Approved: 4/7/94
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Jerry Moran at 10:00 a.m. on March 18, 1994 in Room 514-S of the Capitol.

All members were present except: Senator Parkinson (excused)

Committee staff present: Mike Heim, Legislative Research Department
Gordon Self, Revisor of Statutes
Darlene Thomas, Committee Secretary

Conferees appearing before the committee:

Paul Shelby, Judicial Administration Office
Alice Admas, Clerk of District Court, Council Grove
Diana Jones, Chief Clerk, 25th Judicial District, Garden City
Walter Scott, Jr., Kansas Collections Attorneys and Kansas Collectors Association, Inc.
Chuck Simmons, Department of Corrections
Representative Kenny Wilk
Representative Phill Kline
Ann Elliott, Gary County Landlords Association
Julie Doll, Olathe Daily News
Kay Berenson, Hays Daily News
Jim Clark, Kansas County and District Attorneys
Representative Rocky Nichols
Tom Throne, McPherson Centinel
Jacklyn Graber, Coordinator of Sexual Assault Services
Steve Bennett, Atchison Daily Globe

Others attending: See attached list

Chairman Moran asked Senator Emert to report on the Criminal Law Subcommittee regarding SB 765, SB 774, and SB 764.

A motion was made by Senator Emert, seconded by Senator Ranson to adopt the subcommittee report to report SB 765 adversely. The motion carried.

A motion was made by Senator Emert, seconded by Senator Ranson to remove the provisions of HB 2579 and substitute with the provisions of SB 774 and to include a portion of the provisions of SB 764 as amended by the subcommittee. The motion carried.

A motion was made by Senator Brady, seconded by Senator Emert to report HB 2579 favorably as amended. The motion carried.

HB 2761--identity of victims of sex offense not public record

Kay Berenson, Hays Daily News testified in opposition to HB 2761 and provided written testimony (Attachment No. 1). She said HB 2761 would close off all public and news media acts as to any information about victims of sex crimes. Ms. Berenson urged the Committee not to change the open records law which would prevent disclosure of names, addresses or other information which might identify victims of sex crimes.

Julie Doll, The Olathe Daily News testified in opposition to HB 2761 and provided written testimony (Attachment No. 2). She said allowing officials to keep the names of victims of sex crimes secret sets a dangerous precedent. Ms. Doll said HB 2761 creates the idea that the victims of sexual assault should be embarrassed and have something to hide.

Jim Clark, Kansas County and District Attorneys Association testified in support of HB 2761 and provided written testimony (Attachment No. 3). He said HB 2761 seeks to protect the victims of sex crimes from further victimization by an assault on their privacy.

Representative Phill Kline provided written testimony on HB 2761 (Attachment No. 4).

Jacklyn Graber, Coordinator of Sexual Assault Services provided written testimony on HB 2761 (Attachment No. 5).

Chairman Moran closed the hearings on HB 2761.

HB 2677-records of marriage licenses

Paul Shelby, Judicial Administration Office testified in support to HB 2677 and provided written testimony (Attachment No. 6). He said the purpose of HB 2677 is to eliminate the record of marriage license applications. Mr. Shelby said HB 2677 did not delete the application, just the record. He requested an amendment to K.S.A. 23-106 which would require that each district court keep a record of all marriages resulting from licenses issued by the court, which record shall show the names of the persons who were married and the date of the marriage.

Alice Adams, Clerk of the District Court, Morris County testified in regard to HB 2677 and provided written testimony (Attachment No. 7). She requested K.S.A. 23-106 be amended to require the clerk to keep a record of all marriages resulting from licenses issued by the court.

HB 2697-service of process, time limits

Paul Shelby, Judicial Administration Office testified in support of HB 2697 and provided written testimony (Attachment No. 8). He said the purpose of HB 2697 was to extend the answer/appearance dates from the date the summons is issued in Chapter 61 cases to allow more time for service.

Diana Jones, Chief Clerk, 25th Judicial District testified in support of HB 2697 and provided written testimony (Attachment No. 9). She said HB 2697 would amend the service and answer times set in the code of civil procedure for limited action cases.

Walter Scott, Jr., Kansas Collections Attorneys & Kansas Collectors Association testified in regard to HB 2697 and provided written testimony from Elwaine Pomeroy (Attachment No. 10). He said there was concern that the extension of time for service of process should be 30 days rather than 35 days as provided in HB 2697.

Ann Elliott, Geary County Landlords Association, Inc. provided written testimony on HB 2697 (Attachment No. 11).

Chairman Moran closed the hearings on HB 2677 and HB 2697.

HB 2832--inmates filing civil actions; parole board denials

Representative Kenny Wilk testified in support of HB 2832 and provided written testimony (Attachment No. 12). He said HB 2832 would address the problem of convicted criminals filing frivolous and expensive lawsuits against the state.

Chuck Simmons, Department of Corrections testified in support of HB 2832 and provided written testimony (Attachment No. 13). He said HB 2832 establishes reasonable measures to discourage frivolous inmate litigation without creating unreasonable obstacles to an inmate's right of access to courts.

John Knoll, Assistant Attorney General testified in regard to HB 2832 and provided written testimony (Attachment No. 14). He said there is concern with the growth in lawsuits filed against the parole board, challenging parole denials. Mr. Knoll said HB 2832 would slow the growth of frivolous civil inmate litigation.

HB 2779--court cannot issue a contempt citation against a person who reports that a gag order has been issued

Tom Throne, McPherson Centinel testified in support of HB 2779. He said the press was an important factor in keeping the public knowledgable of the events happening in communities.

Representative Rocky Nichols provided written testimony in support of HB 2779 (Attachment No. 15).

Steve Bennett, Atchison Daily Globe provided written testimony in support of HB 2779 (Attachment No. 16).

Chairman Moran closed the hearings on HB 2779.

A motion was made by Senator Oleen, seconded by Senator Bond to report HB 2677 favorably and place on the consent calendar. The motion carried.

Chairman Moran appointed Senator Harris and Senator Ranson to a subcommittee to consider HB 2832, particularly to investigate the "habeas corpus" issue involved with the passage of HB 2832.

The meeting adjourned at 11:00 a.m.

The next meeting is scheduled for March 21, 1994.

GUEST LIST

COMMITTEE: Senate Judiciary **DATE:** 3/18/94

NAME (Please Print)	ADDRESS	COMPANY/ORGANIZATION
Kay Berenson	Hays Daily News, Box 857 Hays, KS	KPA
Julie Doll	OLATHE DAILY NEWS, 514 S. KANSAS OLATHE 66062	KPA
Ben Coates	Topeka	KPA
Tom Throne	McPherson, KS. Sentinel	KPA
Walt Scott	Topeka	Assoc. Credit Bureaus
Steve Maska	Topeka	AG office
Alice Adams	Council Grove	KADCA
Jim Jones	Garden City	Dist. Ct.
John M. Knoll	Topeka	AG's OFFICE
Lisa Goetz	Topeka	KSC
Ron Thomas	Leavenworth	Dist. Ct.
Al Singleton	Manhattan	Dist. Court
Paul Shelby	Topeka	OJA
Jim Clark	Topeka	KCDAA
Carolyn Risley, Hue	"	SRS
Lonnie Powell	TOPEKA	KDHE
Charles Simmons	Topeka	Dept. of Corrections
John W. Smith	Topeka	KDOR DMV
Amy Cox	Manhattan	Manhattan Mercury
Ron Smith	Topeka	KS Bar
KAREN Franek	"	KAR
Trish Bledsoe	820 S.E. Quincy #16B Topeka, KS 66612	KCSDV
Sam Stotts	Topeka	KDOC

#1

Testimony before the Senate Judiciary Committee regarding House Bill 2761 amending KSA 45-221 relating to identification of victims of sex offenses:

My name is Kay Berenson. I am the editor of the Hays Daily News. I am here today to urge you not to change the open records laws to prevent disclosure of names, addresses or other information that might identify victims of sexual crimes.

I am not here to tell you that newspapers want to identify victims of sex crimes in their pages.

As an editor for nearly 10 years, I have participated in countless discussions about how to be sure that news stories did not accidentally identify victims of sex crimes. It is not necessary to close the records to prevent names from being used in media reports.

Even though we do not print identifying details about victims, being cut off from access to that information would pose real problems for newspapers and, most important, for our readers.

Many law enforcement agencies would see the change as reason to divulge nothing more than the fact that a sex crime was reported.

News media reports would be reduced to something like this: "A rape was reported early Monday, Hays police said today.

"Releasing any further details would identify the victim, police said."

Such a news report would do nothing to provide other women in the community with the basic information they need to protect themselves.

It would not tell other women in town whether the attack occurred in their neighborhood, whether the attacker was a friend who'd been allowed into the victim's house or a stranger who had cut a window screen.

Women would have no way to judge from such a report how serious their own danger might be. Some might take foolish risks. Others might be unnecessarily frightened.

Closing off access to records that contain news is a serious erosion of press freedom. It would also hamper the vital press function of serving as a check on government, including law enforcement.

I have heard complaints raised about the way law enforcement officers treated victims in sex crimes. Without access to records, newspapers cannot check out such complaints. Reporters and editors — and the readers they serve — would have no way to find out whether sex crimes are being adequately investigated and whether victims are being treated with sensitivity.

I would like to conclude today with some anecdotal evidence of the need to keep the law the way it is.

I have a beautiful and much loved 20-year-old daughter who is now attending college in Washington state.

About three weeks ago, a man — probably drunk or on drugs — tried to break down the door of my daughter's apartment near her college campus.

Fortunately for my daughter, her door is very strong with a heavy metal bar across it. The intruder could not get in.

The significance of this incident lies in the reason my daughter has that very strong door on her apartment.

That door is very strong and she is very careful about always locking it because she knows that she lives in a dangerous, high crime neighborhood. She knows that partly because she follows news reports about crime in her neighborhood as published in her local newspaper.

I think The Hays Daily News and all Kansas newspapers need to be able to provide Kansas women with the same basic information about their degree of safety or danger that my daughter has.

If this bill passes, I don't think we will be able to give them that information anymore.

I urge you to kill this bill.

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attachment 1-1

#2

HB 2...

It's hard to argue with the intentions of this measure. Efforts to ease the pain suffered by the victims of crime are both popular and commendable.

But the effort to protect victims by keeping their identity a secret is an ill conceived one.

Allowing officials to keep the names of victims of sex crimes secret sets a dangerous precedent.

Although not to the same extent, victims of all kinds of crime are vulnerable and frightened. On what grounds are sex crimes, which experts agree are more about rage and violence than about sex, to be kept secret while other crimes are not?

And what is offered in this measure is not true protection. Once a case reaches court, the name of the accuser, as well as the accused, becomes a matter of public record. Closing police records robs the public of information they may need to know while giving the victim only a short-term and flawed measure of secrecy.

The move toward more secrecy also runs counter to a growing school of thought that the victims of sex crimes should not be treated different from the victims of other crimes. That by keeping their names secret, we perpetuate the stigma that is attached to them.

Although I do not completely buy that argument -- and although the overwhelming majority of newspapers do not publish the names of sex-crime victims, except at their request -- it would be a mistake for government to mandate that some victims' identity be kept secret and others be identified, based solely on the nature of the alleged crime. And it is a fact that more and more victims of sexual assault are choosing to come forward and publicly tell their stories.

A few weeks ago, a retired police officer called me to talk about a proposal then before the City Council to establish a reserve police unit. The gentleman said he would much prefer the bolstering of the police force through the establishment of such units than by some of the other steps that were being taken in the name of fighting crime.

As a police officer during the late '60s and early '70s, the man said, there was talk, not entirely in jest, of the United States becoming a police state, and he was glad that he was on the side of the police.

Now, the man said, it appears that through legislation aimed at reducing crime and aiding victims, lawmakers are slowing stripping away the rights that form the foundation of our freedom.

