify reporter's privilege. The bill would eliminate uncertainty that has surrounded reporter's privilege in Kansas since the late 1970s. The bill would give clear direction to trial judges in resolving disputes over reporter's privilege. It would provide protection to journalists in a way that would enable them to contribute to public understanding of government and to increase public confidence that government in Kansas is committed to being open, clean and accountable to the people.

* *Mike Kautsch is a professor of law at the University of Kansas and director of the Media, Law and Policy program at the KU School of Law. He previously was dean of KU's William Allen White School of Journalism and Mass Communications. His opinion as expressed herein, is wholly personal and is not offered to represent, in any way, official positions of KU or the KU School of Law.*

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March 10, 2008

To: Sen. John Vratil, chairman, Senate Judiciary Committee

From: Ric Anderson, columnist, Topeka Capital-Journal

Re: SB 313

Thank you, Mr. Chairman and members of the committee, for the opportunity to address you today about this important piece of legislation. On behalf of the Topeka Capital-Journal but also as a lifelong Kansan, I'd like to tell you briefly about a case that I believe speaks to the necessity of the bill before you today.

In 2004, my colleague Tim Carpenter began looking into anonymous reports of misconduct in the Topeka Municipal Court system. As Tim began his reporting, it became immediately clear he had struck a sensitive nerve. Court staff members were ordered not to speak to reporters. Officials instructed city prosecutors to decline interview requests from reporters. All communication with city employees was funneled through one person, and new requirements were installed to govern requests for public records.

Tim eventually was able to produce a series of stories outlining problems in the court system. Among them: ticket fixing and lax oversight that had resulted in nearly $4 million in fines going uncollected, as well as soaring costs for providing lawyers to indigent defendants, many of whom hadn't even been required to document their inability to hire an attorney.

Within three months after Tim produced his initial story about the situation, two of the court's three judges left their posts under pressure. Tim's work was an example of investigative reporting at its finest.

But it would have been impossible without the help of several very brave individuals who, without protection of a shield law, risked their jobs and livelihoods to provide him with information. Stonewalled by official sources, Tim received assistance in his reporting from court staff and others who came to the selfless conclusion that the problems in the system outweighed the serious repercussions they faced had they been identified as whistleblowers.

It's for people like them — and for the citizens of Kansas — that I support this piece of legislation. Would this bill help journalists perform their duty as public watchdogs? Quite possibly, and I believe the public would be well-served in that regard.

However, that's not the most important issue. My goal in supporting the bill isn't to find a way to make it easier for Tim or me or any other member of a media organization to do our jobs. It's to protect those who have something important to tell us. Thank you for your time and consideration.

Ric Anderson, Columnist
Topeka Capital-Journal
(785) 295-1282

Senate Judiciary
3-10-08
Attachment 2

FLEESON, GOOING, COULSON & KITCH, L.L.C.
125 North Market, Suite 1600
Wichita, Kansas 67202
Telephone: (316) 267-7361

IN THE EIGHTEENTH JUDICIAL DISTRICT
DISTRICT COURT, SEDGWICK COUNTY, KANSAS

STATE OF KANSAS	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 06 CR 1523
	)	
ELGIN R. ROBINSON, JR.,	)	
	)	
Defendant.	)	
	)	

MEMORANDUM IN SUPPORT OF OBJECTION AND MOTION TO QUASH OF WICHITA EAGLE AND BEACON PUBLISHING COMPANY, INC. AND DEBBIE GRUVER

Debbie Gruver and Wichita Eagle and Beacon Publishing Company, Inc. (collectively "movants") submit this memorandum in support of their objection and motion to quash to the subpoena duces tecum issued to Ms. Gruver at the request of the state in the above-captioned criminal matter.[1] The subpoena seeks production of the following:

> Any and all notes, field notes, documents, tape recordings, photographs reflecting all or part of any conversation between Debra (sic) Gruver and Elgin Robinson.

In her role as a reporter for The Wichita Eagle newspaper, Debbie Gruver had a series of conversations with Elgin Robinson, the defendant in this capital murder. These

[1] Although the subpoena is issued solely to Ms. Gruver, the notes in question are the property of The Wichita Eagle and the newspaper therefore joins Ms. Gruver in objecting to the subpoena.

conversations led to the publication of a news article which appeared in The Wichita Eagle on Sunday, November 12, 2006. A copy of the article is attached hereto.

Even before the article was published, a subpoena duces tecum was issued to Ms. Gruver at the request of the state under the authority of an inquisition proceeding commenced pursuant to K.S.A. 22-3101. The District Attorney has since withdrawn the subpoena in the inquisition and reissued it in the context of these criminal proceedings. A similar subpoena was issued to television station KWCH and its reporter Michael Schwanke.

Movants dispute that the state has the authority under Kansas law to issue a discovery subpoena of this type. In this regard, movants adopt and incorporate herein the arguments of KWCH and Mr. Schwanke.

Movants further submit that the subpoena violates their qualified First Amendment privilege to resist the compulsory disclosure of materials and information obtained in the news gathering process. The arguments in this memorandum will focus on that Constitutional issue.

ARGUMENT AND AUTHORITIES

The subpoena in question seeks to compel movants to produce the fruits of their news gathering efforts. The court should not permit this attempted infringement on constitutionally-protected activity.

In *Branzburg v. Hayes*, 408 U.S. 665 (1972), the United States Supreme Court expressly recognized, in the context of a grand jury subpoena, that reporters' news gathering efforts qualify for First Amendment protection, noting that "without some protection for seeking out the news, freedom of the press could be eviscerated." 408 U.S. at 681. From this

beginning, it is now widely held that a non-party journalist has a qualified privilege arising from the First Amendment to resist discovery of unpublished information and resource materials acquired in the news gathering process.[2]

In Justice Powell's concurring opinion in *Branzburg*, which provided the fifth vote for the majority holding, he stated:

> As indicated in the concluding portion of the opinion, the Court states that no harassment of newsmen will be tolerated. If a newsman believes that the grand jury investigation is not being conducted in good faith he is not without remedy. Indeed, if the newsman is called upon to give information bearing only a remote and tenuous relationship to the subject of the investigation, or if he has some other reason to believe that his testimony implicates confidential source relationships without a legitimate need of law enforcement, he will have access to the court on a motion to quash and an appropriate protective order may be entered. The asserted claim to privilege should be judged on its facts by the striking of a proper balance between freedom of the press and the obligation of all citizens to give relevant testimony with respect to criminal conduct. The balance of these vital constitutional and societal interests on a case-by-case basis accords with the tried and traditional way of adjudicating such questions.

408 U.S. at 709-10

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[2] *See, e.g., Bruno & Stillman v. Glove Newspaper Co.*, 633 F.2d 583, 595-96 (1st Cir. 1980); *United States v. Burke*, 700 F.2d 70, 77 (2d Cir. 1983), *cert. denied*, 464 U.S. 816 (1983); *United States v. Cuthbertson*, 630 F.2d 139, 147 (3d Cir. 1980), *cert. denied*, 449 U.S. 1126 (1981); *Riley v. City of Chester*, 612 F.2d 708, 715, 716 (3d Cir. 1979); *United States v. Steelhammer*, 539 F.2d 373, 375 (4th Cir. 1976); *Cervantes v. Time, Inc.*, 464 F.2d 986, 994 (8th Cir. 1972), *cert. denied*, 409 U.S. 1125 (1973); *Shoen v. Shoen*, 48 F.3d 412, 1282 (9th Cir. 1995); *Silkwood v. Kerr-McGee Corp.*, 563 F.2d 433, 437-38 (10th Cir. 1977); *Zerilli v. Smith*, 656 F.2d 705, 714 (D.C. Cir. 1981); *Los Angeles Memorial Coliseum v. NFL*, 89 F.R.D. 489, 492-94 (C.D. Cal. 1981); *In re Consumers Union of U.S., Inc.*, 495 F. Supp. 582, 586-87 (S.D.N.Y. 1980); *Gulliver's Periodicals, Ltd. v. Chas. Levy Circulating Co.*, 455 F. Supp. 1197, 1202-03 (N.D. Ill. 1978); *Altemose Constr. Co. v. Bldg. & Constr. Trades Council*, 443 F. Supp. 489, 491 (E.D. Pa. 1977); *Loadholtz v. Fields*, 389 F.Supp. 1299, 1302-03 (M.D. Fla. 1975); *Democratic Nat'l Comm. v. McCord*, 356 F.Supp. 1394, 1398 (D.D.C. 1973); *Wright v. Fred Hutchinson Cancer Research Center*, 206 F.R.D. 679 (W.D. Wash. 2002); *State ex rel. Houdok v. Henry*, 389 S.E.2d 188 (W. Va. 1989).

In *Gonzales v. National Broadcasting Co., Inc.*, 194 F.3d 29, (2d Cir. 1999), the Second Circuit Court of Appeals articulated the basis and importance of the privilege:

> If the parties to any lawsuit were free to subpoena the press at will, it would likely become standard operating procedure for those litigating against an entity that had been the subject of press attention to sift through press files in search of information supporting their claims. The resulting wholesale exposure of press files to litigant scrutiny would burden the press with heavy costs of subpoena compliance, and could otherwise impair its ability to perform its duties—particularly if potential sources were deterred from speaking to the press, or insisted on remaining anonymous, because of the likelihood that they would be sucked into litigation. Incentives would also arise for press entities to clean out files containing potentially valuable information lest they incur substantial costs in the event of future subpoenas. And permitting litigants unrestricted, court-enforced access to journalistic resources would risk the symbolic harm of making journalists appear to be an investigative arm of the judicial system, the government, or private parties.

199 F.3d at 35. *See also United States v. LaRouche Campaign*, 841 F.2d 1176, 1188 (1st Cir. 1988) (holding that allowing the government to compel production of unpublished material would (1) intrude upon the news gathering and editorial process; (2) improperly convert journalists into investigators for the government; (3) provide the media with a disincentive to preserve unpublished materials; and (4) impose a burden on journalists in responding to subpoenas).

The state and federal courts of Kansas have recognized the existence of a reporter's qualified privilege. In *State v. Sandstrom (In re Pennington)*, 224 Kan. 573 (1978), the Kansas Supreme Court, relying on *Branzburg*, stated:

> We believe a newsperson has a limited privilege of confidentiality of information and identity of news sources, although such does not exist by statute or common law. . .

> Courts applying *Branzburg* to criminal cases have generally concluded that the proper test for determining the existence of a reporter's privilege in a particular criminal case depends upon a balancing of the need of a defendant for a fair trial against the reporter's need for confidentiality. (citations omitted). Whether a defendant's need for the confidential information or the identity of its source outweighs the reporter's privilege depends on the facts of each case. As a general rule, disclosure has been required ***only in those criminal cases where it is shown the information in the possession of a news reporter is material to prove an element of the offense***, to prove a defense asserted by the defendant, to reduce the classification or gradation of the offense, or to mitigate or lessen the sentence imposed. When the information sought has a bearing in one of these areas, the newsperson's privilege must yield to the defendant's rights to due process and a fair trial.

