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March 6, 2013

HB 2013 Amending the crime of Perjury

Mr. Chairman and Committee Members,

I am writing testimony for the above mentioned bill and making a meaningful suggestion to improve the bill. Many laws are created for the precise purpose of protecting the citizens from the abuse of power from agencies, officials and of course individuals who might and could abuse the system.

I think HB 2013 helps correct a single, small, irrelevant problem. I also know that this bill falls way short of addressing the real problems we have with this procedure. I have major concerns as it pertains to the crime itself.

Two of the most basic concerns of the criminal justice system are the integrity of the fact-finding and the truth-determining process. On the one hand, the object of a motion hearing or criminal trial is to search for the truth. Protection of individual interests, as well as systematic and societal interests in the punishment and prevention of crime and in the viability of the system itself, depends upon the actual and perceived achievement of this.

Perjured testimony by witnesses and defendants undermines this process and destroys these interests. The fundamental value of the criminal justice system is that it is better to have a guilty person go free than for an innocent person to be convicted and punished for a crime he or she did not commit. Because of this overriding concern for the protection of innocence, judgments of acquittal are final even if erroneous. The State or government is not allowed a second chance to prove guilt after previously failing to establish it.

Reasons often suggested to explain why prosecutors decline to charge perjury include evidentiary considerations, particularly those caused by the element of perjury and the so-called "two witness rule." Although these considerations reduce the number of prosecutions, they may not be appropriate in view of the reasons for these requirements and the legitimate interests they serve. The sheer standards being asked of the Prosecutor is completely absurd. The analysis that was given to me was made this way. If the person believes the moon is red, the Prosecutor can bring in doctors and others to prove that the person can see more colors than red, but the other leg of the equation is that they must prove that the person doesn't believe the moon is red – this an impossibility?

The so-called "two witness rule" is the most often cited reason for the low incidence of perjury prosecutions. This quantitative rule of evidence prohibits proof of falsity by the testimony of only one witness-falsity must be shown by the testimony of two independent witnesses or one witness plus independent corroborative evidence. I realize this rule attempts to strike an appropriate balance between preventing false testimony while encouraging witnesses to testify and protecting a defendant's right to present a defense. But???

This is why the crime of perjury is rarely prosecuted, thereby adding to the problem.

There are fewer than a dozen perjury cases prosecuted in the entire state of Kansas in any given year, and not one of them stem from disputed criminal cases. It is typical for someone to believe that the other side committed perjury in almost every case that goes to trial whether it is a civil or criminal case. The criminal law system just cannot handle the flood of cases that would result of perjury

prosecutions. The court makes the call as to witness credibility in each case, right or wrong, and that is ordinarily the end of that issue. Even appeals do not typically involve issues of credibility.

The corrosive influences of perjury in our legal system, especially when committed by those whose job it is to enforce the law, represent the law and are ignored — or even legitimized — by those whose responsibilities it is to check individuals who enforce the law.

If we really want to reduce the corrosive effects of perjury on our legal system, the place to begin is at or near the top of the perjury hierarchy. If we continue to deliberately blind ourselves to police perjury and other equally dangerous forms of lying under oath, and focus on even the lowest category of possible perjury (hiding embarrassing facts to only marginally relevant to a dismissed civil case), we would be reaffirming the dangerous message that perjury will continue to be a selectively prosecuted crime reserved for political or other agenda-driven purposes.

Let's address the real problem of allowing the "LAW" or statutes to be used in a manner that allows for the reasonable practical use of this process, rather than continue to make it impossible to charge under the current standards.

Respectfully Submitted,

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