He was not referring to this bill, but to the various measures at all levels of government that deal with everything from curfews for teen-agers to making it easier for police to search and seize property. But I was reminded of his comments when I read of this measure.

This is a bill that offers secrecy to a certain class of crime victims. It is a secrecy that embeds in law the idea that the victims of sexual assault should be embarrassed and do have something to hide. And it is, after all that, a flawed secrecy, which cannot last. It offers the victim no protection from being identified in court.

In the end, this is a measure that cannot do what it intends to do. Its only effect is to close more government records, which benefits neither the victims of crime nor the potential victims who rely on information about such crimes to protect themselves.

Julie Doll
associate publisher, The Olathe Daily News

Senate Judiciary
3-18-94
attachment 2-1

Kansas County & District Attorneys Association

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

Testimony in Support of

HOUSE BILL NO. 2761

The Kansas County and District Attorneys Association supports passage of HB 2761, which seeks to protect the victims of sex crimes from further victimization by an assault on their privacy.

The bill is a further expression of concern for crime victims, which the Legislature has exhibited many times in the past.

This bill is not that drastic as it does not place restrictions on a defendant or other parties in a criminal case. It merely removes information vital to a sex crime victim's privacy from the public view prior to a case being filed. If a an actual criminal case is filed, it becomes public record and the victim must then endure the privacy invasion required of criminal case adjudication. The trade-off is that a victim of a sex crime may report the crime, but not be exposed to loss of privacy until the culprit is caught and the case filed, at which time the effort to seek justice presumably outweighs the loss of privacy.

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attachment 3-1

#4

SPONSORS
Phill Kline
Kenny Wilk
Jan Pauls
David Adkins
Barbara Ballard
Tom Bradley
Tim Carmody
Ray Cox
Joann Flower
Joann Freeborn
Fred Gatlin
Ken King
Bill Mason
Doug Mays
Laura McClure
Bob Mead
Gayle Mollenkamp
Jim Morrison
Don Myers
Melvin Neufeld
Kay O'Connor
Greg Packer
Pat Pettey
Blaise Plummer
Tom Robinett
Alex Scott
Marvin Smith
Sabrina Standifer

Protecting the Privacy of Victims - H.B. 2761

TESTIMONY OF REP. PHILL KLINE

Before the Senate Judiciary Committee
Friday, March 18, 1994

Mr. Chairman and members of the committee, thank you for the opportunity to appear before you in support of H.B. 2761. The bill protects the identity of any victim of a sex crime, is co-sponsored by 28 representatives of both political parties and passed the House 116-9.

As we discuss this bill it is important to understand three things: (1) why we need the bill; (2) what the bill is; and (3) what the bill is not.

RAPE IS THE MOST UNDERREPORTED OF VIOLENT CRIME AND THOSE WHO RAPE WILL RAPE AGAIN

The FBI Uniform Crime Report states that 94,504 rapes *were reported* in the United States in 1989. Based on reports to police 16 rapes are attempted and 10 women are raped in our country every hour. The FBI also reports that *only 15% of all rapes are reported.* A rape, or violent sex offense, that is not reported is a rape waiting to happen.

Fully 52% of convicted rapists will be arrested again within 3 years of their release from prison. (From the pages of Newsweek, July 1990 and U.S. News & World Report, July 1989, as provided by M.O.C.S.A.).

Our state has a compelling interest in increasing the report, prosecution and conviction of rapists. This legislation will help accomplish that goal.

RAPE IS A TRAUMATIC AND INVASIVE CRIME THAT HAS LONG LASTING IMPACT

Rape, next to murder, is the most violating and demeaning of all crimes. It is a crime that deeply affects the victim, resulting in severe emotional trauma that must be addressed on an individual basis while considering the individual needs of each victim. In fact, studies indicate that 50% of rape victims experience post-traumatic stress disorder for years after a rape and 16% still suffer emotional problems 15 years following the rape. (HRS Rape Awareness Program, Tallahassee, FL) 1987.

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This trauma combines with an unwarranted public stigma to cause the underreporting of sex crimes. *A 1992 survey completed by the National Victim Center revealed that 97% of rape service agencies believe that laws shielding victim confidentiality by protecting the disclosure of names will be effective in increasing the report of rape.*

Rape counselors and victims' advocates indicate that one of the first questions asked by a victim is whether her name will be in the paper. They also report that many times when a rape victim is informed that her name, address and phone number are public information, they simply do not report the crime. *We must have the courage to encourage the report of rape and to do this we must support the rape victim and her personal concerns for privacy.*

THIS BILL HAS OVERWHELMING PUBLIC SUPPORT

In 1992 Kansas voters overwhelmingly approved a constitutional amendment recognizing victims' rights. Since that time, Kansans have been waiting to see what we will do to promote those rights. We have had tremendous discussion regarding the rights and lack of rights of criminals, however, we have not spent a great deal of time promoting victims' rights. This bill is an effort to address part of the publics' concerns.

People support this bill. A 1990 poll by the National Victim Center reveals that 79% of Americans support this type of law.

THIS BILL IS SIMPLE; IT SIMPLY ALLOWS LOCAL LAW ENFORCEMENT AGENCIES TO REFUSE TO RELEASE THE NAME, ADDRESS AND PHONE NUMBER OF VICTIMS' OF SEX CRIMES

Current law allows the release of the name, address and phone number of sex crime victims - to anyone. This is the law despite the fact that our laws currently protect from disclosure certain investigative materials and often, the identify of juvenile offenders. This bill simply amends the Kansas open records act to provide that any information which individually and specifically identifies the victim of a sex crime may be withheld.

The bill is constitutional. It does not prohibit publication, it does not prevent the victim from voluntarily going to the media, it does not close information relating to the crime or prevent the disclosure of general information relating to the victim. Such information may have significant public safety ramifications. This bill essentially weighs the public interest in being a voyeur against the state's interest in increasing the report of rape and victims' interest in privacy - and sides with the victim and the reporting of rape.

This bill offers the least restrictive method to address the privacy concerns of the sex crime victim. The choice is left to local law enforcement agencies to develop a policy that is utilized consistently.

This bill should not be viewed as an indictment of the media. Kansas media representatives have been responsible and have a voluntary policy that prevents the publication of identifying information of the victim. Voluntary compliance, however, is not sufficient to many victims attempting to overcome the trauma of rape. They deserve and need this protection.

The First Amendment can and must be cherished and protected. The First Amendment, however, simply by its existence, should not cause us to shy away from important and fundamental policy and societal questions. Simply raising the First Amendment, should not defeat this proposal. The U.S. Supreme Court and our constitution clearly recognizes the rights of states to protect certain information from disclosure when a compelling state interest is protected. We have a compelling need to increase the reporting of sex crimes - to prevent our citizens from becoming future victims.

In a perfect world, a woman would not hesitate to report a rape or hesitate to have her name in the paper because we would not have a stigma regarding rape. In a perfect world, women would not be raped. Tragically, we do not live in a perfect world. Rapes occur and the results are brutal. It is time that we side with the victim, that we recognize that action is needed to increase the report of rapes and that we empower victims to choose their own path to healing and the prosecution of the rapist.

I strongly urge you to report this bill favorably for passage.

Victim #5

MOCSA

METROPOLITAN ORGANIZATION TO COUNTER SEXUAL ASSAULT

February 16, 1994

Representative Michael O'Neal, Chairman
Judiciary Committee
Kansas House of Representatives
Capitol Building
Topeka, KS

Honorable Chairman and Members of the Committee:

I am here today representing the Metropolitan Organization to Counter Sexual Assault in Kansas City, Missouri. Our organization was incorporated in 1975, and our mission is to lessen the ill-effects of sexual assault and abuse by treating victims, educating the public in prevention of these crimes, and improving treatment of victims through professional training and advocacy. MOCSA is the rape crisis center for the greater metropolitan Kansas City area and deals with victims of sexual assault and abuse of all ages. In 1993, we served 32,000 throughout the Kansas City area.

Our organization is fully in support of House Bill 2761, which will protect the identification of victims of sexual assault. MOCSA is committed to preserving and protecting the rights of sexual assault and abuse victims, including the right to privacy. It is our position that the rights and preferences of sexual assault victims are paramount and that they should control any public release of their names, addresses, or other identifying information. No one - including parents or guardians - has the right to permit public identification of a sexually victimized individual without the victim's full consent.

3515 BROADWAY • SUITE 301 • KANSAS CITY, MISSOURI 64111-2501 • 816/931-4527

24-HOUR CRISIS LINE: 816/531-0233

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attachment 5-1

In all cases, we believe it is the victim's right to decide what information about an abuse or assault experience is told, when it is told, and to whom it is told. MOCSA supports victims who choose to relate their experiences and frequently makes requests of victims on behalf of the media or other groups. These individuals are selected based upon the status of their recovery and on MOCSA's judgment that the exposure may be beneficial, or at least in no way harmful. We also offer follow-up support and debriefing opportunities, as these types of exposures may result in unexpected traumatic reaction.

However, when an individual has been totally dominated by another individual, the additional loss of privacy and control through unwanted public exposure is re-victimization, and can be harmful and debilitating and delay recovery, frequently for years.

Over the years, MOCSA has had contact with a number of individuals who have experienced public exposure by the media and have suffered as a result. We have a particular concern for children, as we have known adults whose childhood victimization was made public and they describe recurring emotional trauma because of that public exposure and the related embarrassment and stigmatization.

We recognize and respect the constitutional guarantees regarding freedom of the press, and while we believe that most members of the print and broadcast media respect the rights of individual sexual assault victims to privacy and safety, there would be great comfort in the assurance that that privacy is protected by law. All of us would agree that sexual victimization is a very cruel and private invasion of ones body and being, and this is complicated by a society that places a stigma on victims of these crimes, and frequently adopts an attitude of blame

rather than sympathy. Unlike other victims of crime, the victim of rape and sexual assault lives with these additional burdens and is often "re-victimized" by those who do not understand.

In 1992, a survey done by the National Victim Center revealed that 97% of rape service agencies responding thought that laws protecting victims' confidentiality by protecting disclosure of their names by the news media --97%-- would be effective in increasing victims' willingness to report sexual assaults.

The general public also supports protection of victims' identity. In 1990, the National Victim Center conducted a poll which revealed that 79% of Americans believe that a law should be passed prohibiting the release of a sexual assault victim's name. Clearly, the general public recognizes the difficulty, the vulnerability and the unfortunate stigma faced by sexual assault victims.

In closing, MOCSA fully endorses House Bill 2761. We urge your positive action to support victims of sexual assault.

Respectfully submitted,

Jacklyn Graber

Jacklyn Graber, MA
Coordinator of Sexual Assault Services

#6

House Bill No. 2677
Senate Judiciary Committee
March 18, 1994

Testimony of Paul Shelby
Assistant Judicial Administrator
Office of Judicial Administration

Thank you Mr. Chairman and members of the committee for allowing us to appear today to discuss House Bill No. 2677 which relates to the record of marriage license applications.

We support this proposal from the Kansas Association of District Court Clerks and Administrators. The purpose of this bill is to elimate the record of marriage license applications. It does not delete the application, just the record.

Presently, K.S.A. 23-106 requires the Clerk of the District Court to keep a record of marriage license applications which shows the name of the person applying and the date of the filing of such application and the names of the parties to the proposed marriage. In addition, K.S.A. 23-109 and K.S.A. 23-112 states that the judge or clerk must record marriages on the marriage record in each court, and that the judge or clerk shall keep a correct copy of all marriage licenses returned with the endorsement on the license by the person performing the marriage ceremony.

We are requesting an amendment to K.S.A. 23-106 which would require that each district court keep a record of all marriages resulting from licenses issued by the court, which record shall show the names of the persons who were married and the date of the marriage.

This change would elimate duplicate record keeping, duplicate indexing and save clerk time.

We urge the committee to favorably pass this bill.