224 Kan. at 574, 575-76 (emphasis added). *See also New York Times Co. v. Gonzalez*, 382 F. Supp. 2d 457, 503 (S.D.N.Y. 2005) (listing Kansas as one of 14 states in which "a reporter's privilege has been recognized by either the state's highest court or an appeals court in civil or criminal proceedings."); *Hart v. Playboy Enterprises, Inc.*, No. 76-258-C2, 1978 U.S. Dist. LEXIS 15357, at *7 (D. Kan. 1978) ("We note that the Kansas Supreme Court recently recognized a newsman's limited privilege of confidentiality in a criminal case." [citing *Pennington*]).

The qualified privilege was also recognized by the Tenth Circuit Court of Appeals in *Silkwood v. Kerr-McGee Corp.*, 563 F.2d 433 (10th Cir. 1977). There, the court provided a four-part test which facilitates the balancing of interests required by *Branzburg* and *Pennington*:

1. Whether the party seeking information has independently attempted to obtain the information elsewhere and has been unsuccessful.

2. Whether the information goes to the heart of the matter.

3. Whether the information is of certain relevance.

4. The type of controversy.

> From these criteria, it has to be concluded that compulsory disclosure in the course of a "fishing expedition" is ruled out in the First Amendment case.

563 F.2d at 438. *Accord United States v. Foote*, No. 00-CR-20091-01-KHV, 2002 U.S. Dist. LEXIS 14818 (D. Kan. Aug. 8, 2002).[3]

The test articulated in *Silkwood* is completely consistent with the Kansas Supreme Court's decision in *Pennington*. This was recognized in *Weathers v. American Family Mutual Insurance*, No. 87-2557-O, 1989 U.S. Dist. LEXIS 18300, at *2 (D. Kan. Sept. 26, 1989), where the court said:

> The Kansas courts recognize the newsman's privilege as one based on the First Amendment, rather than statute or common law. *See In re Pennington*, 224 Kan. 573, 581 P.2d 12 (1978). The Tenth Circuit also recognizes that the newsman's privilege is based on the U.S. Constitution, First Amendment. *See Silkwood v. Kerr-McGee Corp.*, 563 F.2d 433 (10th Cir. 1978). Thus the applicable federal and state law would both look to the First Amendment of the U.S. Constitution to define and determine the newsman's privilege. Both federal and Kansas cases, moreover, follow the same course. In *Pennington*, the court held a balancing test must be followed. This is basically the same approach adopted in *Silkwood* by the Tenth Circuit Court of Appeals.

In order to establish the three prongs of the *Silkwood* test, the state cannot simply offer speculation as to what the unpublished materials might show. In *Pugh v. Avis Rent-a-Car System*, No. M8-85, 1997 U.S. Dist. LEXIS 16671 (S.D.N.Y. Oct. 28, 1997), a litigant tried

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[3] This same test has been applied beyond the Tenth Circuit. *See* STONE AND LIEBMAN TESTIMONIAL PRIVILEGES § 8.09, p. 429 (1983). *See also, e.g., United States v. Cuthbertson*, 630 F.2d 139, 148 (3d Cir. 1980), *cert. denied*, 449 U.S. 1126 (1981); *Zerelli v. Smith*, 656 F.2d 705 (D.C. Cir. 1981).

to compel the production of "outtakes" from interviews conducted by the CBS new program, "60 Minutes". The court found that the litigant had failed to make the necessary showing to overcome the qualified privilege:

> Stripping away the rhetoric in Defendant's memorandum of law, this subpoena is based only upon Defendant's "hunch" that the 60 Minutes interview outtakes of the fourteen individuals named in the subpoena must contain some information useful to its argument against class certification simply because Plaintiffs' counsel made allegedly improper statements to other unrelated media sources. This "hunch," without more, does not constitute a clear and specific showing that the nonpublished information is highly material and relevant. Furthermore, because Defendant offers only unsupported speculation as to what information the outtakes might contain, Defendant also fails to make a clear and specific showing that the information sought is necessary or critical to its claim . . ..

1997 U.S. Dist. LEXIS at *12.

The "fishing expedition" nature of the state's subpoena in the present case is conclusively established by the fact that the state first caused the subpoena to be issued even before The Wichita Eagle published a story based upon Ms. Gruver's conversations with defendant Robinson. In other words, the subpoena was issued based upon nothing more than the fact that Ms. Gruver and spoken to Robinson. The state apparently believes it is entitled to know everything Robinson said to Ms. Gruver, simply because he said it. This is insufficient. There is absolutely no indication that the unpublished information possessed by Ms. Gruver "is material to prove the element of the offense" as required by *Pennington*, or "goes to the heart of the matter" and is "of certain relevance" as required by *Silkwood*.[4]

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[4] The relevance requirement has also been articulated by the Kansas Supreme Court. As stated in *State, ex rel. Stephan v. Clark*, 243 Kan. 561, 568 (1988):

> The relevancy requirements of subpoenas in aid of civil or criminal

The mere fact that a person—reporter or otherwise—has a conversation with a person who has been charged with a crime, should not automatically compel that person to testify as to the nature of the conversation. *See In re Paul*, 513 S.E.2d 219 (Ga. 1999) (government did not establish necessary elements to overcome reporter's privilege and reporter was not required to turn over unpublished materials concerning interview of a murder defendant).

In sum, there is no indication that the subpoena issued to Ms. Gruver constitutes anything more than a fishing expedition on the part of the state. The state should be required to come forward with specific evidence demonstrating that the requested materials are highly relevant, critical to its case and cannot be obtained through other means. Unless a high standard is set for the production of this material, the state could simply peruse the newspaper on a daily basis and routinely subpoena reporters who obtain and publish information regarding criminal matters. This would be directly contrary to the First Amendment and the reporter's privilege. As stated by the Court in *United States v. National Talent Associates, Inc.*, 25 Media L. Rep. 2550 (D.N.J. 1997):

> The Court must be mindful of "the essential role played by the press in the dissemination of information and matters of interest

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> litigation have been called "stringent." *See Yellow Freight System, Inc. v. Kansas Commission on Civil Rights*, 214 Kan. 120, 125, 519 P.2d 1092 (1974); *State ex rel. Wolgast v. Schurle*, 11 Kan. App. 2d 390, 394, 722 P.2d 585 (1986). 97 C.J.S., Witnesses § 25(e) summarizes the rule on what type of documents may be required to be produced:
>
> "Generally speaking, a subpoena duces tecum may be used to compel the production of any proper documentary evidence, such as books, papers, documents, accounts, and the like, which is desired for the proof of an alleged fact *relevant to the issue before the court or officer issuing the subpoena*, provided that the evidence which it is thus sought to obtain is competent, *relevant*, and *material*." (Emphasis added.).

> and concern to the public," . . . To allow the Government to subpoena news gathering material simply because that method is more convenient than securing equivalent information from non-privileged sources would impermissibly intrude upon protected investigative and editorial processes and subvert the privilege. Litigants cannot feel free to do this and journalists should not hesitate to report on an issue that may be come subject to litigation. As Justice Powell clarified in his concurring opinion (in *Branzburg*): "[c]ertainly, we do not hold . . . that state and federal authorities are free to 'annex' the news media as 'an investigative arm of government."' *Branzburg*, 408 U.S. at 709 (Powell, J. concurring).

For the reasons stated above, the Court should quash the subpoena issued to Debbie Gruver in this matter.

FLEESON, GOOING, COULSON & KITCH, L.L.C.

By_____
Lyndon W. Vix - #12375
Attorneys for Debbie Gruver and The Wichita Eagle and Beacon Publishing Company

2-10

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above Memorandum was hand-delivered this 29th day of December, 2006, to:

Nola Tedesco Foulston
District Attorney
Sedgwick County Courthouse Annex
535 N. Main
Wichita, Kansas 67203

Marc Bennett
Assistant District Attorney
Sedgwick County Courthouse Annex
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Lyndon W. Vix

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Written Testimony
SB 313
Senate Judiciary Committee
March 10, 2008
By
Kent Cornish, President
Kansas Association of Broadcasters

The Kansas Association of Broadcasters serves a membership of free-over-the-air radio and television stations in Kansas – nearly 230 in all. Most of those stations have news departments that try hard to keep their listeners and viewers informed. We stand in support of SB 313.

The Kansas Legislature recognizes that "a representative government is dependent upon an informed electorate…" (KSA 75-4317). This bill would protect reporters' ability to report on the workings of government, and thus keep the electorate informed.

How else does the news media gain the trust of citizens to uncover wrong doing and corruption, if there is a likelihood their identity will be revealed. SB 313 doesn't preclude the courts from gaining access to information that is necessary to secure the interest of the parties. It simply requires convincing evidence in a hearing that would outweigh any harm that the disclosure of the information would have on the free flow of information to the public – read electorate.

Quoting Congressman Mike Pence, a republican from Indiana, "Freedom is no more than one generation from expiring." That freedom applies to reporters as well.

Thank you for your time and consideration.

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Senate Judiciary
3-10-08
Attachment 3

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

March 10, 2008

To: Sen. John Vratil, chairman, Senate Judiciary Committee

From: Doug Anstaett, executive director, Kansas Press Association

Re: Supplemental cases involving subpoenas of reporters in Kansas

The following anecdotal information has been supplied by Sherry Chisenhall, executive editor of the Wichita Eagle. Other reporter subpoenas handled by Mike Merriam, media law attorney in Topeka, are listed at the bottom.

Wichita Eagle Cases

April 2000

District attorney's office issues subpoena for Wichita Eagle reporter Tim Potter's notes from jailhouse phone interview with murder defendant Tanner Green. Potter received the subpoena the day after his story was published. We moved to quash and lost, then refused to turn over the notes and were held in contempt and fined $500 per day. Facing that fine, we published the notes online (our policy is to never release unpublished material), then turned them over. The key element in this case is that the fine was so severe that we were unable to risk an appeal while the fines rolled up.

2006

* Wichita Eagle Reporter Deb Gruver did a series of jail phone interviews with murder defendant Elgin Robinson, and received a subpoena from the DA's office before she could even get a story published. KWCH was also subpoenaed for unaired footage. We moved to quash on the grounds it was clearly a fishing expedition and we had not even had the opportunity to publish a story. We lost, and published the notes online before turning them over. The judge ruled that based on the subsequent story, in his view the defendant appeared to confess to rape, and prosecutors' need for that information overrode any First Amendment protections. Anticipating we would publish notes online before turning them over, the assistant DA asked the judge to bar us from doing so. He declined to do that, but the DA told us after the fact that the judge was angry we had posted the notes. The judge refused to postpone enforcement of his order to allow us to appeal.

* A local bank subpoenaed notes from Wichita Eagle business columnist Carrie Rengers in an attempt to learn the whereabouts of a source mentioned in her column. Before moving to quash the subpoena, our publisher called the bank president and talked him into having the subpoena withdrawn.

2007

* Reporter Tim Potter was again subpoenaed by the district attorney's office, this time seeking the identity of an unnamed source in a crime story and demanding interview notes also. Tim interviewed the neighbor of a registered sex offender who was accused of sexually abusing neighborhood children. We were prepared to oppose the subpoena, but it was withdrawn because the case did not go to trial.