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attachment 6-1

#7

HOUSE BILL NO. 2677
SENATE JUDICIARY COMMITTEE

Testimony of Alice Adams
Clerk of the District Court, Morris County
Member, Legislative Committee, KADCCA

Mr. Chairman and Committee Members:

I appreciate the opportunity to appear today to discuss House Bill No. 2677, which would amend marriage license procedures.

K.S.A. 23-106 presently requires the Clerk of the District Court to keep a record of all marriage license applications filed, showing the name of the applicant, the date of filing, and the names of the parties to the proposed marriage.

Additionally, K.S.A. 23-109 and K.S.A. 23-112 state that the judge or clerk must record marriages on the marriage record in each court, and that the judge or clerk shall keep a correct copy of all marriage licenses returned with the endorsement on the license by the person performing the marriage ceremony.

The Clerks of the District Court are requesting that K.S.A. 23-106 be amended to require the clerk to keep a record of all marriages resulting from licenses issued by the court. We are not eliminating the application, just the recording of it. This change would save the clerk time and eliminate duplicate records, which would be especially helpful in the urban counties, where 300 to 400 marriage license applications may be filed each month.

Thank you for your consideration.

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attachment 7-1

House Bill No. 2697
Senate Judiciary Committee
March 18, 1994

Testimony of Paul Shelby
Assistant Judicial Administrator
Office of Judicial Administration

Thank you Mr. Chairman and members of the committee for allowing us to appear today to discuss House Bill No. 2697 which relates to Chapter 61 process of service.

We support this proposal from the Kansas Association of District Court Clerks and Administrators. The purpose of this bill is to extend the answer/appearance dates, from the date the summons is issued in Chapter 61 cases, to allow more time for service.

In Fiscal Year 1993, which ended June 30, 1993, we had 80,404 limited action cases filed in the district courts. In our medium and large jurisdictions, the Sheriff is unable to completely serve all process timely in Chapter 61 cases which requires reissuance of process which increases the cost of litigation to the parties and the workload in the sheriffs' and clerks' offices. The majority of returns are marked "Unable to Serve" which causes an Alias Summons to be issued and served. We have the same problem with certified mailings.

We are requesting that the answer/appearance dates on Chapter 61 cases be set on a date determined by the court that is not less than 11 days nor more than 35 days from the date the summons is issued. We are also making in-county and out-of-county the same. We are also requesting a change in the return of service being required within a set number of days from issuance, the return is to be made in 5 days in all cases before the date stated in the summons for the defendant to either appear to plead to the petition. The exeption is K.S.A. 61-2306, forcible entry and detainer cases which remain the same.

We are also requesting amendments to Form 1 of K.S.A. 1993 Supp. 61-2605 to comply with these changes.

We urge the committee to favorably pass this bill.

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attachment 8-1

#9

House Bill No. 2697
Senate Judiciary Committee

Testimony of Diana Jones
Chief Clerk, 25th Judicial District

Mr. Chairman:

Thank you for the opportunity to appear today to discuss House Bill No. 2697 which amends the service and answer times set in the code of civil procedure for limited action cases under KSA 61-1802 et seq.

The legislature changed the statutorily prescribed preferred method of service for civil process to service by certified mail effective January 1, 1991, under Chapter 60 of the Kansas Statutes Annotated. This is incorporated by reference in Chapter 61; however, no adjustments were made to the prescribed service and answer times in Chapter 61 to facilitate utilization of this method of service, and the time required to get notice back from the postal service on certified mailings is beyond the mandated service and answer parameters.

Additionally, many sheriff's departments are having difficulty in effecting personal service within these times, thus requiring reissuance of process which increases the cost of litigation to the parties and increases the workload in the sheriffs' and clerks' offices. For example, on Chapter 61 cases Shawnee County last year issued 18,782 original summons and 11,585 alias summons (which are summons issued subsequent to the original issuance). A spot docket call check showed that, of the 558 cases set, 55% of the cases had no returns, no service, or showed time expired.

For these reasons we are asking that the answer/appearance dates on Chapter 61 cases be set on a date determined by the court that is not less than 11 days nor more than 35 days from the date the summons is issued. This will allow the courts some latitude in scheduling to meet the courts' dockets and enable them to allow more time when service is to be effected by certified mail. Rather than return of service being required within a set number of days from issuance, the return is to be made a prescribed number of days before the court date. All in-county and out-of-county time differences are eliminated, only retaining the lesser time for return of service currently set in KSA 61-2306 for forcible entry and detainer cases.

Changes proposed to the summons form in KSA 61-2605 reflect the consolidation of parameters and eliminates the need for independent calculation of dates for return of service now required to complete the forms before issuance.

We urge the committee to consider our concerns and amend the statutes as proposed.

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attachment 9-1

#10

REMARKS CONCERNING HOUSE BILL 2697
SENATE JUDICIARY COMMITTEE
MARCH 18, 1994

Thank you for the opportunity of presenting this statement on behalf of the Kansas Collectors Association, Inc., and on behalf of the Kansas Collection Attorneys. These groups agree that there should be an extension of time for service of process, but we feel that an extension to 30 days should be a sufficient extension of time, rather than the 35 days as provided in the bill as amended by House Committee.

We would urge the committee to amend the bill, on page 1, in line 31, by striking "35" and inserting in its place "30". With this amendment, we would be entirely supportive of the bill.

The bill as originally introduced would have provided for an extension to 40 days; we made a presentation before the House Judiciary Committee requesting that the extension be limited to 30 days, and apparently the House Committee compromised at 35. Perhaps we should be asking that the extension be limited to 25 days, so that you could in turn compromise on 30. But in all seriousness, we believe that 30 days would be sufficient.

Elwaine F. Pomeroy, for
Kansas Collectors Association, Inc., and
Kansas Collection Attorneys

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attachment 10-1

#11

GEARY COUNTY LANDLORDS ASSOCIATION, INC.
364 Grant Avenue
Junction City, Kansas 66441-4244
931/238-1894

House Bill 2697 - Concerning civil procedure for limited actions; relating to process.

I regret that I cannot appear in person before you today, however, I do appreciate the opportunity to send written testimony.

Many landlords in Geary County use the forcible detainer under limited actions in the eviction process. Many times we have appeared in court only to discover the defendant has not been served or the return has not been delivered to the court. We have to check daily with our Sheriff's office to make sure these papers are served. We have furnished them information where they can find the tenants and at what time, still the papers are not served or not returned to the court in sufficient time. The case cannot be heard, the landlord must re-file and go through the process again. There is no enforcement or penalty to the statute to encourage those serving the process to follow the law.

We do have one objection to the bill - page 1, line 30 - the changing of the days to appear in court.

In the eviction process we give the tenant so many days to pay rent, usually 3 days. If the rent is not paid, a Notice to Quit for Non-Payment of Rent is issued giving the tenant 72 hours to pay or move. Upon return of the notice and the 72 hours has expired and the tenant has not paid rent or moved, a forcible detainer action is filed in district court under limited actions. We also use the forcible detainer if a 30 day Notice to Vacate has been issued and the tenant has not moved at the end of the notice period.

Under present law the court has up to 21 days for first hearing. The judge usually gives the tenant another 10 days to move from the premises. Then if they don't move, the Sheriff can take another 10 days to move the tenants out. This may take as much as 50 days to remove the tenant from the home.

Some utility companies have made the landlord responsible for the utility bills if the tenant does not pay, and many times in an eviction the tenant will not pay the utilities as well. The utilities may be cut off for non-payment or the tenant may still owe for the utilities at the time of the eviction and just not pay them. In some cases the landlord must pay the utility bill before the next tenant may have utilities.

So during the eviction process, the debts add up and in many cases damages, as well, as some tenants will deliberately cause damages to the home in retaliation to the eviction. By the time the Sheriff serves the writ of execution to remove the tenant, the tenant may already owe for another months rent.

If the time limit is changed to as much as 35 days to respond, the tenant may be able to reside in the home for as much as 65 days without paying rent.

Landlording is a business for profit, however, the losses incurred during the eviction process must be added into the rents charged to make up for these losses. As rents are increased to make up the losses, the affordability of housing changes, making the homes less affordable.

We are asking that the time limits for forcible detainer not be changed in landlord-tenant disputes.

Again, thank you for the opportunity to send testimony. I have enclosed my office and home phone numbers if you should have any questions.

Ann Elliott, Legislative Chairperson

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State of Kansas

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House of Representatives

COMMITTEE ASSIGNMENTS
MEMBER: TAXATION
EDUCATION
FEDERAL & STATE AFFAIRS
JOINT COMMITTEE ON LEGISLATIVE EDUCATIONAL PLANNING COMMITTEE

March 18, 1994

H.B. 2832

Mr. Chairman and members of the Judiciary Committee.

Thank you for the opportunity to come before you in support of H.B. 2832. This bill is meant to reduce the number of frivolous lawsuits filed in the state of Kansas. This legislation addresses the problem of convicted criminals filing frivolous, and expensive lawsuits against the state. In Vinson Gordon Crenshaw v. State of Kansas, Case No. 93-3062-DES. an inmate claimed he had been "hit by a very large kangaroo." The relief requested, release from custody. In Alvin Daniel Harris v. Kansas Department of Corrections, et al., Case No. 92-3092-DES. an inmate claimed that a magazine was delivered a day late at that two pages were loose and fell from it constituting cruel and unusual punishment. The relief requested, 40 million dollars. At first flush these claims are amusing, until we stop and realize that these cases cost Kansas tax payers real money and equally important when a court consumes resources on one of these thoughtless claims some innocent victim is waiting for their turn at justice.

H.B. 2832 addresses the frivolous lawsuit area by:

1. Requiring inmates to **exhaust administrative remedies** prior to using the court system (page 1, line 30).

2. Requiring some amount of money be paid as a **filing fee** (page 11, line 33), and **assessing fees** for cases deemed frivolous at the conclusion of a trial or hearing (see page 10, line 17). The fees would be assessed against

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the individual "inmate trust accounts." (See attachment for details concerning the amount of money in inmate trust accounts per institution).

3. **Amends** the **habeas corpus** writ to include a **statue of limitations** (page 9, line 9), allows the court additional time to respond versus the current 24 hours (page 9, line 40), and requires the court to respond with only written reasons for parole denial versus "specific and detailed" reasons (page 6, line 30 and page 7, line 3).

Mr. Chairman, when the House Judiciary Committee worked the bill there was some mis-communication concerning filing fee requirements. I have worked with Mr. Paul Shelby and respectfully ask for the committee's consideration for amending the bill per the attached balloon. Other amendments were attached to this bill on the House Floor regarding victim restitution, Rep. Phill Kline will address those provisions of the bill in his testimony.

It is not my intent, nor do I believe it would ever be the intent of the legislature, to deny any legitimate case from being heard and served in our Kansas courts. But clearly many of the cases filed by inmates are an abuse of the system. Convicted criminals have had "their day in court." Though many of our constituents would like to completely strip inmates of any right to use the courts, we cannot do that. I believe H.B. 2832 puts in place law that will give the courts greater flexibility to prevent many of these senseless cases.

The 1994 Legislature will pass comprehensive criminal justice reform legislation. These new laws will place an additional burden on an already stretched court system. H.B. 2832 will help prevent some frivolous cases, thus giving victims greater access to the courts and the justice so rightly deserved by innocent taxpaying Kansans.

I would ask the committee to recommend H.B. 2832 favorable for passage.

KANSAS DEPARTMENT OF CORRECTIONS

DOC
SERVING KANSAS

JOAN FINNEY, GOVERNOR GARY STOTTS, SECRETARY

LANDON STATE OFFICE BUILDING — 900 SW JACKSON
TOPEKA, KANSAS — 66612-1284
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COPY

DATE: February 7, 1994

TO: Chuck Simmons
Chief Legal Counsel

FROM: Jim Rowe, Accountant

SUBJECT: Inmate Trust Fund Balances

A list of the Department of Corrections' Inmate Trust Fund balances as of December 31, 1993, that you requested are shown below.

Larned Correctional Mental Health Facility	$17,342
Winfield Correctional Facility	$29,102
El Dorado Correctional Facility	$45,517
Ellsworth Correctional Facility	$34,257
Norton Correctional Facility	$17,981
Stockton Correctional Facility	$3,435
Hutchinson Correctional Facility	$128,628
→ Lansing Correctional Facility	$230,958
Topeka Correctional Facility	$42,819
Wichita Work Release Facility	$180,954
TOTAL	$730,993

Note: The ADP on December 31, 1993 was 5,664 which gives an average Inmate Trust Fund Balance of approximately $129.00. Some inmates have large balances, as you can see at WWRF, which pulls the average up considerably. Many inmates, I would estimate at least 75%, have very small balances of probably $10.00 or less at the end of each month.

JR/pa

[As Amended by House Committee of the Whole]

As Amended by House Committee

Session of 1994

HOUSE BILL No. 2832

By Representatives Wilk and Phill Kline, Bradley, Cox, Crabb, Farmer, Flower, Freeborn, Glasscock, Graeber, Hayzlett, Jennison, Mayans, Mays, Mead, Myers, O'Connor, Packer, Robinett, Roe, Samuelson, Scott, Shore, M. Smith, Snowbarger, Vickrey and Wagle

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AN ACT concerning inmates in the custody of the secretary of corrections; relating to denial of parole; concerning the filing of civil actions by inmates; **[relating to inmate employment;]** amending K.S.A. 60-1501, **60-1503,** 60-1504 and 60-2007 and K.S.A. 1993 Supp. 22-3717, 60-1505, 60-2001**[, 60-2403, 75-5211]** and 75-5268 and repealing the existing sections.

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

New Section 1. Any inmate in the custody of the secretary of corrections or in a county jail, prior to filing any civil action naming the state of Kansas, **any political subdivision of the state of Kansas,** any public official, **the secretary of corrections, the warden, the sheriff, or an employee of the department of corrections or the county, while such employee is engaged in the performance of such employee's duty,** as the defendant pursuant to the rules of civil procedure, shall have exhausted such inmate's administrative remedies, established by **rules and regulations promulgated by the secretary of corrections or by county resolutions,** concerning such civil action. Upon filing a petition in a civil action, such inmate shall file with such petition proof that the administrative remedies have been exhausted.

Sec. 2. K.S.A. 1993 Supp. 22-3717 is hereby amended to read as follows: 22-3717. (a) Except as otherwise provided by this section and K.S.A. 1993 Supp. 21-4628 and amendments thereto, an inmate, including an inmate sentenced pursuant to K.S.A. 21-4618 and amendments thereto, shall be eligible for parole after serving the entire minimum sentence imposed by the court, less good time credits.

(b) An inmate sentenced for a class A felony, including an inmate

incapacitated or incompetent persons, physically present in this state may prosecute a writ of habeas corpus in the supreme court, court of appeals or the district court of the county in which such restraint is taking place. No docket fee shall be required.

(b) Except as provided in K.S.A. 60-1507, and amendments thereto, an inmate in the custody of the secretary of corrections shall file a petition for *writ pursuant to subsection (a) within ~~two years of the date of the decision of the hearing or action such inmate is challenging~~* 30 days from the date the action was final.

Sec. 4. K.S.A. 60-1503 is hereby amended to read as follows: 60-1503. (a) *Issuance.* ~~Upon filing of the petition, the writ shall be issued forthwith by the clerk of the court and shall bear the seal of the court.~~ *The petition shall be presented promptly to a judge in the district court in accordance with the procedure of the court for the assignment of court business. The petition shall be examined promptly by the judge to whom it is assigned. If it plainly appears from the face of the petition and any exhibits attached thereto that the plaintiff is not entitled to relief in the district court, the petition shall be dissolved at the cost of the plaintiff. If the judge finds that the plaintiff may be entitled to relief, the judge shall issue the writ and order the person to whom the writ is directed to file an answer within the period of time fixed by the court or to take such other action as the judge deems appropriate.*

(b) *Form.* The writ shall be directed to the party having the person under restraint and shall command ~~him or her~~ *such person* to have ~~such~~ person before the judge at the time and place specified in the writ.

the restrained

(c) *Service.* The writ shall be served without delay. If directed to the sheriff it shall be served by the clerk. If directed to any other person it shall be served by the sheriff or some other person designated by the judge. If the person to whom it is directed cannot be found or shall refuse admittance, the writ may be served by leaving it at ~~his or her~~ *such person's* residence or affixing it at some conspicuous place where the party is confined or restrained.

(d) *Sundays and holidays.* The writ may be issued and served at any time, including Sundays and holidays.

Sec. 4 5. K.S.A. 60-1504 is hereby amended to read as follows: 60-1504. (a) *Time.* ~~The~~ Except as provided in subsection (b), the person to whom the writ is directed shall file an answer thereto within ~~twenty-four (24)~~ 72 hours after the writ is served or at such other time as shall be specified in the writ.

(b) Time; exceptions. If the petition for writ challenges a denial of parole or a prison disciplinary action, the person to whom the

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such provisions for custody during pendency of the appeal, as the judge shall prescribe. If the state, in open court, announces its intention to appeal from an order discharging a prisoner, the judge shall stay the enforcement of the judgment for a period not more than 24 hours to permit the filing of an appeal.

(e) (1) *The Record.* In habeas corpus proceedings involving extradition to another state, when written notice of appeal from a judgment or an order is filed, the transcript shall be prepared within 20 days after the notice of appeal is filed and sent to the appellate court for review. The appellate court may shorten or extend the time for filing the record if there is a reasonable explanation for the need for such action. When the record is received by the appellate court, the court shall set the time for filing of briefs, if briefs are desired, and shall set the appeal for submission.

(2) *Hearing.* Such cases, taken to the court of appeals by appeal, shall be heard at the earliest practicable time. The appellant need not be personally present, and such appeal shall be heard and determined upon the law and the facts arising upon record. No incidental question which may have arisen on the hearing of the application before the court shall be reviewed.

(3) *Orders on Appeal.* In such cases, the appellate court shall render such judgment and make such orders as the law and the nature of the case may require, and may make such orders relative to the costs in the case as may seem right, allowing costs and fixing the amount, or allowing no cost at all.

Sec. 6 7. K.S.A. 1993 Supp. 60-2001 is hereby amended to read as follows: 60-2001. (a) *Docket fee.* Except as otherwise provided by law, no case shall be filed or docketed in the district court, whether original or appealed, without payment of a docket fee in the amount of $61.50 to the clerk of the district court.

(b) *Poverty affidavit in lieu of docket fee.* (1) *Effect.* In any case where a plaintiff by reason of poverty is unable to pay a docket fee, and an affidavit so stating is filed, no fee will be required. ~~*If the plaintiff is an inmate in the custody of the secretary of corrections, such inmate may be required to pay a reduced docket fee. The supreme court shall establish by court rule a sliding scale for the docket fee based on the inmate's ability to pay. If such inmate has money in the inmate's account, the secretary of corrections is hereby authorized to disburse such money to pay the docket fee*~~ ~~court costs shall be determined at the conclusion of the case by the court hearing the case.~~ The secretary of corrections is hereby authorized to disburse money from the inmate's account ~~in relation to the inmate's ability to pay, if the court~~

An inmate in the custody of the secretary of corrections may file a poverty affidavit only if the inmate attaches a statement of the balance in the inmate's trust fund. Such statement shall be certified by the secretary. On receipt of the affidavit and attached statement, the court shall determine the costs for filing the action.

~~assesses costs to the inmate].~~ to pay the costs as determined by the court.

(2) *Form of affidavit.* The affidavit provided for in this subsection shall be in the following form and attached to the petition:

State of Kansas, _____ County.

In the district court of the county: I do solemnly swear that the claim set forth in the petition herein is just, and I do further swear that, by reason of my poverty, I am unable to pay a docket fee.

(c) *Disposition of docket fee.* The docket fee shall be the only costs assessed in each case for services of the clerk of the district court and the sheriff. The docket fee shall be disbursed in accordance with K.S.A. 20-362 and amendments thereto.

(d) *Additional court costs.* Other fees and expenses to be assessed as additional court costs shall be approved by the court, unless specifically fixed by statute. Other fees shall include, but not be limited to, witness fees, appraisers' fees, fees for service of process outside the state, fees for depositions, alternative dispute resolution fees, transcripts and publication, attorneys' fees, court costs from other courts and any other fees and expenses required by statute. All additional court costs shall be taxed and billed against the parties as directed by the court. No sheriff in this state shall charge any district court in this state a fee or mileage for serving any paper or process.

Sec. ~~7~~ 8. K.S.A. 60-2007 is hereby amended to read as follows: 60-2007. (a) Except as otherwise provided in this subsection, the provisions of this section shall apply to any civil action brought in a court of this state, including any action pending on the effective date of this act. This section shall not be applied retroactively to specific conduct occurring prior to the effective date of this act. The provisions of this section shall not apply to proceedings brought under K.S.A. 60-1507, *and amendments thereto.*

(b) At the time of assessment of the costs of any action to which this section applies, if the court finds that a party, in a pleading, motion or response thereto, has asserted a claim or defense, including setoffs and counterclaims, or has denied the truth of a factual statement in a pleading or during discovery, without a reasonable basis in fact and not in good faith, the court shall assess against the party as additional costs of the action, and allow to the other parties, reasonable attorney fees and expenses incurred by the other parties as a result of such claim, defense or denial. An attorney may be held individually or jointly and severally liable with a party for such additional costs where the court finds that the attorney knowingly and not in good faith asserted such a claim, defense or denial or, having gained knowledge of its falsity, failed to inform the court

rate allowed in K.S.A. 75-3203 and amendments thereto;

(c) if any of the dependents of the inmate are receiving public assistance, a reasonable percentage of the inmate's net pay after deduction of the above expenses shall be forwarded to the court which ordered support for the dependent or, if there is no order, to the secretary of social and rehabilitation services;

(d) if subsection (c) is not applicable, then a reasonable percentage of the inmate's net pay after deduction of the above expenses shall be disbursed for the payment, either in full or ratable, of the inmate's obligations [if such obligations relate to the care and support of the defendant's immediate family] acknowledged by the inmate in writing, or which have been reduced to judgment;

~~[(e) payment of a reasonable amount to the clerk of the district court in which the crime occurred pursuant to an order of restitution and payment to the state crime victims compensation fund pursuant to the program established in subsection (2);~~

~~[(f) if subsection (c) or (d) is not applicable, then a reasonable percentage of the inmate's net pay after deduction of the above expenses shall be disbursed for the payment, either in full or ratable, of the inmate's other obligations acknowledged by the inmate in writing, or which have been reduced to judgment;]~~

~~(e)~~ [(g)] payment of a reasonable amount into a savings account for disbursement to the inmate upon release from custody;

~~(f) payment of a reasonable amount to the clerk of the district court in which the crime occurred pursuant to an order of restitution. Such payment shall be required only if the inmate is incarcerated for a crime or crimes for which restitution is, or could be, ordered pursuant to the property crime restitution and compensation act. Such payment shall be in addition to any amount withheld and ordered paid as restitution to the state crime victims compensation board; and~~

(g) payment of costs assessed to the inmate pursuant to the code of civil procedure; and

~~(g)~~ *(h)* the balance, if any, shall be credited to the inmate's account and shall be made available to the inmate in such manner and for such purposes as are authorized by the secretary.

~~[(2) The secretary of corrections is hereby authorized to implement a program where inmates in the custody of the secretary contribute monetarily to the crime victims compensation fund. The secretary is hereby authorized to adopt rules and regulations to implement this program.~~

[New Sec. 10. When the court orders that restitution be paid, whether to the crime victim or crime victims compensation fund,

Strike lines 37-41

requested to do so.