* A local bank subpoenaed two reporters who had investigated whether a local bank branch was refusing services to black people but not white people. Wichita Eagle reporters Mark McCormick and D[illegible]

Senate Judiciary
3-10-08
Attachment 4

had gone to the branch and requested the services, and were treated differently. Mark wrote about it in his column. The bank is being sued by the man who tipped Mark to the alleged discrimination. The bank subpoenaed the two reporters, wanting interview notes, emails between the two of them, and depositions. The incident happened several years ago and the notes and emails no longer exist. We agreed that they would give depositions only describing what happened in the bank, and not the newsgathering or editing process. Those depositions were taken in January 2008.

Other cases

The following cases involve subpoenas of reporters handled by the law office of Mike Merriam, a Topeka media attorney. If further details are requested, we would be glad to provide those.

Eileen J. Harris v. Vinod N. Patel — Case No. 92-CV-1483

Eaton, et al. v. Meneley, et al. — Case Nos. 01-2097-KHV and 01-2098-CM

State of Kansas v. Rex Childers — Case No. 96-CR-3925

Meneley v. Hamilton, et al. — Case No. 99-C-460

The State of Kansas v. David R. Meneley - Case No. 99-CR-1295

Hall Publications, Inc. V. Stauffer Communications, Inc. - Case No. 92-4253-SAC

The State of Kansas v. Fred W. Phelps, Sr. - Case No. Case No. 93-CR-00326

The State of Kansas v. Jonathan B. Phelps - Case No.: 93-CR-1966

Blake v. Board of Commissioners, Case No. 00-C-904

Subpoena to *The Topeka Capital-Journal* - Case No. 01-2097-KHV & 01-2098-CM

Beverly Beam v. Stauffer Communications, Inc. - Case No. 93-4196 RDR

MCC RADIO, LLC, d/b/a WIBW v. Kuhn, et al. - Case No. 05-C-750

Donna Palatas v. WIBW-TV - Case No. 57-160-00107-98

David M. Tyree v. Lucretia Tyree, Case No. 99-D-478

Kansas Press Association, Inc.

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

March 10, 2008

To: Sen. John Vratil, chairman, Senate Judiciary Committee
From: Doug Anstaett, executive director, Kansas Press Association
Re: Status of reporter's privilege law in Kansas

The following was compiled for the Reporters Committee for Freedom of the Press by William P. Tretbar, a Wichita attorney who represents the Wichita Eagle and other media outlets in a variety of media law cases.

I. Introduction: History & Background

Kansas does not have a shield statute and the case law governing actions in the state courts is poorly developed. In the federal courts, the decisions of the United States Court of Appeals for the Tenth Circuit control, and there are a number of Tenth Circuit decisions in which a relatively strong qualified privilege has been recognized and applied.

II. Authority for and source of the right

A. Shield law statute

Kansas does not have a shield statute.

B. State constitutional provision

The Kansas Constitution does not have an express shield provision, nor has any other provision been construed in a manner providing such protection.

C. Federal constitutional provision

State trial judges customarily apply the decisions of the Kansas appellate courts, even in cases involving questions of federal constitutional law. In *In re Pennington*, 224 Kan. 573, 581 P.2d 812 (1978), *cert. denied*, 440 U.S. 929 (1979), the Kansas Supreme Court held that "a newsperson has a limited privilege of confidentiality of information and identity of news sources" based on the First Amendment. 224 Kan. At 574, 581 P.2d at 813. There have been no reported appellate decisions involving the qualified privilege since *Pennington*.

Federal judges look to the decisions of the United States District Court for the District of Kansas and the United States Court of Appeals for the Tenth Circuit. In *Silkwood v. Kerr-McGee Corp.*, 563 F.2d 433 (10th Cir. 1977) ("*Silkwood*"), the Tenth Circuit also recognized the existence of a qualified First Amendment privilege.

D. Other sources

There are no other sources of law discussing this issue.

III. Scope of protection

Generally — *State Courts*: Journalists and practitioners have struggled to understand *In re Pennington*, 224 Kan. 573, 581 P.2d 812 (1978), *cert. denied* 440 U.S. 929 (1979) ("*Pennington*"), the only state court appellate decision discussing the qualified privilege, since it was decided. It seems clear that the Kansas Supreme Court wanted to carve out a qualified privilege available to journalists under certain circumstances. Nevertheless, the upshot of the decision is that a litigant need only show that information in issue is relevant in order to overcome the privilege.

Whether a defendant's need for the confidential information or the identity of (a journalist's) source outweighs the reporter's privilege depends on the facts of each case. As a general rule, disclosure has been required only in those criminal cases where it is shown the information in possession of the news reporter is material to prove an element of the offense, to prove a defense asserted by the defendant, to reduce the classification or gradation of the offense charged, or to mitigate or lessen the sentence imposed. When the information sought has a bearing in one of these areas, the newsperson's privilege must yield to the defendant's rights to due process and a fair trial.

While courts recognize that a news reporter's privilege is more tenuous in a criminal proceeding than in a civil case, that fact in and of itself does not automatically require disclosure in a criminal case. If that were true, no privilege would exist for a news reporter summoned in a criminal case. Nor does the privilege evaporate because the defendant is charged with murder. The proper test enunciated by the *Branzburg* majority is whether the information sought is relevant to the issues before the tribunal. Mr. Justice Powell's concurring opinion and the vast majority of criminal cases since *Branzburg* dealing with this issue recognize this feature as a primary requirement, but further suggest a test of balancing the need of the defendant for the information or the identity of the news source against the privilege of the news reporter. The trial court in this case stated that if the balancing test were applied, the need for the information outweighed the news reporter's privilege of confidentiality.

The problem, of course, is that "relevant evidence" includes any evidence "having any tendency in reason to prove any material fact." K.S.A. 60-401(b). If "relevance" is the criteria for overcoming the privilege, journalists are essentially on the same footing as any other witness.

A number of state court trial judges faced with qualified privilege issues have simply ignored *Pennington* and applied the law of the Tenth Circuit. *See, e.g.*, *Insurance Management Associates v. Miller*, 1994 WL 315808 (Kan.Dis.Ct. 1994). In the author's experience, this is not an outcome journalists can count on.

It should also be noted that since *Pennington* was decided, the Kansas Supreme Court, in two cases not involving journalists, has suggested that it will require a litigant seeking confidential information to "exhaust alternative sources of information before seeking a court's order compelling discovery." *See*, *Berst v. Chipman*, 232 Kan. 180, 189, 653 P.2d 107 (1982) (information generated by NCAA in infraction investigation), and *Adams v. St. Francis Regional Med. Center*, 264 Kan. 144, 160, 955 P.2d 1169 (1998) (medical peer review information). An excellent argument can be made that these decisions should apply with equal force in cases involving confidential information in the possession of a journalist. Until the Kansas Supreme Court makes this clear, however, journalists can expect many state trial courts to continue to look

to *Pennington* for the law in this area.

***Federal Courts*:** The qualified privilege available in the federal courts of Kansas is much stronger. As first described in *Silkwood* and applied in several Tenth Circuit decisions thereafter, it essentially requires a litigant attempting to overcome the privilege to demonstrate that the information in issue is crucial to the litigation and unavailable from other sources. *See*, *e.g.*, *Grandbouche v. Clancy*, 825 F.2d 1463 (10th Cir. 1987).

Absolute or qualified privilege
The privilege is qualified in both state and federal courts, regardless of the nature of the information in issue.

III. Scope of protection
1. Civil
The qualified privilege is said to be stronger in a civil case than in a criminal case: In *Pennington*, for example, the court noted that:

"While courts recognize that a news reporter's privilege is more tenuous in a criminal proceeding than in a civil case, that fact in and of itself does not automatically require disclosure in a criminal case. If that were true, no privilege would exist for a news reporter summoned in a criminal case."

In *Silkwood*, the court noted without amplification that the "type of controversy" is a factor to consider in determining whether the qualified privilege is available in a particular case. 563 F.2d at 438.

2. Criminal
See above. In *Pennington*, the court stated that:

Whether a defendant's need for the confidential information or the identity of its source outweighs the reporter's privilege depends on the facts of each case. As a general rule, disclosure has been required only in those criminal cases where it is shown the information in possession of the news reporter is material to prove an element of the offense, to prove a defense asserted by the defendant, to reduce the classification or gradation of the offense charged, or to mitigate or lessen the sentence imposed. When the information sought has a bearing in one of these areas, the newsperson's privilege must yield to the defendant's rights to due process and a fair trial.

3. Grand jury
There is no statutory or case law addressing this issue in the state courts. (Note: grand juries are rarely convened pursuant to state law. A procedure journalists are more likely to encounter in the state courts is the prosecutorial "inquisition." *See* K.S.A. 22-3101, *et seq.* An inquisition is essentially a discovery proceeding, in which the district attorney is authorized to issue subpoenas for testimony under oath regarding alleged violations of state law. There is no case law discussing the privilege in the context of an inquisition.)

In federal grand jury cases, the courts in Kansas (and throughout the federal system) are bound to follow the decision in *Branzburg v. Hayes*, 408 U.S. 665 (1972), which involved three distinct grand jury subpoenas. Although Justice Powell's concurring opinion in *Branzburg* is cited in most decisions regarding the reporter's privilege, it is important to note that the *Branzburg*

majority declined to recognize the existence of a such a privilege and ordered the reporters claiming the privilege to testify.

III. Scope of protection

Information and/or identity of source

If the qualified privilege applies, it protects the identity of a confidential source, as well as information implicitly identifying the source, under both state and federal case law.

Confidential and/or non-confidential information

There is no statutory or case law specifically addressing this issue. As noted above, however, the Kansas Supreme Court has suggested in two cases not involving journalists that a litigant seeking confidential information will be required to demonstrate that he or she has exhausted alternative sources of the information in issue. *Berst v. Chipman*, 232 Kan. 180, 189, 653 P.2d 107 (1982); *Adams v. St. Francis Regional Medical Center*, 264 Kan. 144, 160, 955 P.2d 1169 (1998).

Published and/or non-published material

Although there is no statutory or case law addressing the issue, it is unlikely that a Kansas court will permit a journalist to claim the qualified privilege with respect to published information, based on the doctrine of waiver. *See* K.S.A. 60-437 and Federal Rules of Evidence § 501.

Reporter's personal observations

There is no statutory or case law addressing this issue. The author believes it unlikely that a state or federal court will permit a reporter to refuse to testify regarding his or her personal observations, assuming they bear on the matter in issue.

Media as a party

Kansas does not have a shield statute and, thus, there is no statutory language indicating whether different reporter's privilege rules apply in cases in which a journalist and his or her employer are defendants in a defamation case. There is case law suggesting the rules do change, and that journalists may pay a price for claiming the privilege, at least in defamation cases in which proof of actual malice is an essential element. *See, e.g., Gleichenhaus v. Carlyle*, 226 Kan. 167, 170, 597 P.2d. 611 (1979), and *Herbert v. Lando*, 441 U.S. 153 (1979). In *Grandbouche v. Clancy*, 825 F.2d 1463 (10th Cir. 1987), however, a somewhat unusual non-media First Amendment privilege case, the Tenth Circuit "refuse(d) to adopt a *per se* rule that a plaintiff waives his First Amendment privileges simply by bringing suit." 825 F.2d at 1467.

Defamation actions

See preceding section. There have been no state or federal decisions which specifically discuss penalties for non-compliance with discovery obligations in defamation cases.

IV. Who is covered

There are no state decisions defining "reporter," "news" or similar terms. The decision in Silkwood, which involved the privilege claim of a documentary film maker, suggests that the Tenth Circuit will define these terms somewhat liberally, to the extent it is necessary to define them. Indeed, in the subsequent case of Grandbouche v. Clancy, 825 F.2d 1463 (10th Cir. 1987), the court recognized the qualified First Amendment privilege rights of an individual who did not claim to be a news gatherer or representative of any communications medium.

Whose privilege is it?

There is no statutory or case law addressing this issue.

Following is an excerpt from
THE REPORTER'S PRIVILEGE: A HISTORICAL OVERVIEW
Media Law Resource Center, N.Y., N.Y.
(with support from the McCormick Tribune Foundation)
Originally distributed October 20, 2006,
At the Media Law Seminar, KBA Media Bar Committee

1972: The only time the **Supreme Court squarely faced the reporter's privilege issue** was in *Branzburg v. Hayes*, 408 U.S. 665 (1972).... The case arose out of four grand jury investigations:

- Two grand juries were convened to investigate reports in the Louisville, Kentucky *Courier-Journal* on the local drug trade. *Branzburg v. Pound*, 461 S.W.2d 345 (Ky.Ct. App. 1970); *Branzburg v. Meigs*, 503 S.W.2d 748 (Ky.Ct.App. 1971).
- The third grand jury investigation involved a Massachusetts grand jury's investigation of a television journalist's coverage of the internal planning of protests by the Black Panther movement. *In re Pappas*, 358 Mass. 604, 266 N.E.2d 297 (1971).
- The fourth investigated reporting on the Black Panther movement by *New York Times* reporter Earl Caldwell. *Caldwell v. U.S.*, 434 F.2d 1081 (9th Cir. 1970).

The Court held that the First Amendment does not protect a journalist who has actually witnessed criminal activity from revealing his/her information to a grand jury. However, five justices recognized the existence of a qualified privilege for reporters. As described by Justice Potter Stewart in his dissenting opinion, the First Amendment rights of reporters should be weighed against the subpoenaing party's need for disclosure, with the court considering in the balance whether the information is relevant and material to the party's case; whether there is a compelling and overriding interest in obtaining the information; and whether the information could be obtained from another non-media source.

Paul Branzburg was sentenced to six months in jail, but had moved to Michigan to work for *The Detroit Free Press* and, despite the Kentucky governor personally lobbying Michigan Governor William Milliken to extradite Branzburg back to Kentucky, Milliken refused and Branzburg never returned to Kentucky or served a day in jail.

1970s-1990s: In the year following *Branzburg*, dozens of reporters were cited for contempt and many were jailed for refusing to comply with subpoenas. News organizations sought protection and the lower federal courts and state courts and legislatures responded. At the time of the *Branzburg* ruling, only 17 states had some sort of statutory protection protecting confidential sources and only a handful of jurisdictions had recognized the right under the common law or constitutional law;[i] now, the courts and/or legislatures of every state but Wyoming have recognized a reporter's privilege, including 31 states and the District of Columbia which have state shield law statutes.[ii]

Although, following the decision, there was some debate as to whether the *Branzburg* court had rejected any First Amendment privilege for journalists or had recognized the existence of such protection but found it to have been overcome in that specific set of circumstances, the lower federal and state courts gradually developed a jurisprudence reading *Branzburg* to support the existence of a constitutional privilege in certain circumstances. Most of these courts focused on Justice Powell's opinion, concluding that he and the dissenters endorsed a balancing of interests, and roughly the same balancing test began to emerge, focusing on three factors:

(1) the relevance of the information being sought;
(2) whether the information is necessary or critical to a party's claim or defense; and

(3) whether the party seeking the information has exhausted alternative sources.

Although there were nuanced differences among these courts, for example, on the precise standard to be applied and the application of the privilege in various contexts, there was a broad consensus regarding the core meaning of *Branzburg*—*i.e.*, that those who engage in reporting have some constitutionally-based protections against compelled disclosure, the application of which requires a careful balancing in each case.

Late 1990s-present: Tears in the patchwork of protection on which journalists had come to rely are becoming increasingly apparent. There has been a notable rise in the number of subpoenas served on journalists and application of new techniques in "leak" investigations—such as investigators asking government employees to sign waivers releasing reporters from confidentiality agreements. Among the high-profile cases:

- Rhode Island investigative reporter **Jim Taricani** of the NBC affiliate in Providence was released on April 9, 2005 after serving four months of a six-month house arrest sentence for refusing to reveal who gave him an FBI videotape showing a top aide of former Mayor Vincent "Buddy" Cianci, Jr. of accepting a bribe. (Cianci was later convicted on corruption charges and is serving a five-year, three-month sentence.) The videotape was leaked to Taricani in violation of a protective order issued by a federal judge in connection with the corruption investigation. The sentence was issued even though the special prosecutor appointed to investigate the source of the leak determined the identity of the source. Taricani's source later pleaded guilty to contempt and perjury, and, in September 2005, was sentenced to 18 months in prison on the perjury charge.
- On July 6, 2005, a federal judge ordered that Judith Miller of the *New York Times* be **jailed** for refusing to disclose her source before the grand jury investigating the leak of the identity of a covert C.I.A. operative, Valerie Plame. That same judge in October 2004 had sentenced Miller and *Time* reporter Matt Cooper to serve up to 18 months in jail (the term of the grand jury) for civil contempt of court for refusing to disclose their confidential sources, but those sentences were stayed pending appeal. Cooper agreed to testify after his source released him from his promise of confidentiality, thereby avoiding jail. Miller was released on September 29, 2005, after serving 85 days at the Alexandria Detention Center in Virginia. She agreed to testify before the grand jury after receiving a personal waiver from her source. (Information on case current as of October 21, 2005.)

  Background: In February 2005, Miller and Cooper appealed the civil contempt order imposed by the district court judge to a three-judge panel of the D.C. Circuit Court of Appeals. The panel denied the request and held that no privilege protects journalists from being compelled to disclose their sources before a grand jury. The court unanimously agreed that the First Amendment does not provide protection. The three judges split on the question of whether a common law privilege may exist, although even those who found the existence of a common law privilege agreed that it would have been overcome in this case—but the portion of the opinion supporting this decision was only available to the government as it was redacted from the public version. Neither the journalists (and their lawyers) nor the public has been allowed to see the reasons why the government claims it must have their testimony.

  The case was then appealed to the full D.C. Circuit Court of Appeals, which declined to hear the case in April 2005. In late June 2005, the Supreme Court refused to take up the case.

  The Miller-Cooper case involves a leak investigation following the publication by columnist Robert Novak of the identity of undercover CIA officer Plame, whose husband, former Ambassador Joseph C. Wilson IV, had publicly criticized the Bush

administration's claim that Iraq had been attempting to buy uranium from Niger to make nuclear weapons. In publishing Plame's identity, Novak cited two unnamed "senior administration officials" as his sources. Patrick Fitzgerald, the special prosecutor investigating the leak, subpoenaed or sought testimony from at least five reporters, one of whom—Miller—never even wrote a story about Plame. It is unclear whether Robert Novak was subpoenaed and/or whether he has testified regarding his sources for the initial story.

On October 28, 2005, a grand jury indicted I. Lewis "Scooter" Libby, Vice President Dick Cheney's chief of staff, on five charges related to the leak investigation: one count of obstruction of justice, two counts of perjury and two counts of making false statements. (Information on case current as of November 1, 2005.)

- Patrick Fitzgerald also unsuccessfully sought telephone company records for *New York Times* reporters Judith Miller and Philip Shenon in connection with a Chicago-based grand jury investigating whether someone in the government had told them of a planned raid on an Islamic charity suspected of giving money to al Qaeda.
- In California, FBI agents raided the home of Victor Conte (whose nutritional supplement company, BALCO Labs, was alleged to have provided designer steroids to star athletes) in order to discover who had leaked grand jury testimony from the case to the *San Francisco Chronicle*.
- Six reporters have been subpoenaed in connection with the lawsuit by **Wen Ho Lee**, the nuclear scientist who had been named by the press as being suspected of passing secrets to the Chinese. In August 2004, U.S. District Judge Thomas Penfield Jackson held five of these reporters in contempt, imposing a $500 a day fine (delayed pending appeals), after the reporters answered questions posed by Lee's attorneys but refused to name their sources. The reporters are: AP reporter H. Josef Hebert; *New York Times* reporters James Risen and Jeff Gerth; *Los Angeles Times* reporter Robert Drogin; and Pierre Thomas, who was at CNN when the relevant stories were reported. In June 2005, the D.C. Circuit Court of Appeals upheld the contempt orders against four of the reporters. A petition for rehearing en banc is currently pending. (Information current as of September 8, 2005.)
- About a dozen news organizations were subpoenaed in connection with a lawsuit by **Steven Hatfill**, charging violations under the Privacy Act over government leaks and Hatfill having been named a "person of interest" in the investigation into the 2001 anthrax attacks. The subpoenas were issued after the Department of Justice claimed that submitting to Hatfill's discovery requests would hamper their ongoing investigation and D.C. District Court Judge Reggie B. Walton ordered 100 federal agents to waive any confidentiality agreements with the media. The organizations subpoenaed include: NPR (which subpoena was later withdrawn), the AP, the *Washington Post*, *Newsweek* and CBS.

Coinciding with this concentration of court cases seeking confidential sources or notes, some federal courts have begun questioning what had come to be a nationally accepted legal norm with respect to the reporter's privilege. For example:

1998: In *U.S. v. Smith*, 135 F.3d 963 (5th Cir. 1998), the court interpreted *Branzburg* as holding that the First Amendment protects the media from subpoenas only when they are issued to harass the press.

2003: In *McKevitt v. Pallasch*, 339 F.3d 530 (7th Cir. 2003), Judge Richard Posner, who acted without the benefit of any briefing or oral argument on the subject from the

reporters, challenged the existing consensus among the sister circuits in a case in which the appeal had been dismissed as moot. Noting that "[a] large number of cases conclude, rather surprisingly in light of *Branzburg*, that there is a reporter's privilege," the Court wrote that, "rather than speaking of privilege, courts should simply make sure that a subpoena *duces tecum* directed to the media, like any other subpoena *duces tecum*, is reasonable in the circumstances."

Proposed Military Guidelines: In early February, 2005, the Air Force outlined revisions it is considering making to its regulations to discourage uniformed lawyers from serving subpoenas on journalists, after several reporters were served with Air Force subpoenas in preceding months for court-martial proceedings involving victims of alleged rape. The announcement followed a meeting between the Air Force's acting judge advocate general and members of a national organization of journalists who cover victims of violence, who had emphasized how difficult it can be for victims of violence to tell their stories to reporters and cautioned that victims might be even more reluctant to come forward in the future if they know that a reporter's notes might be used in court.

Echoing the DOJ Guidelines, the memo laying out the proposed Air Force guidelines suggests that Air Force attorneys should "strike the proper balance between the public's interest in the free dissemination of ideas and information and the public's interest in effective law enforcement." The proposed revisions would encourage uniformed lawyers to consult with "experienced counsel at their higher headquarters" and talk to managers at media outlets before serving a subpoena.