[(2) The provisions of this subsection shall apply only to those judgments which have not become void as of July 1, 1988.

[(c) The time within which action must be taken to prevent a judgment from becoming dormant does not run during any period in which the enforcement of the judgment by legal process is stayed or prohibited.

[(d) the provision of this section shall not apply to section 10.

[Sec. 12. K.S.A. 1993 Supp. 75-5211 is hereby amended to read as follows: 75-5211. (a) The secretary of corrections shall provide programs of employment, work, educational or vocational training for those inmates whom the secretary determines are available, willing and able to participate and are capable of benefiting therefrom. Equipment, management practices and general procedures shall, to the extent possible, approximate normal conditions of employment. Such work week may include schooling, vocational training, employment at private industry, treatment or other activities authorized by the secretary. For all purposes under state law, no inmate shall be deemed to be an employee of the state or any state agency. The secretary of corrections shall credit to each inmate as a reward for such employment, an amount which shall be set by the governor but shall not be less than $.25 per day. *Of the amount credited to the inmate, an amount shall be deducted and paid to the crime victims compensation fund pursuant to the program established in K.S.A. 75-5268, and amendments thereto.* Any inmate who is gainfully employed under the work release provisions of K.S.A. 75-5267 and 75-5268, and amendments thereto, or who is gainfully employed by a private business enterprise operating on the grounds of a correctional institution under K.S.A. 75-5288 and amendments thereto, or any other private business at which inmates are permitted to be gainfully employed, and any inmate who is incarcerated at the Topeka correctional facility for the purpose of receiving diagnosis and any inmate on disciplinary segregation status shall not be eligible to receive compensation as provided in this subsection.

[(b) The secretary of corrections shall establish programs and prescribe procedures for withdrawing amounts from the compensation paid to inmates from all sources for the same purposes as are prescribed by K.S.A. 75-5268 and amendments thereto for moneys of work release participants, except that any inmate employed in a private industry program, other than work release, shall, in addition to the deductions specified in K.S.A. 75-5268 and amendments thereto, have deduction of 5% of monthly gross wages paid

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The secretary of corrections is hereby authorized to adopt rules and regulations under which offenders in the secretary's custody may be assessed fees for various services provided to offenders and for deductions for payment to the crime victims compensation fund.

to the crime victims compensation fund or a local property crime fund for the purpose of victim compensation. The department of corrections is authorized to make this deduction and payment to the crime victims compensation fund or a local property crime fund. In the event a local fund has made a payment to a victim of a property crime under this act and there is an order of restitution for which moneys are being withheld from an inmate under K.S.A. 75-5268 and amendments thereto, the secretary shall cause such moneys deducted for use by the state crime victims compensation board to be paid quarterly to the local fund, if any, then the balance to the state crime victims compensation fund. If there is no order of restitution, then K.S.A. 75-5268 and amendments thereto shall apply to the disposition of funds.

[(c) (1) Upon the initial release of any inmate on parole, conditional release, postrelease supervision or expiration of the inmate's maximum sentence, the inmate shall be provided with suitable clothing and, if the inmate has a balance of $500 or less in the inmate's trust account, a cash payment of $100. If the inmate subsequently violates a condition of release resulting in reincarceration and is thereafter again released on parole, conditional release, postrelease supervision or expiration of the inmate's maximum sentence, the inmate may be provided, pursuant to rules and regulations of the secretary of corrections, with a cash payment of not more than $100. Any inmate who is gainfully employed under the work release provisions of K.S.A. 75-5267 and 75-5268, and amendments thereto, or who is gainfully employed by a private business enterprise operating on the grounds of a correctional institution under K.S.A. 75-5288 and amendments thereto, or any other private business at which inmates are permitted to be gainfully employed, or any inmate paroled or released to a detainer shall not be eligible to receive this cash payment. *Upon any release, when an inmate is receiving funds from the inmate's trust account, an amount shall be deducted and paid to the crime victims compensation fund, pursuant to the program established in K.S.A. 75-5268, and amendments thereto.*

[(2) An inmate released on expiration of the inmate's maximum sentence shall be provided public transportation, if required, to the inmate's home, if within the state, or, if not, to the place of conviction or to some other place not more distant, as selected by the inmate. An inmate released on parole or conditional release shall be provided public transportation, if required, to the place to which the inmate was paroled or conditionally released.]

Sec. ~~9~~ 10 [13]. K.S.A. 60-1501, 60-1503, 60-1504 and 60-2007

Testimony on HB 2832
Submitted by the Kansas Department of Corrections
to the Senate Judiciary Committee
March 18, 1994

The Department of Corrections supports HB 2832 as amended by the House of Representatives, but has concerns regarding sections 7, 9, and 12 as explained later in this testimony. The bill is intended to establish reasonable measures to discourage frivolous inmate litigation without creating unreasonable obstacles to an inmate's right of access to the courts. We believe the bill provides a number of measures to achieve this goal. We wish to specifically address several of these provisions:

New Section 1: This provision would require that inmates exhaust administrative remedies prior to initiating actions against the State of Kansas or employees of the State for actions arising from the performance of an employee's duties. The Department's inmate grievance procedure has been certified as meeting standards established by the United States Department of Justice. This certification allows the United States District Court to require that an inmate exhaust administrative remedies prior to filing a civil rights action in federal court. The intent is to try to resolve issues at the lowest level possible. Requiring exhaustion of remedies could increase resolution of disputes at the facility level without taking up valuable court time.

Section 3: This section establishes a thirty day statute of limitation period for the filing of a petition for a writ of habeas corpus by inmates in the custody of the Secretary of Corrections. Current law does not limit the time period for filing a petition for a writ of habeas corpus. Inmates frequently use such actions to challenge disciplinary convictions occurring several years prior to the filing of the petition. This makes the case difficult to defend since staff involved in the incident may no longer by employed by the Department or documents concerning the incident may no longer be available.

Section 7: This section as originally proposed authorized a reduced docket fee for the filing of a civil action by an inmate. The current docketing fee is $61.50. In most cases an inmate avoids this fee by filing an affidavit of poverty. The proposal for a reduced docketing was based on a belief that requiring an initial fee of some amount might discourage inmates from filing clearly frivolous actions, without unreasonably restricting an inmate's

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access to the courts. The bill now provides for the court to determine court costs at the conclusion of the case and authorizes the Secretary of Corrections to disburse money from the inmate's account in relation to the inmate's ability to pay. The bill does not provide a means to determine an inmate's ability to pay. The Department believes it is more appropriate for the court to make this determination, particularly since the Department of Corrections, or staff of the department, will be the defendants in the cases filed by inmates. In addition, Section 7 appears to conflict with Section 8 which provides that the Secretary is authorized to disburse "any money in the inmate's account" rather than on an ability to pay basis.

The Department supports the amendment offered by Representative Wilk as an alternative to the current provisions of the bill. We believe it sets forth a reasonable procedure for determining the ability of an inmate to pay some or all of the costs for filing a civil action in court.

Sections 8 and 9: These sections authorize the Department to withdraw funds from an inmate's account in those instances when a court has assessed costs against the inmate. The Department believes this provision is necessary so that clear authority to take this action is in statute.

Sections 9 and 12: Section 9 also authorizes the secretary of corrections to implement a program where inmates contribute monetarily to the crime victims compensation fund. The Department has no objections to such inmate contributions. However, rather than providing authorization for inmate contributions only to the crime victims compensation fund, it is suggested that the secretary of corrections be given general authority to assess fees to offenders in the secretary's custody, including for contributions to the crime victims compensation fund. To provide such authority, it is suggested that section 12 of the bill be amended as suggested by Representative Wilk.

Assessing fees to offenders is based on a belief that offenders should be accountable for their actions, and contributing to the costs of incarceration or supervision are important components of establishing that accountability.

#14

STATE OF KANSAS

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TESTIMONY BEFORE THE SENATE JUDICIARY COMMITTEE
By John J. Knoll, Assistant Attorney General
Re: House Bill 2832
March 18, 1994

Ladies and Gentlemen:

Thank you for the opportunity to comment on the provisions of House Bill 2832, a bill aimed at slowing the growth of frivolous civil inmate litigation.

The Attorney General is charged with the responsibility of defending the Kansas Parole Board in state and federal court actions and is concerned with the tremendous growth in lawsuits filed against the parole board in the past year. In calendar year 1992, inmates challenged approximately 40 parole denials, while in calendar year 1993 they challenged approximately 150 denials through state court proceedings. These lawsuits typically take the form of habeas corpus actions challenging denial of parole. Such an approach was

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sanctioned by the Kansas Supreme Court in Johnson v. Stucker, 203 Kan. 253, 259, 453 P.2d 35 (1969), although courts are limited to inquiring whether the board complied with applicable statutes and whether the board's actions were arbitrary and capricious.

Inmates have formulated fill-in-the-blank petitions which have been distributed to inmates in correctional institutions all over the state. (See Exhibit A - attached). Typically, the inmate states his restraint is unlawful because there is no evidence the parole board considered the statutory factors for parole set out in K.S.A. 1993 Supp. 22-3717(k), or the board failed to "state in detail the specific reasons for not granting the parole" as required by the statute. Just a few weeks ago, I was served with 12 Writs of Habeas Corpus resulting from such petitions, and these cases were recently heard in the Leavenworth County District Court.

Due to fast timeline imposed in habeas corpus actions and the workload of the Kansas Parole Board, these suits are often difficult to defend. Although the inmate bears the burden of proof, Johnson, 203 Kan. at 260, a recent decision by the Kansas Court of Appeals, Haney v. Hamilton, 13 Kan. App. 2d 269, 768 P.2d 832, rev. denied

244 Kan. 737 (1989) seems to justify setting every parole denial case for hearing and having a parole board member testify about what factors they considered in denying the inmate parole.

Such an approach creates obvious problems. Parole board members are typically traveling to parole hearings three or four days per week (See Exhibit B, attached). Requiring parole board members to testify in each and every habeas corpus action disrupts the normal workload of the board. Also such an approach takes up valuable judicial time which could be better spent on other matters. In habeas corpus actions challenging a denial of parole, courts are limited in the available relief to remanding the case back to the Kansas Parole Board with instructions to conduct a proper hearing and to make proper findings. Lamb v. Kansas Parole Board, 15 Kan. App. 2d 606, 608, 812 P.2d 761 (1991). Errors in parole board proceedings can and should be discovered and corrected by the board itself through the use of the board's own appeal procedures, then by resort to district court, if required. Additionally, the approach contemplated by the Haney case is expensive. Currently, the Attorney General must refer several habeas corpus cases to outside counsel due to limited staff, short timelines in habeas cases and the

logistics involved in defending cases in those districts which contain correctional facilities, which span the state from Norton, to Hutchinson to Lansing. Due to these concerns, the Attorney General supports the ideas set out in House Bill 2832.

The Attorney General supports the exhaustion requirement in the bill because it gives the responsible agency the opportunity to correct any errors it may have committed prior to having to answer a lawsuit.

The Attorney General also supports the amendments to the parole board statutes contained in the bill. The language in K.S.A. 1993 Supp. 22-3717 requiring the board to "state in detail the specific reasons for not granting the parole," appears to have outlived its usefulness. When that language was added to the statue by 1988 House Bill 3079, Kansas prisons were rapidly being filled with mostly first-time offenders convicted of less serious class D and E felonies. Parole rates were also plummeting, which contributed to the overcrowding problem. The situation is quite different today. With the adoption of the sentencing guidelines, those convicted of less serious crimes are given presumptive probation while only serious offenders or repeat offenders go to prison.

While parole rates have stayed low since the adoption of the sentencing guidelines, there is a good reason for continued low parole rates. Many inmates who were good candidates for parole were released under the limited retroactivity provision of the sentencing guidelines bill. The inmates now left in the system are those convicted of more serious offenses such as murder, rape, and aggravated sex crimes, and these inmates know or should know that they are being denied parole because the board is concerned with their ability to be law-abiding citizens based on the nature of their heinous crimes. Thus, the Attorney General supports the amendments to K.S.A. 1993 Supp. 22-3717 to require the board to merely state in writing the reasons for denying parole.