Federal Shield Law Efforts:
Against this backdrop, emphasizing the need to establish consistency and uniformity in the protection of newsgathering, a bipartisan group of lawmakers have introduced bills in the House and Senate in an effort to enact a federal shield law. In February 2005, Representatives Mike Pence (R-Ind) and Rick Boucher (D-Va) introduced the "Free Flow of Information Act" (a.k.a "Media Shield Law") in the House (H.R. 581); and Senator Richard Lugar (R-Ind) then introduced an identical bill in the Senate (S. 340), which was co-sponsored by Senator Chris Dodd (D-Conn), who had introduced a similar bill in the prior Congress (S. 369) (the "Free Speech Protection Act"). Revised versions of the Free Flow of Information Act were introduced in the House (H.R. 3323) and the Senate (S. 1419) on July 18, 2005.

At a July 20, 2005 hearing of the Senate Judiciary Committee to discuss the Free Flow of Information Act, Congressman Pence emphasized that the goal is to protect citizens' right to know what government is doing. "Without the assurance of confidentiality, many whistle-blowers will simply refuse to come forward, and reporters will be unable to provide the American public with information they need to make decisions as an informed electorate."[iii] The Senate Judiciary Committee held a second hearing on the bill on October 19, 2005. (Legislative information current as of November 1, 2005.)

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[i] Kelli L. Sager, *et al.*, "The Road Less Taken: The Path to Recognition of a Qualified Reporter's Privilege through the Law of Evidentiary Privileges," published in *White Paper on the Reporter's Privilege* (Media Law Resource Center, Inc., 2004), at p. 20.

[ii] *See New York Times v. Gonzales*, 04 Civ. 7677 (RWS), at 97-100 (S.D.N.Y 2005).

[iii] *Reporters' Shield Legislation: Issues and Implications Before the Senate Comm. on the Judiciary*, 109th Cong. (July 20, 2005) (statement of Congressman Mike Pence).

Following is an excerpt (with modified footnoting and some explanatory inserts) from *Saving the Shield with Silkwood: A Compromise to Protect Journalists, Their Sources, and the Public*, by Leita Walker, Comment, University of Kansas Law Review, June 2005
Originally distributed October 20, 2006,
At the Media Law Seminar, KBA Media Bar Committee

[In 2002 and 2003, a] debate took place in Kansas regarding whether the state should adopt a shield law that would provide an absolute privilege to journalists to refuse to disclose confidential sources and information.[1] Eventually, a legislative advisory committee unanimously rejected the bill.[2] ....

Kansas's rejection of legislation meant to protect journalists reflects nationwide skepticism about the objectives—and the objective limits—of the Fourth Estate.[3] Further, public uncertainty about the media has manifested itself as hostility toward the profession, which in turn has contributed to an erosion of protections for journalists. While the public's fears are not necessarily unfounded, shield laws remain important to democracy in the twenty-first century. One case, *Silkwood v. Kerr-McGee Corp.*,[4] offers a compromise that protects journalists, their sources, and the public....

The [U.S. Court of Appeals for the] Tenth Circuit recognized a qualified privilege for journalists in *Silkwood v. Kerr-McGee Corp.*, a 1977 case in which Karen Silkwood's estate claimed Kerr-McGee had "willfully and wantonly contaminat[ed Silkwood] with toxic plutonium radiation."[5] As part of pretrial discovery, the corporation served a subpoena on Arthur Hirsch, who had investigated Silkwood's life and death with the intention of producing a documentary film.[6] The trial court denied protective relief to Hirsch and ordered him to produce and answer questions regarding information he claimed was provided to him in confidence.[7] On appeal, the Tenth Circuit considered (1) "whether a privilege exists in favor of a non-party witness which permits him to resist pretrial discovery in order to protect a confidential source of information," (2) whether such a privilege should apply to a documentary filmmaker, and (3) how the trial court should proceed.[8]

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1. *See* H.R. 2798, 2002 Leg. (Kan.) (amended version). The original version of the bill provided only a qualified privilege to journalists, but in conducting its initial study, the Judicial Council Press Shield Advisory Committee worked from an amended version of H.R. 2798. REPORT OF THE JUDICIAL COUNCIL PRESS SHIELD ADVISORY COMMITTEE 2 *at* http://www.kscourts.org/council/press_report.pdf (Dec. 5, 2003) [hereinafter COMMITTEE REPORT]. Although never formally adopted by the House Federal and State Affairs Committee, the amended version of the bill provided journalists with a qualified privilege to not disclose nonconfidential sources or information and an absolute privilege to not disclose confidential sources and information. Kan. H.R. 2798, at 1–2. The amended version of the bill is on file with the *Kansas Law Review*.

2. COMMITTEE REPORT, *supra* note [1], at 3.

3. "In the Fourth Estate model of press freedom, 'the press is autonomous, functioning as watchdog on the government, publicizing abuses, and, one hopes, arousing the citizenry.'" Clay Calvert, *And You Call Yourself a Journalist?: Wrestling with a Definition of "Journalist" in the Law*, 103 DICK. L. REV. 411, 431 n.126 (1999) (quoting LUCAS A. POWE, JR., THE FOURTH ESTATE AND THE CONSTITUTION: FREEDOM OF THE PRESS IN AMERICA 234 (1991)). "Apparently it was T.B. Macaulay who first referred to the reporters of Parliament as 'the fourth estate of the realm' . . . ." David Lange, *The Speech and Press Clauses*, 23 UCLA L. REV. 77, 90 n.79 (1975).

4. 563 F.2d 433 (10th Cir. 1977).

5. 563 F.2d 433, 435 (10th Cir. 1977). The plaintiffs also charged that Kerr-McGee Corporation and some if its agents violated Silkwood's constitutional rights by "conspiring to prevent her from organizing a labor union" and "by conspiring to prevent her from filing complaints against [it] under the Atomic Energy Act." *Id.* at 434–35. In the months before her death, Silkwood "was elected to the union bargaining committee, spoke before the Atomic Energy Commission (AEC) about plutonium contamination incidents in the plant, uncovered evidence of doctored quality-assurance records for defective fuel rods, and was contaminated by potentially lethal levels of plutonium." Kate Bronfenbrenner, *Foreword to* RICHARD RASHKE, THE KILLING OF KAREN SILKWOOD, at vii, vii (2d ed. 2000). She died on the way to meet with a *New York Times* reporter when her car was forced off the road. *Id.* The circumstances of Silkwood's death have caused many to wonder whether it was intentional. *See generally id.* at 89–189.

6. 563 F.2d at 434–35.

7. *Id.* at 434.

8. *Id.* at 435–36.

After examining [the U.S. Supreme Court's 1972 decision in] *Branzburg* [*v. Hayes*], the Tenth Circuit held that the existence of a privilege was "no longer in doubt."[9] According to the court, *Branzburg* made clear the First Amendment's "preferred position in the Bill of Rights" and held only that a reporter who receives a subpoena must appear and testify.[10] "He may, however, claim his privilege in relationship to particular questions which probe his sources."[11] The Tenth Circuit further held that the "Supreme Court has not limited the privilege to newspaper reporting," and that Hirsch's status as a filmmaker did not limit the scope and extent of the constitutional privilege.[12]

Finally, the Tenth Circuit laid down a balancing test for the district court to follow on remand of the case. It stated that before a journalist is ordered to testify, a court should consider…:

1. Whether the party seeking information has independently attempted to obtain the information elsewhere and has been unsuccessful.
2. Whether the information goes to the heart of the matter.
3. Whether the information is of certain relevance.
4. The type of controversy.[13]

The Tenth Circuit also stated that out of the four factors, relevance might be of particular importance and that the demand for information should not be vague.[14]

…

The law in Kansas is less clear. In the 1978 case of *In re Pennington*, the Kansas Supreme Court held that "a newsperson has a limited privilege of confidentiality of information and identity of news sources, although such does not exist by statute or common law."[15] The court looked at *Branzburg* and stated that in deciding whether a reporter's privilege exists, courts should balance an accused's need for a "fair trial against the reporter's need for confidentiality."[16] Nevertheless, the court held that the trial court did not abuse its discretion in sentencing reporter Joe Pennington to sixty days in jail for refusing to disclose the identity of a confidential news source.[17] In explaining its decision, the court reduced the balancing test to one of mere relevance by stating that it would "not disturb the ruling of the trial court unless the record clearly show[ed] the information sought [was] not relevant to the defense or could not lead the defendant to information relevant to her defense."[18]

In re Pennington has mystified its readers. As one commentator pointed out, the problem with the decision "is that 'relevant evidence' includes any evidence 'having any tendency in reason to prove any material fact.' If 'relevance' is the criteria for overcoming the privilege, journalists are essentially on the same footing as any other witness."[19] Indeed, the confusion caused by *In re Pennington* was one factor leading to the proposal of a shield law [for Kansas in 2002].[20]

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9. *Id.* at 437.
10. *Id.*
11. *Id.*
12. *Id.*
13. *Id.* at 438 (citing Garland v. Torre, 259 F.2d 545 (2d Cir. 1958)).
14. *Id.*
15. State v. Sandstrom (*In re* Pennington), 224 Kan. 573, 574, 581 P.2d 812, 814 (1978).
16. *Id.* at 575, 581 P.2d at 815.
17. *Id.* at 577, 581 P.2d at 816.
18. *Id.*
19. William P. Tretbar, *The Reporter's Privilege in Kansas, at* http://rcfp.org/cgi-local/privilege/contents.cgi?st=KS&t=frame (internal citations omitted) (last visited Mar. 3, 2005).
20. *See* COMMITTEE REPORT, *supra* note [1], at 4 ("Those Committee members in favor of enacting a statute point[ed] out that the current shield law in Kansas is contained in a single case [that] is 25 years old" and that "does not clearly set out the requirements for overcoming the privilege.").

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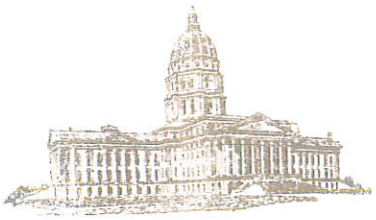

Senator Derek Schmidt
Majority Leader

Committee Assignments
Chair: Confirmation Oversight
Vice Chair: Assessment & Taxation
Organization Calendar & Rules
Member: Judiciary
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Testimony in support of Senate Bill 313
Presented to the Senate Judiciary Committee
by Senator Derek Schmidt

March 10, 2008

Mr. Chairman, members of the committee, thank you for the opportunity to testify before you this morning in support of Senate Bill 313, which would establish a Reporter's shield law in Kansas.

I support this legislation because I believe the First Amendment conveys a special condition on members of the press. Our Constitution contemplates that the news-gathering and the disseminating function is special -- is separate and apart from ordinary work -- and is a fundamental part of the system of checks and balances that keep our government free and accountable to the citizens.

For that reason, the Constitution prohibits us from enacting any law that abridges the freedom of the press. I believe enactment of a shield law, which would be a qualified testimonial privilege granted to bona fide members of traditional media organizations, would well serve the constitutional system and would further the purposes of the First Amendment.

In order for a free press to fulfill its obligation to ferret out information of importance to the public, journalists must be able to establish relationships with sources who have access to that sort of information. Sometimes, that requires a journalist to keep the source's identity confidential. If a journalist cannot give a reasonable assurance of confidentiality to a source, that source's willingness to provide information is likely to be chilled.

The proposed shield law will help traditional journalists to better protect confidential sources from disclosure. It will ensure that such disclosure can be compelled by a court only when absolutely essential and only when no other alternative is available to serve the interests of justice.

This bill proposes a reasonable shield law. It is tightly drawn. It ensures that courts can still balance all of the interests of justice with the interests of the public in having a free and vigorous press.

I encourage the committee to give this legislation favorable consideration.

Thank you for the opportunity to testify. I would be happy to stand for questions.

Senate Judiciary
3-10-08
Attachment 5

STATE OF KANSAS

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TOPEKA

SENATE CHAMBER

COMMITTEE ASSIGNMENTS

VICECHAIR: SPECIAL CLAIMS AGAINST THE STATE (JOINT), VICECHAIR
MEMBER: HEALTH CARE STRATEGIES
JUDICIARY
PUBLIC HEALTH AND WELFARE
TRANSPORTATION

CORRECTIONS AND JUVENILE JUSTICE OVERSIGHT (JOINT)

Testimony Before the
Kansas State Senate Judiciary Committee
On Monday, March 10th, 2008,
In Support of Senate Bill 590

Members of the Committee, Mr. Chairman, thank you for the opportunity to have a hearing before your Committee in support of Senate Bill 590. Senate Bill 590 amends K.S.A. 2007 Supplement 74-9501. It adds to that existing statute a Substance Abuse Policy Board. The Board becomes part of the Kansas Criminal Justice Coordinating Council on issues concerning treatments, sentencing, rehabilitation, and supervision of substance abuse offenders. It is the intent of this legislation to have the Board analyze and study driving under the influence and the use of drug courts by other states and jurisdictions. The Board would be comprised of the Secretary of Corrections, the Commissioner of Juvenile Justice, Secretary of Social and Rehabilitation Services, Director of the Kansas Bureau of Investigation, Chief Justice of the Kansas Supreme Court, and two individuals appointed by the Kansas Association of Addiction Professionals. The Board would on its first meeting elect its Chair.

Public members of the Board could receive compensation. There is no per diem to be paid for salaried state, county, or city employees. The report to the Board to the Kansas Criminal Justice Coordinating Council would also be submitted to the Governor, Attorney General, Chief Justice of the Supreme Court, Clerk of the House, and Secretary of the Senate.

The Division of Budget's Memorandum signed by the Director of the Budget state that the only outlay might be an additional $3200 for fiscal year 2009 from the state general fund for office supplies. Existing staff would support the Board's agendas, minutes, and reporting research required by the bill. Only $1581 would be dispensed also for the per diem and subsistence for the two non-governmental employees at the four meetings per year. Receiving the same rate of compensation that we do as legislators. The various state agencies involved state that additional staff time would be necessary to collect the data and research, but that could be absorbed by existing resources.

My experience, Mr. Chairman, over the last two legislative sessions in serving both with you on this Committee and in the Interim Judiciary Committee clearly informs me that there is a great desire to improve the Kansas Criminal Justice System dealing with offenders who are addicted to illegal drugs and alcohol. The current disbursement of

state and local government resources is extensive in law enforcement and criminal justice costs including, of course, incarceration. The cost to our society is significant also.

During the interim, I conducted research regarding other states' approaches to these very difficult issues. All of our members of the legislature, the various Committees that deal with these topics, and those in the Executive and Judicial branch all with the best intentions, the cost of a mistake or error of implementing ineffective programs are wasteful and even counterproductive. Criminal Justice policies can be devastating to the state resources and economy. The cost of substance abuse in Kansas cannot be valued only in dollars, but the continued abuse of illegal substances and the addictions that many Kansans are faced with includes costs to their families, not just by loss of employment, but in the dysfunctional families that become victims too of this substance abuse at times perpetuating this pattern of behavior through successive generations.

The intention of this legislation is to comprehensively review the activities of other states. If someone else has developed a perfectly round wheel, there is no reason for Kansas to reinvent it. To build our decisions upon the successes of other jurisdictions is far more efficient than implementing programs based solely upon the subjective opinion of one or more of our members. To effectively deal with this complicated issue comprehensive assessment and evaluation of other programs must be done. While I have in my own personal research discovered several very promising approaches in dealing with multiple DUI offenders, the savings in the long run for Kansas citizens and state government spending can certainly be significant. Our goals should be to reduce recidivism, to break the cycle of addiction, and to help our fellow citizens get on with their lives in a productive and beneficial manner. And that is the ultimate purpose of this legislation. I hope that the Committee will support this legislation and consider amending it into the Subcommittee report prepared for other legislation dealing with substance abuse offenders and multiple DUI offenders.

Respectfully submitted,

Phillip B Journey

Senator Phillip B. Journey
State Senator 26th District

STUART J. LITTLE, Ph.D.
Little Government Relations

Senate Judiciary Committee

Testimony on Senate Bill 590

March 10, 2008

Chairman Vratil and Members of the Committee,

My name is Stuart Little and I appear today on behalf of the Kansas Association of Addiction Professionals (KAAP) in support of Senate Bill 590.

KAAP represents over 850 members including individual counselors in private practice and large treatment programs who provide counseling and treatment services to individuals with addictions. KAAP includes professionals in the fields of gambling addiction, prevention and treatment counselors, as well as other addiction related professionals such as educators, court services officers and members of special populations.

A critical part of KAAP member's work is directly related to the criminal justice system, particularly for offenders participating in Senate Bill 67 and Senate Bill 123 intensive treatment programs. A Substance Abuse Policy Board to advice and consult with the Criminal Justice Coordinating Council would be a valuable and useful structural advance to ensure the best treatment services for offenders and punishment for offenders in Kansas.

I would be happy to stand for questions.

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Senate Judiciary Committee
Senate Bill 590

TESTIMONY
March 10, 2008

Barbara Burks, LCPC, RAODAC, CADC III
Johnson County Mental Health Center
Director of Substance Abuse Services

Thank you very much for allowing me the opportunity to speak with you today regarding Senate Bill 590.

I am here today to urge you to support Senate Bill 590, which establishes a substance abuse policy board to consult and advise the criminal justice coordinating council. I am specifically advocating for the proposed inclusion on the policy board of two (2) substance abuse professionals appointed by the Kansas Association of Addiction Professionals (KAAP).

I believe it is critical for substance abuse treatment professionals to have input into major state policy related to substance abuse. The policy board will benefit from the inclusion of professionals who are directly involved in delivering substance abuse treatment to the offender population. These professionals will bring not only education and training in substance abuse treatment but hands-on experience. I believe this practical experience will be particularly important in helping to inform policy recommendations regarding the treatment, sentencing, rehabilitation, and supervision of substance abusing offenders.

Inclusion of substance abuse professionals on the substance abuse policy board recognizes and affirms the long history of collaboration between the substance abuse field and the criminal justice system. This partnership has resulted in innovative programs such as those that serve SB 123 and SB 67 clients and has helped to decrease recidivism in the offender population.

Finally, I want you to know that my advocacy for the inclusion of substance abuse professionals on the policy board is rooted in my own positive experience as a founder and active member of Johnson County's Drug and Alcohol Advisory Board for the past. This 15-year alliance between providers, the District Court, and Corrections has resulted in a strong system of intervention and treatment for substance abusing offenders in Johnson County. I am proud to be a part of that endeavor and believe that a similar collaboration on the State level would be equally productive and beneficial to the citizens of Kansas.

KANSAS

KANSAS DEPARTMENT OF CORRECTIONS
ROGER WERHOLTZ, SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

Testimony on SB 590
to
The Senate Judiciary Committee

By Roger Werholtz
Secretary
Kansas Department of Corrections
March 10, 2008

The Department of Corrections supports SB 590. SB 590 would create the Substance Abuse Policy Board under the auspices of the Criminal Justice Coordinating Council. This bill is modeled on the Sex Offender Policy Board. As a member of the Sex Offender Policy Board, I believe that board's study of sex offender treatment and supervision issues was beneficial to the formulation of the department's internal operations as well as legislative policies. The creation of boards to study complex issues utilizing the expertise of diverse governmental and private members who can hold hearings involving experts in the field and members of the public provides an opportunity to develop and recommend important policies for legislative consideration.

Substance abuse has a significant impact on society and the well being of Kansans. The mandate of the Substance Abuse Policy Board to study and provide advice regarding the treatment, sentencing, rehabilitation and supervision of substance abuse offenders provides an opportunity for the development and adoption of polices that address substance abuse in an effective and efficient manner for the rehabilitation of substance abusers and the protection of the public.

The Department urges favorable consideration of SB 590.

DEPARTMENT OF CORRECTIONS
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Kansas Department of

Social and Rehabilitation Services

Don Jordan, Secretary

SB 590 – Establishing the Substance Abuse Policy Board

Senate Judiciary Committee
March 10, 2008

Chairman Vratil and members of the Committee, I am providing written testimony in support of SB 590.

SB 590 provides for the establishment of a substance abuse policy board consisting of cabinet level membership from the Department of Corrections, the Department of Social and Rehabilitation Services, the Juvenile Justice Authority, the Kansas Bureau of Investigations, the Chief Justice of the Supreme Court and two persons representing the Kansas Association of Addiction Professionals.

The purpose of this new policy board would be to analyze and study issues like drugs courts in other states, driving under the influence, and their root cause of substance abuse. This board model, which brings together multiple agencies and field representatives, is one that has been successful in addressing other complex social and criminal justice issues that require informed and comprehensive public policy. Having previously served as Chair of the Sex Offender Policy Board, I can attest that these types of boards can help ensure that agencies and the field work together to address issues such as substance abuse in the most effective and efficient manner.

Should the committee have questions, please do not hesitate to contact me.

For Additional Information Contact:
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CHRIS BUCK, ENTERPRISE CAR RENTAL
SENATE JUDICIARY COMMITTEE
TESTIMONY IN SUPPORT OF HB 2707
March 10, 2008

Mr. Chairman, Members of the Committee, my name is Chris Buck and I am the Loss Control Manager for Enterprise Leasing Company of KS. I am pleased to appear today to support HB 2707 as amended in the House, although our testimony is specifically directed at Section 2(a)(5), beginning on page 2, line 27 of the current bill.

HB 2707 amends K.S.A. 21-3702 – "Prima facie evidence of intent to permanently deprive an owner of property", to provide for a three day written demand in the case of a rental car that is not returned. Current law provides for a ten day notice. Kansas is one of only six states that require a person who leases or rents personal property to wait ten days prior to reporting the deprivation of property to local law enforcement. Under the current statute there are several issues that the ten day hold time can create and be cause for concern not only for the businesses who engage in leasing or renting property but safety concerns to the general public.

In the last two years Enterprise has incurred 122 incidents where a vehicle had to be reported stolen due to the failure of the renter not returning. To illustrate how the current statute can cause a concern for public safety, I offer one example that could have been avoided by the passage of HB 2707.