The Attorney General also supports the amendments to the habeas corpus statutes set out in the bill. Currently, there is no statute of limitations applicable to habeas corpus actions. Quite often the parole board and the department of corrections are required to defend actions which occurred several years ago, and quite often they are hampered in doing so by the lack of documentation or fresh memories as to what actually occurred. For example, two weeks ago I appeared at a hearing in Butler County District Court in which an inmate was attempting to have a parole

revocation set aside (Exhibit C). The inmate contended that his revocation was unlawful because he allegedly did not receive written notice of the revocation hearing before the parole board. The "fatal" error occurred in 1980. There were only three witnesses competent to testify about notice or lack thereof. Two of them are deceased and the third had no specific recollection of the events. Inmates should not be able to challenge events that occurred so long ago. Private litigants have a time limit in which to bring their actions, and so should inmates.

The proposed amendment in Section 4 of House Bill 2832 also is a step in the right direction. This section would make issuing the writ discretionary with the court, and would standardize the procedure to be followed if the case proceeds beyond the filing of the petition. The Attorney General believes the proposed amendments would help preserve judicial and administrative resources by streamlining and standardizing habeas corpus procedures, and by allowing for summary dismissal of meritless actions seeking quasi-administrative review of parole denials and prison disciplinary proceedings. These proposed amendments would help preserve traditional habeas corpus review for those actions which require prompt and efficient determination of whether a person is lawfully in custody,

such as child custody disputes and cases involving unlawfully held pretrial detainees who have no adequate remedy at law.

With respect to the proposed amendments in Sections 7-12 of House Bill 2832, the Attorney General wholeheartedly supports the concepts contained in these sections. Inmates, just as other citizens, should be required to bear a portion of the costs of the litigation they pursue instead of being able to file with impunity at taxpayer expense. Furthermore, inmates who abuse the system should have to reimburse the state for frivolous lawsuits. Also, inmates in work programs should be required to reimburse the state for amounts expended by the state to support the inmate's family during incarceration. Above all, inmates should be required to contribute to the crime victim's compensation fund to provide restitution to compensate the victims of their crimes.

IN THE DISTRICT COURT OF LEAVENWORTH COUNTY, KANSAS

[redacted],
PETITIONER,

VS.

CASE NO. [redacted]

DAVID R. MCKUNE, WARDEN OF
LANSING CORRECTIONAL FACILITY:
AND
KANSAS PAROLE BOARD,
RESPONDENTS.

PETITION FOR WRIT OF HABEAS CORPUS
(Pursuant to K.S.A. 60-1501)
AND
MOTION TO APPOINT COUNSEL
AND
REQUEST FOR AN EVIDENTIARY HEARING

COMES NOW, [redacted], the petitioner, pro se, and respectfully represents that he is unlawfully deprived of his liberty by the above named respondents, Warden of the Lansing Correctional Facility, Lansing, Leavenworth County, Kansas; and the Kansas Parole Board, Shawnee County, Topeka, Kansas, and that the cause or pretense of his restraint, to the best of his knowledge and belief in his conviction(s) in [redacted], County, Kansas, Case No. [redacted].

Petitioner would further move the Court for an Order Appointing Counsel to represent him in this action, due to his indigency, and grant him an evidentiary hearing on his claims raised herein.

That Petitioner is a resident of Leavenworth County, Kansas, and that said wrongful restraint is taking place in Leavenworth, County, Kansas.

EXHIBIT
A
1-4-8

Further, Petitioner states that said imprisonment is wrongful for the following reasons:

1. Petitioner was denied parole on JANUARY 94.

2. Petitioner has or has not submitted an application for appeal and/or reconsideration of his denial of parole; apparently, the Parole Board has a policy or practice of granting appeals or reconsideration to some but not all inmates who so apply, such that petitioner would object to respondents requiring resort to sporadic appeal process, thereby entitling them to raise failure to appeal decision denying parole as an affirmative defense, unless each inmate denied parole who applies for appeal or reconsideration is permitted equal access to appeal process.

3. The reason(s) petitioner was denied parole was due to:

DID NOT SAY ??

4. There was a complete lack of substantial competent evidence that the Parole Board complied with the statutory requirements that it consider all pertinent information, including, but not limited to the specific factors set forth in the current version of K.S.A. 22-3717, to wit: (a) compliance with program agreement; (b) the circumstances of the offense; (c) the pre-sentence report; (d) previous social history and criminal record; (e) conduct, employment and attitude in prison; (f) reports of mental and physical examinations as have been made; (g) comments of victim, victim's family, public, and officials; and (h) capacity of correctional instututions. Additionally, the Parole Board's actions and/or omissions and/or reasons and/or decision were not in compliance with the mandate that it "state in detail the specific reasons for not granting parole."

5. Evidence in support of Petitioner's claims:

A. Parole File of Petitioner

B. Respective Parole Board member(s) who personally reviewed Petitioner's application for parole and voted to deny the same.

C. Testimony from Petitioner

6. Petitioner requests the Court appoint counsel to represent him in this action due to his indigency, and inability to competently prosecute this action without the assistance of counsel.

7. Petitioner further requests the Court grant him an evidentiary hearing in this matter.

WHEREFORE, petitioner prays that a writ of habeas corpus be issued, that he be discharged from the unlawful portion of his sentence, granted a new parole hearing, appointed counsel, an evidentiary hearing and such other relief as this Court deems just and fair in the premises.

Respectfully submitted:

[redacted]

Petitioner/Pro se
Lansing Correctional Facility
Post Office Box 2
Lansing, Kansas 66043

VERIFICATION AND POVERTY AFFIDAVIT

STATE OF KANSAS)
) SS:
COUNTY OF LEAVENWORTH)

I, [redacted], of lawful age, being first duly sworn upon my oath, under penalty of perjury, depose and say: That I am the Petitioner in the above-entitled action, that I have read the Petition, and that I know the contents of said Petition and that the facts stated therein are true. I further state that by reason of my poverty, I am unable to pay a docket fee or retain counsel.

[redacted]
PETITIONER

SUSCRIBED AND SWORN before me on this 1 day of FEB, 1994.

Kenneth W. Chinn Sr.
NOTARY PUBLIC

My Commission Expires:

(month) (day) (year)

KENNETH W. CHINN, SR.
Notary Public - State of Kansas
My Appt. Expires 12-28-94

14-11

TO: Clerk

FROM: [redacted]

RE: Petition for Writ of Habeas Corpus for Filing and Service

DATE: 1-31-94

Please find enclosed the original and (3) copies of a Petition for Writ of Habeas Corpus. Please file the original with your office, serve each of the respondents, and return a file-stamped copy to petitioner at your earliest convenience.

Respondents can be served at:

DAVID R. MCKUNE, Warden
Lansing Correctional Facility
Post Office Box 2
Lansing, Kansas 66043

KANSAS PAROLE BOARD
c/o John Knoll
Assistant Attorney General
Kansas Judicial Center, 2nd Floor
Topeka, Kansas 66612

Thank you for your cooperation in this matter.

Sincerely yours,

[redacted]
Petitioner

Enclosures: Petition and Three (3) Copies

14-12

APPEAL AND/OR RECONSIDERATION OF DENIAL OF PAROLE

NAME: [redacted]

NUMBER: [redacted]

FACILITY: L.E.F.

DATE APPEAL SUBMITTED:

I was considered for Parole on 1-12-94.

The Parole Board took the following action:

PASS TO OCTOBER 94 WITH REC. SUBSTANCE ABUSE TREATMENT, MENTAL HEALTH AND WORK RELEASE (RECEIVE 1-26-9

ISSUE(S) AND BASIS FOR RECONSIDERATION

Insofar as the Kansas Parole Board had adopted a policy, practice, or custom of considering the serious nature and/or circumstances of the crime(s) as a predicate to the determination of the extent to which release would depreciate the seriousness of the crime and/or sentence imposed by the court; promote disrespect for the law; and/or be incompatible with prevailing social opinion, reconsideration is requested based on the intervening changes in the law on July 1, 1993, inasmuch as they reflect new social values about crimes and punishments:

1. Legislative judgments are the most reliable objective evidence of "community or social values or opinions."

2. Evolving standards of decency which mark the progress of a maturing society precludes vacuous "public safety" considerations, where persons with similar crime(s) will be released into society after a discrete and definite period of time under the new guidelines, such that incarceration beyond the limit of grid for similar offense(s) committed on or after July 1, 1993, does not further legitimate penological objectives of punishment, rehabilitation, or deterrence, especially since similar crime(s) in the future results in mandatory release after specific period.

3. Insofar as the Parole Board states reasons as denial for parole that petitioner for parole is believed unable or unwilling to lead the life of a law abiding citizen, circumstantial evidence from which it may plausibly be inferred that this reason is arbitrary, capricious, and irrational is that the Parole Board routinely releases inmates with similar offenses, but who have markedly worse and more serious disciplinary histories while in prison, which directly contravenes legislative intent of having made "good time" credits available, and encouraging good behavior and conforming with the rules while in prison "presumably" mandatory prerequisites to favorable parole consideration.

4. Insofar as the Parole Board states the serious nature and/or circumstances of the crime(s) as the reason(s) for its denial of parole, circumstantial evidence from which it may plausibly be inferred that such decision is arbitrary, capricious, and irrational is the Parole Board's established practice or custom of releasing many inmates with similar and/or same crime(s) of which petitioner for parole was convicted after serving considerably less time in prison on the same sentence(s).

5. Insofar as the Parole Board passes inmates who file grievances, letters of complaint and/or lawsuits against the Parole Board and/or prison officials for longer periods of time than they were passed during pervious parole hearing, the following series of events is set forth as circumstantial evidence from which retaliatory motive may plausibly be inferred: (a) petitioner for parole was previously passed for a shorter period of time than on subsequent pass; (b) Parole Board could have passed the petitioner for longer period when previously considered, but did not; (c) the basis for the previous pass remained immutable by their nature (e.g., serious nature of offense, serious circumstance of offense, etc.); (d) and the only intervening change in the circumstances between the two decisions was petitioner's exercise of his constitutional rights of access to the courts and/or to petition government for redress of grievances.

6. Insofar as the Parole Board has adopted an established custom or practice of continuing to incarcerate inmates who successfully complete their Inmate Program Agreements and/or who take advantage of non-mandatory self-help programs, and who have good prison disciplinary records far beyond their initial P.E. dates, it has rendered inmate participation in such programs virtually meaningless, in direct contravention to the legislative intent of making such programs a prerequisite to favorable parole consideration.

7. Insofar as the Kansas Sentencing Commission has been charged with actively studying the continued need for a Parole Board, such circumstance presents either an actual and/or potential conflict of interest where Parole Board members have a direct financial stake or pecuniary interest in demonstrating a continued need for a full Parole Board, resulting in the reasonable probability of a pro-Parole Board bias sufficient to at least call into question, if not completely erode, the Parole Board's presumption of neutrality or impartiality in rendering a decision on who stays in prison and who gets released. This is especially relevant because, since this duty was assigned to the Sentencing Commission, there has been a continuing decrease in the number of persons released by the Parole Board, and the more inmates remaining in prison under the old laws, the greater the presumption a full Parole Board is needed.

8. Insofar as Parole Board cites the serious nature of crime(s) as the sole reason for passing an inmate, its decision is arbitrary and capricious, insomuch as it fails to sufficinetly individualize its decision.

SUMMARY

Based on any or all of the issues set forth above which are applicable to my particular situation, Parole Board members and the Director of the Parole Board have intentionally and knowingly adopted and implemented a series of informal practices or customs which do not reasonably further any legitimate penological objectives, where they discourage rehabilitation, penalize good behavior, and completely defeat the legislative intent that accrued good time credits have a positive effect on inmates to encourage them to obey the rules and actively participate in rehabilitation programs, which the legislature clearly intended as essential prerequisites to an inmate's hope or expectation that he may shorten the duration of his incarceration through good behavior.

Through the series of practices or customs set forth above, Parole Board members (especially in light of the conflict of interest) have unwittingly created an entire class of people (inmates with indeterminate sentences) who have abandoned any hope or expectation that they might shorten the duration of their incarceration through good behavior and/or conforming to prison rules and/or participating in rehabilitation programs, which completely ignores and undermines the legislative intent of providing for a system by which such conditions were major prerequisites to favorable parole consideration.

CONCLUSION

The Parole Board's action and/or decision in my case was arbitrary, capricious, and an abuse of discretion or otherwise not in accordance with the laws, unsupported by substantial evidence, contrary to my constitutional rights, contrary to prevailing social opinion, unwarranted by the facts; contravenes legislavite intent and/or violates the traditional notions of fundamental fairness and substantial justice.

WHEREFORE, I respectfully request the Parole Board grant me a new hearing and such other relief as it deems consistent with fundamental fairness and substantial justice.

Respectfully Submitted:

[redacted]

Appellate/Pro se

KANSAS PAROLE BOARD
LANDON STATE OFFICE BUILDING
900 JACKSON STREET, 4TH FLOOR
ROOM 452 S
TOPEKA, KANSAS 66612-1220
(913) 296-3469

December 15, 1993

TO: All Institutions and Concerned Personnel

FROM: Micah M. Ross, Director
Kansas Parole Board

RE: Calendar Schedules for Parole Hearings

Attached are copies of the Kansas Parole Board's schedules for the first 6 months of 1994.

MAR:jb

Attachment

EXHIBIT
B

1994 January

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
December 1993 S M T W T F S 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31	February 1994 S M T W T F S 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28				EVER READY®	**1** New Year's Day
2	**3** LANSING (LCF-CU; LCF-EU; OCF)	**4**	**5** TOPEKA PVs	**6** WINFIELD (WCF)	**7**	**8**
9	**10** NORTON (NCF-CU; NCF-EU) LSSH; LCMHF)	**11** TOPEKA (TCF-CU; RDU)	**12** TOPEKA (TCF-WU; TCF-SU) TOPEKA PVs	**13** WICHITA (WWRF)	**14**	**15** Martin Luther King, Jr.'s Birthday
16	**17** Martin Luther King, Jr. Day HOLIDAY	**18** ELLSWORTH (ECF)	**19** HUTCHINSON (HCF-CU; HCF-EU; HCF-SU) TOPEKA PVs	**20**	**21**	**22**
23 **30**	**24** KANSAS CITY PUBLIC COMMENT **31**	**25** TOPEKA PUBLIC COMMENT	**26** EL DORADO (EDCF; EDWCF; TCWF) TOPEKA PVs	**27** WICHITA PUBLIC COMMENT	**28**	**29**

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1994 February

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6	**7** TOPEKA (TCF-CU;RDU)	**8** TOPEKA (TCF-WU;TCF-SU)	**9** WINFIELD (WCF) TOPEKA PVs	**10** WICHITA (WWRF)	**11**	**12**
13	**14** ELLSWORTH (ECF)	**15** HUTCHINSON (HCF-CU;HCF-EU;HCF-SU)	**16** TOPEKA PVs	**17**	**18**	**19**
20	**21** KANSAS CITY PUBLIC COMMENT	**22** TOPEKA PUBLIC COMMENT	**23** EL DORADO (EDCF;EDWCF; TCWF) TOPEKA PVS	**24** WICHITA PUBLIC COMMENT	**25**	**26**
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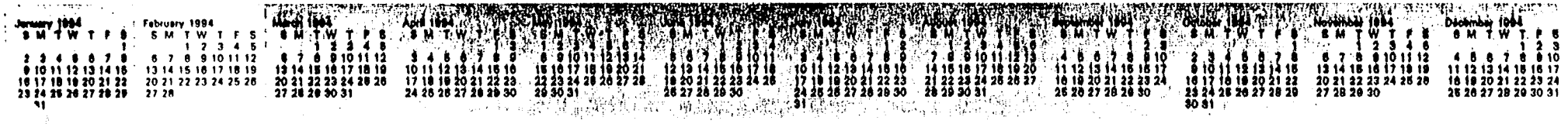

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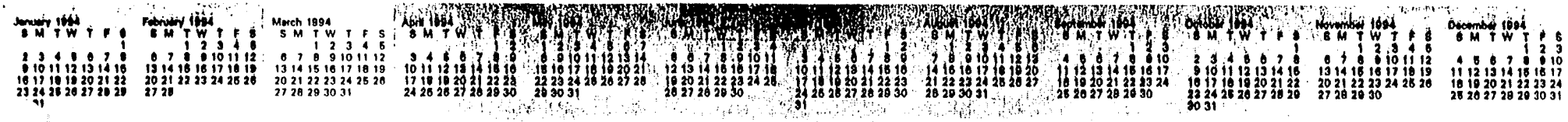

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10	**11** TOPEKA (TCF-CU;RDU)	**12** TOPEKA (TCF-WU;TCF-SU)	**13** WINFIELD (WCF) TOPEKA PVs	**14** WICHITA (WWRF)	**15**	**16**
17	**18** ELLSWORTH (ECF)	**19** HUTCHINSON (HCF-CU;HCF-EU;HCF-SU)	**20** TOPEKA PVS	**21**	**22**	**23**
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1994 May

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22	23 KANSAS CITY PUBLIC COMMENT	24 TOPEKA PUBLIC COMMENT	25 EL DORADO (EDCF;EDWCF; TCWF) TOPEKA PVS	26 WICHITA PUBLIC COMMENT	27	28
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April 1994

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19	20 WICHITA (WWRF)	21	22 TOPEKA PVs	23	24	25
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FILED
BUTLER COUNTY
DISTRICT COURT

COPY

'94 FEB -2

Lloyd Hill
ElDorado Correctional Facility
P.O. Box 311
ElDorado, Kansas 67042

IN THE DISTRICT COURT OF BUTLER COUNTY
STATE OF KANSAS

Lloyd Hill)
Plaintiff,)
)
vs.) Case Number: 93C382
Kansas Parole Board)
Michael A. Nelson Warden)
et. al Defendants.)

MOTION TO AMEND AND/OR ADD

Comes Now, Lloyd Hill, and motions this court to amend and/or add to his petition currently pending in this court. Petitioner respectively requests that this court add and amend all requested issues.

ISSUES AND/OR AMENDMENTS

Petitioner presents Kansas Statute Law 45-9-2 into record which states as follows:

PAROLE REVOCATION HEARINGS.

After a parolee is returned to a correctional institution the parolee may request a hearing prior to the final decision on revocation by the board. The final hearing shall be held without unnessary delay. The board, or any member of the board, shall conduct the hearing to determine whether the parole should be revoked. After considering all pertinant evidence, the board shall enter an appropriate order. If the violation is established to the satisfaction of the board, it may re-instate or revoke the parole.

(b) Prior to the final hearing, the board shall make sure that the parolee has written notice of the alledged violations of parole, and that the evidence against the parolee has been disclosed to the parolee.

EXHIBIT C 14-23

MOTION TO AMEND AND/OR ADD, CONTINUED

> If the board finds there are additional violations other than those contained in the written notice, the hearing shall be continued so that a writtten notice of the additional violations and a statement of the evidence against the parolee can be prepared.

As shown in Exhibit 1, attached to this motion, petitioner never received a notice of his revocation hearing, and was not given the opportunity to refute the charges which were the basis for his parole violation. Petitioner was never afforded a hearing to examine evidence which was the basis for these charges, and was never given the oppurtunity to cross-examine the witnesses which supported the charges. As plainly seen on Exhibit 1, petitioner did not sign this acknowledgement of charges, thereby making his revocation invalid. Petitioner has been held now illegally since August 15, 1980, with no afforded hearing at anytime.

Petitioner asks that this court consider into record the case law of MORRISSEY V. BREWER, 408 U.S. 471, 33 L Ed 2d 484, 92 S Ct 2593., which states, and the court held, "The due process of the Fourteenth Amendment requires that a state afford an individual some opportunity to be heard prior to revoking his parole."
"The hearing required by due process prior to revoking a convict's parole must be accorded before the effective decision."

Petitioner has filed several grievances and appeals to the Kansas State Parole Board and administrators of the ElDorado Correctional Facility, with no action received, the petitioner has no other recourse that to have this court decide and litigate this matter.

REQUEST TO AMEND RELIEF

In light of this evidence presented to the court petitioner hereby requests that 'Relief Sought' be amended to as follows:

1. Immediate Release from Kansas Department of Corrections.
2. Reinstatement of revoked parole.
3. Time credited to parole from the date of August 15, 1980.
4. Compensation in the amount of $3,000,000 for time spent illegally in custody of the Kansas Department of corrections.
5. Any other relief this court deems just.

Respectively Submitted this day of Dec 1994.

Lloyd Hill

STATE OF KANSAS

ROCKY NICHOLS
STATE REPRESENTATIVE, FIFTY-EIGHTH DISTRICT
SHAWNEE COUNTY

HOME:
2329 S.E. VIRGINIA
TOPEKA, KANSAS 66605
(913) 357-6262

TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
MEMBER: LABOR & INDUSTRY
PUBLIC HEALTH & WELFARE
ECONOMIC DEVELOPMENT

OFFICE:
STATEHOUSE—282-W
TOPEKA, KANSAS 66612-1504
(913) 296-7675

March 16, 1994

Chairman Moran and members of the Senate Judiciary Committee:

Thank you for this opportunity to testify in favor of House Bill 2779, concerning the ability of newspapers and the media to report on the existence of gag orders. This bill protects the public's right to know, and it also protects publishers of newspapers and general managers of other media outlets from contempt of court citations when they report on the existence of gag orders.

This bill arises from a case in Atchison where the publisher of the *Atchison Daily Globe* was held in contempt of court for publishing that a gag order had been issued on a defendants prior criminal record. That publisher was fined $2,500 in addition to being sentenced to 48 hours in jail and five more days on probation. An Atchison District Court Judge placed a gag order on the defendant's prior record, but the judge did not stop there. The judge then turned around and placed a gag order on top of that gag order, in effect telling the newspaper that they couldn't even publish the existence of the original gag order. My personal tie to this bill stems from the fact that my brother was the assistant managing editor of the *Atchison Daily Globe* during the gag order ordeal, and I was given many updates on this case.

The judge was able to hold the publisher in contempt because Kansas law does not specifically address this occurrence. HB 2779, however, adds a new section (f) which would prohibit a court from issuing a contempt of court citation against anyone who reports or publishes the existence of a gag order.

In addition, this bill is less controversial because it does not delve into the classic fight between the rights of the accused and the first amendment rights of the media and the publics' right to know. Defendant's prior criminal records could continue to be closed information under this bill, however the media would be able to report on the mere existence of the gag order. In other words, the media could still be gaged, but they would be able to report on it.

I believe that this bill makes sense because it defends the media's right to information as well as the publics' right to know. The Atchison paper was simply attempting to do

Senate Judiciary
3-8-94
attachment 15-1

its job by informing the public of the gag order. I encourage members of this committee to visit with the publishers of your local papers and owners of radio, and T.V. stations about the effects of this bill and the Atchison case. I think that you will find that many publishers of newspapers and owners of radio and television stations are becoming a little "gun shy" in cases involving contempt of court citations. I believe that this bill would help protect the media's right to information while still safeguarding the rights of the accused.

I would add that this bill had huge bipartisan support in the House, and it passed on a vote of 123-2.

I would stand for any questions that you may have.

Kansas newspapers speak out against *Globe* contempt ruling

Excerpt from the Olathe Daily News

The gag order, with the threat of jail and fines, is a common threat used by many judges today.