On or about July 3, 2007 I received a visit from two Kansas City detectives inquiring on a vehicle owned by Enterprise Leasing Company of KS. Per the detectives this vehicle was being investigated for suspicious activity. I received the plate number in question from the detectives and quickly noticed that this was a vehicle we were currently in the process of reporting stolen under the current statute, 21-3702. At this time we had already sent notice on June 29, 2007 (four days earlier), demanding the return of the rental vehicle but still had six additional days to wait before being able to report it stolen to local law enforcement. The officers commented that if it had been reported it would have given them probable cause to pull over vehicle and the individual operating it would likely have been arrested with the vehicle being impounded. However, since the unit had not yet been reported as stolen to local law enforcement, all the detectives could do is note the plate should they encounter the vehicle at a future time. On July 5, 2007, the same vehicle was involved in a drive by shooting critically injuring four individuals, two with life threatening injuries. The vehicle Enterprise was in the process of reporting stolen sustained $14,025 in damage after it hit a pole and was left abandoned. The vehicle that the four innocent individuals occupied came off homicide hold just last week and sustained approximately $8,000 in damage. The renter of the vehicle claims no involvement, stating, "the car was taken from her the day before." The renter has not been charged as the case is still under investigation.

HB 2707 will allow situations as I previously mentioned to be prevented in the future. If the situation previously mentioned would have occurred in Missouri, Nebraska, Iowa, Illinois, Oklahoma, Texas, or Colorado it likely would have been prevented due to the

fact each of those states will allow property that is leased and or rented (specifically leased or rented vehicles) to be reported stolen in three days or less from the date written demand was sent.

Based upon our research, more than half of the states (29 to be exact) have a statute currently on the books allowing companies or persons who rent or lease personal property to report a vehicle stolen in three days or less with another ten states at five days. Bottom line, in my 13 years of experience managing this area of the business for Enterprise Rent-A-Car, covering seven states, the person trying to deprive Enterprise of their property is often involved in some sort of criminal activity. The longer that person has before legal action can proceed the more likely they are to cause unnecessary property damage or harm to others.

Thank you for your time, and I urge you to support HB 2707.

KANSAS AUTOMOBILE DEALERS ASSOCIATION

March 10, 2008

To: The Honorable John Vratil, Chair
and Members of the Senate Committee on Judiciary

From: Don L. McNeely, KADA President

Re: HB 2707 – Theft, Intent to Deprive, Leased or Rented Motor Vehicles

Good morning, Chairman Vratil and Members of the Senate Committee on Judiciary. My name is Don McNeely and I serve as President of the Kansas Automobile Dealers Association, which represents the franchised motor vehicle industry in Kansas. On behalf of KADA, I am pleased to appear today in support of HB 2707, which addresses the issue of motor vehicle theft in the State of Kansas.

In addition to amending current law concerning the theft of a leased, rented or loaner motor vehicle that was failed to be returned after notice was given, HB 2707 was amended to address the criminal penalties for the repetitive theft of motor vehicles by the same individuals. In the fall of 2007, KADA worked with Attorney General's Office to create a statewide task force to review and make recommendations on reducing automobile thefts. Representatives included the Sedgwick County District Attorney's Office, KBI, Kansas Highway Patrol, Kansas Association of Chiefs of Police, Wichita Police Department and the Sedgwick County Sheriff's office.

In early February, HB 2831 was introduced which would have created a new crime of motor vehicle theft making the crime a felony on the first offense. KADA met with Chairman O'Neal following introduction, who expressed reservations due to its very large impact upon prison bed space. He recommended something that would target the repeat offenders, but not create the impact on prison space that HB 2831 would create. Thus, the amendments to HB 2707, which was adopted and makes the third and subsequent theft of a motor vehicle a felony with a sentence of presumptive prison.

The problem of auto theft continues to escalate in Kansas, in both the metro and rural areas, as reported in the Kansas City Star on February 9th (attached). In 2006, over 8,500 vehicles were stolen in Kansas, with many of the repeat offenders not spending a single night in jail. According to the FBI 2006 Crime Report, the rate of auto theft in Kansas is significantly higher than our fellow states in the West North Central Region.

On behalf of the Kansas Automobile Dealers Association, I thank the members of the committee for allowing me to appear in support of HB 2707.

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Senate Judiciary
3-10-08
Attachment 12

Posted on Sat, Feb. 09, 2008

Auto thefts in area are on the rise, defying the national trend downward

By BENITA Y. WILLIAMS
The Kansas City Star

While murders and stickups fuel our nightmares, it's far more likely that someone will drive off with your car or truck.

And that risk is rising in some parts of the Kansas City area, thanks to a few organized gangs and serial car thieves.

"When you have two or three (groups or individuals) that are extremely active, they can do a lot of damage," said Police Detective Jamie Rader of Lenexa, where auto thefts surged 123 percent last year. "They don't stop until they get caught."

Lee's Summit saw a 50 percent increase.

Other area cities reporting upticks include Overland Park, Prairie Village, Shawnee and Liberty, despite a national decline in car thefts through the first half of 2007.

Police in cities with the largest spikes pointed to organized thefts. Some examples:

•Three groups have been at work in Lenexa: a juvenile gang caught stealing from apartment complexes, an older group taking large Ford trucks, and a man linked to a string of stolen Hondas. Police think the alleged Honda thief was renting the cars to criminals as getaway vehicles.

•Federal authorities in Kansas City indicted 10 area residents in December, alleging that their bistate ring stole 50 vehicles from car dealerships and an Olathe police lot, and then dismantled them at chop shops in Blue Springs and Kansas City, Kan.

•In Lee's Summit, thieves have repeatedly sliced the fence of an auto auction yard and driven away with vehicles.

•Independence police are noticing a growing gang presence they think is linked to an increase in car thefts and other crimes.

"It's involved with the narcotics trade, and stolen cars often become involved in other crimes like robberies and burglaries," said Kansas City Police Capt. Jeff Emery. "In the long run it affects everyone."

No matter how a car is taken, victims face the same aggravation — and loss of mobility, towing fees and higher insurance rates are only the beginning.

Depending on what the crook finds in the vehicle, victims could see their identities stolen and their homes burglarized.

Last year, someone snatched Susan Smith's keys and took her Jaguar from a Country Club Plaza office building. Her financial papers were inside.

Smith tried to cancel her credit cards, but a mistake allowed someone to charge $5,700 to one card. The company threatened to sue Smith for payment until she convinced them it was the company's fault.

"You feel like they've taken a part of you," Smith said. "But I have learned my lesson. I don't leave anything in my car."

Police acknowledge that they don't, or can't, actively investigate most car thefts. There are too many thefts and too little evidence.

12-2

Mostly, they wait for the cars to turn up abandoned or at traffic stops. Nationally, 59 percent of stolen cars were recovered in 2006, the lowest recovery rate in more than a decade.

Meanwhile, authorities and carmakers keep trying to deter the thieves. The Kansas attorney general has formed a task force with dealerships, and police even use "bait cars" to catch crooks in the act.

However, experts say the best defense remains common sense.

Many people become victims, authorities say, after leaving their cars unlocked, the windows down, or eye-catching valuables in plain sight.

"You might as well put a bow on the car and say, 'Come take me,' " said Liberty Police Lt. Mike Misenhelter. "It's Christmas come early."

A huge industry

Corky Stueve certainly didn't expect his Prairie Village driveway to become a crime scene.

About 8 a.m. one winter day last year he went out to warm up his 2001 Acura sport-utility vehicle. When he returned 15 minutes later, it was gone.

Prairie Village has a law against leaving cars running and unlocked, but Stueve did not get a ticket. That's usually reserved for repeat offenders. Others get warnings.

He got the vehicle back later, but not before someone used the garage door opener inside the Acura to break into the Stueve home while he and his wife were out of town.

The intruder ransacked the house but didn't take anything. Police scared the burglar away.

But Stueve gets "a real empty feeling" thinking what could have happened.

"After the fact, you think we could have been home when those guys tried to get in," he said.

Stueve's experience is not all that unusual, said Olathe Police Detective Ed Drake. The victims often are close to home, he said, or have dashed into a store and back out.

"They've ... lulled themselves into a false sense of security," Drake said.

When they do, they're feeding what the FBI says is a $7.9 billion industry.

And it's not always the car that the thieves are after.

"They will steal it for the contents and for any type of ID they can use to create identity theft or fraud," Drake said.

Some thieves trade cars at drug houses or strip them for radios and other parts.

Others look for certain makes that are easy to take.

A high-dollar car might get shipped out of the country to the underground market, but any clunker will do for a crook with a tow truck looking to sell a car for scrap.

In January, a Kansas City man lost his wheelchair-accessible van, which was stolen and crushed at a scrap yard. An anonymous donor replaced it.

"Because the price of metal is so high, we're seeing an increase in it," said Kansas City Police Capt. Jeff Emery.

During a two-day operation last February at four salvage yards, Kansas City officers recovered 35 stolen cars and made several arrests.

But sometimes you can only speculate why a car is a target.

The person who stole Stueve's car left an older Ford in front of his home, ignition running, door open and radio blaring. The Ford had been stolen an hour earlier while it, too, was left warming up in Overland Park.

"I thought this guy ... saw my car and decided to upgrade," Stueve said.

Fighting the problem

12-3

The good news is that nationally, auto theft has been declining for the past three years. The 2006 figure was down 2.3 percent from 2005, and preliminary numbers from the FBI show car theft continued to drop last year.

Metropolitan totals have been up and down.

Experts credit the national improvement to better engineering in newer cars and innovative crime-fighting tools.

"Perhaps the most effective are the bait cars," said Frank Scafidi of the National Insurance Crime Bureau.

Officers leave bait cars running and unattended, but keep them under surveillance. When the thief takes the bait, police swoop in.

Some bait cars are equipped with cameras, recording equipment, tracking devices and remote kill switches.

Proponents say no entrapment is involved.

"Just by parking in a lot and leaving the car running, we're not making them get inside," Emery said.

In Kansas City, Kan., directed patrols focus on locations where stolen vehicles are found, because the culprits usually are nearby.

Several cities and states have made it illegal to leave vehicles unattended and running on streets or city parking lots, but the law in Prairie Village outlaws the practice on driveways and other private property.

Meanwhile, most automakers have made the car windows and locks resistant to the Slim Jim tool. Others have revised their steering columns.

Some cars even come with antitheft devices, tracking gismos and transponder keys, which are encoded with computer chips.

"When you put the key in the ignition, if there is no chip there, the car is not supposed to start," said Kansas City, Kan., Police Sgt. John Dressler. "Now they've improved it to where if there's no chip when you turn the ignition over, it burns out the fuel pump and the starter relays."

Better laws needed

But when cars are taken, it's difficult to put the thieves behind bars. Only 13 percent of auto thefts were cleared by arrest in 2006, according to the Insurance Information Institute.

And for an auto theft prosecution to be successful, the thief practically has to be caught in the act, said Jackson County Prosecutor Jim Kanatzar. He said Missouri prosecutors can charge a person caught in a stolen car with tampering, but only if the person knew it was stolen.

"You have to prove it wasn't loaned to them," Emery said.

Dressler said stiffer penalties were needed.

"In Kansas, it's merely theft, which includes everything from a jet plane to a lawn mower," he said.

His idea is to lengthen sentences when criminals use stolen cars to commit other crimes.

"Look at it like a weapon they use to commit a robbery," he said. "It's an asset they (thieves) acquire and dispose of that doesn't cost them a dime.

"No one likes to go out and see a big empty spot where their car used to be parked."

Emery agreed.

"I've had my car stolen," he said. "It's no fun."

To reach Benita Y. Williams, call 816-234-7714 or send e-mail to bwilliams@kcstar.com.

12-4

JOE SELF

CHEVROLET Cadillac

March 10, 2008

To: The Honorable John Vratil, Chair
and Members of the Senate Committee on Judiciary

From: Joe Self, Jr., Joe Self Chevrolet – Cadillac - BMW President

Re: HB 2707 – Theft, Intent to Deprive, Leased or Rented Motor Vehicles

Good morning, Chairman Vratil and Members of the Senate Committee on Judiciary. My name is Joe Self, Jr. and I am President of Joe Self Chevrolet, Inc., a Wichita KS automobile dealer. On behalf of Joe Self Chevrolet, Inc., I am pleased to support HB 2707, which addresses the issue of motor vehicle theft in the State of Kansas.

At Joe Self Chevrolet we have experienced several auto thefts each year at our dealership here in Wichita. We have on site security to detour the after hour thefts but it can happen even during the working hours of business.

The cost of security alone of over $42000.00 per year is a portion of what this problem is causing our business. We incur increases in insurance premiums, cost of deductibles, and cost of repairs if the vehicles are recovered plus the lost profits of the sale when we disclose the thefts to the customer.

One problem of these automobile thefts is that all the costs of doing business as a retail automobile dealer must ultimately be past on to our consumer as the retail purchasers or service customer. I will be please to meet with the legislature on Monday and I would be glad to attend to discuss my concerns and answer any questions.

On behalf of the Joe Self Chevrolet, Inc., I thank the members of the committee for allowing me to appear in support of HB 2707.

Sincerely

Joe Self, Jr.
President

8801 E. Kellogg
PO Box 780577
Wichita, Ks. 67278-0577
Tel: 316-684-6521
Fax: 316-689-4314

Senate Judiciary
3-10-08
Attachment 13

Longbine AUTOPLAZA

CHEVROLET PONTIAC BUICK

March 10, 2008

Chairman John Vratil
Senate Judiciary Committee
Kansas Senate,

Mr. Chairman and Committee Members,

I stand before you today to testify in support of HB 2707. Mr. Joe Self has testified that Auto Theft is a major problem in the Metro areas of Kansas. I would like to offer that the problem affects all Kansas Communities. In the past five years I have had 6 vehicles stolen from my lot. Out of these six vehicles, one was recovered locally, one recovered in Kansas City, MO, and 4 have never been recovered. The costs of these thefts to small Kansas businesses are enormous. The insurance premiums, deductibles, incidental damage and diminished value can run into the thousands per vehicle.

I personally believe that the majority of Auto Thefts in Kansas are the result of other criminal activity. The stolen autos are used for drug trafficking or are scraped for cash to support a drug habit. These vehicles are used to promote criminal activity most often by career criminals. Under current sentencing guidelines these criminals can continue their trade without fear of the repercussions of going to jail.

I ask for your support in advancing HB2707. Please do not allow these career criminals and multiple offenders to continue their tricks of the trade.

I'm pleased to stand for questions.

Respectfully,

Jeff Longbine
President
Longbine Auto Plaza
Emporia, KS

3012 WEST U.S. HIGHWAY 50 • EMPORIA, KS 66801-5147 • (620) 342-274

Senate Judiciary
3-10-08
Attachment 14

TESTIMONY TO THE SENATE JUDICIARY COMMITTEE IN SUPPORT OF HB 2707

Presented by Ed Klumpp

March 10, 2008

This testimony is in support of HB 2707. The provision of this bill receiving our primary support is with the provisions of sections 2, 3, and 4 relating to motor vehicle thefts and temporary deprivation of a motor vehicle. We also support the provisions of section 1 concerning suspension of drivers licenses for leaving the scene of a fatal accident.

Motor vehicle thefts are a mounting problem in Kansas. Many of these cases are being charged as temporary deprivation in many jurisdictions. The reasons given by prosecutors include a conclusion that we can't prove the intent to permanently deprive the owner of use of the vehicle because the thief abandons the vehicle when they are done using it or that since we stopped them in the vehicle we don't know what there intent was.

The results are many auto thieves being sentenced many, many times for misdemeanor temporary deprivation. In one case in Topeka a person was charged with 30 auto theft cases over 15 years. He was sentenced for 9 temporary deprivation cases, 3 attempted thefts, and 6 thefts. He never went to trial. Over those 15 years he was sentenced to 37 months in jail or prison but served less than 24 months of that. He served a total of 84 months on probation. He had multiple arrests while on bond pending trial and numerous arrests while on probation. He never committed a person crime, so he never got out of the presumptive probation boxes.

Under the provisions of this bill, he would have served much more time in prison and much less time on probation. But he also would have committed fewer thefts of autos.

We urge you to recommend HB 2707 favorably for passage.

Ed Klumpp
Chief of Police-Retired, Topeka Police Department
Legislative Committee Chair, Kansas Association of Chiefs of Police
E-mail: eklumpp@cox.net; Phone: (785) 235-5619; Cell: (785) 640-1102

Senate Judiciary
3-10-08
Attachment 15

Kansas Peace Officers' Association

INCORPORATED
TELEPHONE 316-722-8433 • FAX 316-722-1988
WEB & EMAIL KPOA.org
P.O. BOX 2592 • WICHITA, KANSAS 67201

Testimony to the Senate Judiciary Committee In Support of HB2707

March 10, 2008

This testimony is in support of HB 2707 as amended by the House Judiciary Committee and by the House Committee of the Whole.

Auto theft continues to be a major crime problem in Kansas. Many of these stolen cars are being prosecuted as temporary deprivation cases instead of theft cases. There are far too many career auto thieves operating in our communities. Many of these thieves have stolen many vehicles before seeing jail time.

The victims of these crimes often have purchased replacement cars before the stolen car is recovered. Auto dealers are suffering enormous losses due to these thefts. Many of these victims are people who are struggling to make ends meet. They are people who don't have full insurance coverage on their vehicles. They miss work because of the loss of use of their vehicles and suffer other challenges because of the loss of the use of their vehicles.

In addition, many police pursuits occur when persons in stolen cars attempt to elude officers attempting to capture them. This creates additional risks to law enforcement and to the public.

The provisions of this bill will help address this problem by making the third conviction of temporary deprivation a felony with presumptive imprisonment. This action in response to repeat offenders will result in a reduction in these crimes.

We also support the provisions of section 1 concerning suspension of drivers licenses for leaving the scene of a fatal accident.

We urge you to recommend HB 2707 favorably for passage.

Ed Klumpp
Legislative Committee Chair, Kansas Peace Officers' Association
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Cell: (785) 640-1102

In Unity There Is Strength

Senate Judiciary
3-10-08
Attachment 16

DON HATTAN
DON HATTAN

Always There Since 1949.

March 10, 2008

To: The Honorable John Vratil, Chair
and Members of the Senate Committee on Judiciary

From: Jim Hattan, President
Don Hattan Chevrolet

Re: HB 2707 – Theft, Intent to Deprive, Leased or Rented Motor Vehicles

Last summer and fall at Don Hattan Chevrolet, we experienced a rash of car thefts in which thieves obtained keys to lock boxes to various dealerships in the city and in a very short period of time stole a considerable number of vehicles.

At our dealership we face the interstate and our entire lot is separated from the interstate with a chain link fence. Thieves used the stolen lock box keys to open lock boxes to steal a total of seven new vehicles and two used ones. They did not just steal these cars and trucks, but drove them through the chain link fence onto the interstate, incurring considerable body damage to each vehicle. These vehicles were all recovered after a 2 day inventory check, which involved 12 people from our dealership and their time. We then contacted On-Star, which located the vehicles and at which point the police recovered them. In one of the instances, a vehicle was loaded down with camping gear and hooked to a stolen vacation trailer and the family was ready to go out for a nice weekend in our $51,000 Tahoe with considerable body damage from the drive through the fence.

The group of people involved in these thefts to my knowledge have not spent one night in jail. Although most were arrested driving the vehicles. The least amount of damage on one of the new vehicles was about $1100. The most damage incurred was on a 2007 crew cab Colorado pickup, which was almost totaled. If somebody shoplifts a $100 item, chances are they will be prosecuted and there will be some kind of consequence. Right now someone can steal a quarter of a million dollars worth of vehicles from me and nothing happens. It is very important to get a bill passed on auto theft that has teeth in it for the whole state. Your car could be next.

Yours very truly,

Jim Hattan
President, Don Hattan Chevrolet
6000 Hattan Drive
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Fax: 316-744-1112
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Mike Steven
AUTO GROUP

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1-800-958-0580

Mike Steven Import Auto Mall
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Wichita, Kansas 67207
(316) 652-2155
1-800-303-2155

Mike Steven Isuzu Suzuki/Program Cars
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Wichita, Kansas 67207
(316) 652-2111

Mike Steven Volkswagen/Infiniti
11211 E. Kellogg
Wichita, Kansas 67207
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1-800-972-8425

Steven Chrysler Jeep Dodge
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Wichita, Kansas 67211
(316) 773-2002
1-800-852-1551

Steven Ford/Mercury
W. Hwy. 54
Augusta, Kansas 67010
(316) 775-2246
1-800-851-5518

March 7, 2008

Chairman John Vratil
Members of Senate Judiciary Committee

This letter is to encourage your support for the auto theft amendments to HB 2707. Our dealership has had over 12 vehicles stolen in the last year. Most recently one of our cars was stolen when the test driver complained of a noise and our salesman got out to investigate the noise and was left standing by the road when the driver drove off. The driver was arrested as he did this 5 times in one month, but we still haven't recovered our vehicle and we cannot determine if the thief is still being held.

Our frustration is that the police say they will not arrest as it is a misdemeanor joyride that our DA will not pursue. The DA says the judges will not prosecute as the jails are too full. We are caught in a viscious circle and need your help.

Respectfully,

Michael E. Steven
President

Senate Judiciary
3-10-08
Attachment 18

Eck Automotive Group

Rusty Eck Ford and Midwest Toyota Ford

March 7, 2008

To : The Honorable John Vratil, Chair
And Members of the Senate Committee on Judiciary

From: Les Eck, Eck Automotive Group

Re: HB 2707 – Theft, Intent to Deprive, Leased or Rented Motor Vehicles

Good Morning, Chairman Vratil and Members of the Senate Committee on Judiciary. My name is Les Eck and I am President of the Eck Automotive Group.

I have dealerships in Wichita as well as Hutchinson KS. We have many problems with car thefts of consumer's vehicles as well as our own.

One thief kept taking consumers mustangs and getting into high speed chases. He ran thru many stop lights till he rolled the car and created a safety hazard for the public. Another instance in Derby they broke into our building and into our lock box and stole 8 keys and cars and trashed them. During our construction our security guard left an area and returned five minutes later. The thieves cut the fence broke the lock box stole the customer vehicle and rolled the fence back closed. A week later he watched a thief across the street break into a car ram the steel pole gate 7-8 times till it broke before guards could cross the lot. Our worst case is our stolen truck being used to transport dead body parts to El Dorado. He was killed in a bar basement cut up and they stole a truck to transport the pieces to burn.

The theft problem is costing consumers, their safety and ours. It affects us all and is getting worse. Because they know there is no punishment for the crime. Please support the Amendment to HB2707.

Thanks for your Support
Les Eck
Rusty Eck Ford
Midwest Toyota Ford

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