Take the case of Gary Dickson, the publisher of the Atchison Daily Globe, who this week was ordered to spend seven days in jail for a contempt charge.

Granted, there probably are a lot of contemptible publishers around the country whose jail time would be enthusiastically supported by irate subscribers and advertisers.

But Gary Dickson should not be one of them.

When judges try to place gag orders on the media, every person living in a free society should regard that as a slap in the face.

There are times when the media has moral and ethical obligations in not printing certain information: when that information concerns national security, names of certain crime victims, when information could place lives in jeopardy.

But those are decisions that have to be made by individual media organizations, not by judges, elected officials, not even the President of the United States.

The people who read and listen to those news reports are the proper judges of any decision to print or broadcast certain information. And no one should have the right to stop the media from printing information.

Atchison Daily Globe: Black day in Atchison

Attorney Dan Garrity made a powerful statement to the news media outside of the courtroom Monday immediately following District Court Judge Philip Lacey's sentencing of *Globe* publisher Gary Dickson.

After the judge found Dickson guilty of contempt of court, Garrity said: "This is a black day in Atchison, Kan., for about 900 years of legal history."

We agree with Mr. Garrity.

If Lacey's ruling is upheld by a higher court, heaven forbid, the law-abiding citizens of this state will be the real losers.

Judges, whenever the whim strikes them, will be able to prevent the news media from reporting the events of open court to the public by the use of gag orders, and gag orders on the gag orders.

Salina Journal

As soon as the Kansas judicial system is finished setting aside fascist gag order from two of Atchison County's district court judges, it can get busy setting aside both judges.

It is clear that neither Judge Maurice O'Keefe nor Judge Phillip Lacy belong on the bench.

Because they clearly neither understand nor believe in the basis of American law, both men should find other careers. If they won't the Kansas Supreme Court should insist.

El Dorado Times Editorial Exerpt

It is one thing to try and insure that a defendant gets a fair trial. It is entirely different to try to hide from the public what steps are being taken to insure a fair trial...

O'Keefe and Lacy need to find somewhere else to sit. They need to trade in their spots on the bench for a government classroom when a teacher is explaining the Constitution and what it means.

Leavenworth Times Exerpt

Now it is up to the Kansas Court of Appeals to send Lacey a message of his own: A judge cannot tell a newspaper what it can or cannot print.

In 1976, the U.S. Supreme Court overturned an order prohibiting publication of information reporters had obtained at a public, pretrial criminal hearing. "Prior restraints on speech and publication are the most serious and least tolerable infringement of First Amendment rights," the court ruled.

Dickson made the decision to ignore part of O'Keefe's order because it was clearly unconstitutional; it demanded to be disobeyed so that a court could review and dismiss it. Unfortunately, Lacey was not willing to discuss the contempt charge on its merits. He was there only to defend the court.

O'Keefe had no right to do what he did—no right to tell people, ultimately, what they can and cannot read. When this case is decided by the Kansas Court of Appeals, that is the message that needs to be sent to Lacey and O'Keefe.

Hays Daily News

One way to tell when a governmen has become tyrannical is whe government officials start jailing new people for reporting what's going on.

By that criteria, Atchison has couple of tyrants on its judicial bench.

Early in its history, this natio adopted the First Amendment to th Constitution to make sure tha governments would never have th power to prevent the people and th press from speaking out.

The First Amendment protects t people's right to know wh government, including judges, is doin It cannot be disregarded.

Editorials

No gags

A bill to tell the Kansas Supreme Court that we are entering the 21st century passed by a large margin in the state House of Representatives.

Lawmakers voted 113-4 to close technical loopholes in the open meetings law that were put there by a recent high court ruling that said public officials could meet in secret as long as they were doing it on the telephone or with other newfangled doodads.

This is symbolic cleanup at its best, which is why it sailed through the lower house and should make it easily through the upper house as well.

Meanwhile, Rep. Rocky Nichols, D-Topeka, has introduced a bill to force judges not to place gag orders on news stories about gag orders.

Nichols' bill comes in the wake of an Atchison Globe news story that reported it had just had a news story gagged by a Kansas judge. In America. A second judge who looked at the unconstitutional gag order issued by his colleague tightened the gag on the people. He ruled that the newspaper didn't try hard enough to settle its problems in the court that had been gagging it in the first place.

That Rep. Nichols is so certain the state courts are too arrogant themselves to dispense with this kind of shoddy legal gagging is a sobering thought, indeed.

What his proposal assures us is that the Kansas Legislature believes in the First Amendment enough to want to pass a symbolic law for its sake.

We're surprised that it has come to this, because our Kansas courts have been known as islands of freedoms for integrity, honesty and openness, especially when government is pitted against the people.

If it takes a symbolic proposal such as Nichols has proposed to stop legal pomposity, so be it. Freedoms can be lost if courts start going bananas in the republic.

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Date: 2-3-4

[ ] Topeka Capital Journal
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[ ] Hays Daily News

Rating agency proposes slight comp rates decrease

TOPEKA (AP) — The Legislature did a good job of reforming the Kansas workers' compensation system last year, at least in the eyes of a national rating agency for the insurance industry.

That agency, the National Council on Compensation Insurance, or NCCI, is asking Insurance Commissioner Ron Todd to approve a slight decrease in premiums businesses pay for workers' compensation insurance.

The NCCI is proposing a 0.3 percent decrease in premiums overall. It filed its plan Wednesday with Todd's office, and Todd said he should make a decision within six weeks.

The filing is a sign of the NCCI's confidence in last year's reform legislation. The NCCI represents the insurance industry in dealings with insurance regulators across the nation.

The effect of the proposal on insurance rates would vary from business to business under the NCCI proposal, but Todd's office said premiums for service companies, office and clerical firms and contractors would decrease on average. Manufacturing companies would see their rates remain stable overall.

The NCCI estimates the reforms would save Kansas businesses $30 million in premiums if Todd approves its proposal. Peter Strauss, an NCCI regional manager, said without the reform efforts, the council would have sought an increase in premiums of up to 18 percent.

"The bottom line is numbers don't lie," Strauss said. "You've turned around a system."

The Editor's Opinion

Statutory protection

Bill seeks to ban gag orders on gag orders

A legislator has introduced a bill that would correct an unconstitutional situation that cropped up in Atchison last summer.

The bill would ban courts from putting gag orders on reports about other gag orders. In other words, it would put into state statutes what already exists in case law.

Judges are not supposed restrain the media prior to publication or broadcast. If they do, they violate First Amendment principles.

The bill was introduced by Rep. Rocky Nichols, D-Topeka.

He was alarmed by a case involving the Atchison Daily Globe. The newspaper's publisher was found in contempt of court last summer after the newspaper reported that a gag order had been issued in a criminal case by an Atchison judge.

This bill might not go any where in the Legislature.

But if it reminds judges they risk having their powers checked by the legislative branch if they run roughshod over constitutional guarantees, then the bill will have served a good purpose.

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15-5

KANSAS CITY KANSAN, Friday, February 11, 1994

Our View

Reardon a proponent of public's right to know

We commend State Rep. Bill Reardon of Kansas City, Kan., for backing two bills that if approved by the Legislature will help ensure the publics' right to access government information.

Reardon supported a House Bill that would eliminate a loophole in the Kansas Open Meetings Act. The problem with the current law was pointed out on Jan. 21 when the Kansas Supreme Court ruled that the open meetings law does not cover telephone and teleconference calls of elected officials.

In today's world of fiber optics, electronic mail and teleconference meetings that loophole could potentially grow into a black hole that invites public officials to conduct secret meetings where public policy decisions might be made in private.

As Reardon put it, "Open meetings are the linchpin of a free society and as a Legislature we have the responsibility to ensure that right."

A stronger law passed the House last week. Earlier this week it was endorsed by a Senate committee.

Reardon also cosponsored a bill in the Kansas House that would protect a newspaper's ability to report and publish when gag orders are issued in civil and criminal cases.

The bill is in response to a case involving the *Atchison Daily Globe* , where that newspaper's publisher was found in contempt of court after the newspaper reported that a gag order had been issued in a criminal case by an Atchison District Court Judge.

This editorial represents a consensus of The Kansan's editorial board. Other material on this page reflects opinions of staff writers, syndicated columnists, cartoonists and readers.

Such a gag order is a slap in the face to free press which is guaranteed by the First Amendment. Rep. Rocky Nichols, D-Topeka, is the principal sponsor of the bill. He believes the bill will pass because legislators such as Reardon support and believe in the public's right to know.

Some officials scoff at the proposed legislation and say it could potentially discourage some people from entering the arena of public service.

That may be true. But, when taxpayers are deprived of information about how public officials are performing or how they voted on issues the entire community suffers.

We support the proposed legislation and offer Reardon a well deserved applause for considering the public's best interest when such issues are before our state leaders.

Open government needed

Recent action by Kansas legislators should help assure that government is conducted in an open manner. The measures which would close the loopholes in the Open Meetings Law and also limit gag orders are needed.

As a result of a recent ruling by the Kansas Supreme Court, telephone conservations were excluded from the Open Meetings Law. Excluding telephone conversations certainly wasn't the intent of those who helped draft the law. Nonetheless, the law must be corrected.

Kansas has a reasonably good open meetings law although we have seen too many public officials, including those in Wyandotte County, who have abused it. Public business should not be conducted behind closed doors.

There appears to be bi-partisan support for the needed legislation to correct the law. Attorney General Bob Stephan, a Republican and

State Rep. Tom Sawyer (D-95th Dist.), the house minority leader, are supporting the change.

The "gag order" bill comes as a result of a district judge in Atchison County who found a newspaper publisher in contempt because his newspaper wrote a story about a gag order. A co-sponsor of the bill is State Rep. Bill Reardon (D-37th Dist.)

"Supporters of the First Amendment consider the Atchison gag order a slap in the face to free press as well as the public's right to know," Rep. Reardon said last week. "The public's right to know through a free press is very important in these times of high crime and violence."

Legislators need to give both of these matters high priority. Open government is at stake.

Rozella Caldwell Swisher

The community lost one of its finest and most dedicated leaders last week. Rozella Caldwell Swisher, 86, died while attending a meeting at a motel in the Rosedale area.

Rozella Swisher retired from teaching social studies at Northeast Junior School in 1976. But she never stopped teaching. She was always interested in keeping folks informed about important public issues--particularly those that affected older adults.

She was active in various organizations including the Con-

Let's save the Springs!

Views West
By
Murrel Bland

Last week it became public knowledge what several of us had known for some time—Aetna Life Insurance Company will try to sell the Indian Springs Shopping Center. Now it will up to the community to find someone who can buy it and make it successful.

Some 18 months ago, the Aetna company repossessed the center from a company that included the late Frank Morgan as one of its principals.

We are both amused and disappointed at some of the silly suggestions that newspaper columnists have offered as solutions to the problems at the center. A writer for the Smaller Daily says that better marketing is the answer. How foolish. You can't market what isn't there.

A columnist for the Big Daily Over Town jokingly suggested that the center could be turned into a sin emporium, complete with strip joints and porno movies. Maybe if these columnists knew a little more about retail, they would have more practical suggestions.

The 23-year-old center once was very profitable. We recall talking to a representative of the management company a couple of years before the center was built. He arrogantly told us that he was doing the community a big favor by building the center here.

Unfortunately center management, when things were going well, often ran rough shod over the community. When it finally brought in management that cared about the community, it was too late.

only about 40 stores and services which take up about 60 percent of the mall's floor space.

Public officials in this town have also taken a very arrogant attitude when it comes to retail. One only has to look at outrageous tax bills that are passed on to struggling merchants including those in the center. One of the main reasons that taxes are high is that economic development officials at City Hall are more interested in failed social programs rather than doing things that benefit merchants.

The center will never come back as a traditional mall. Its best chance is to become a specialty center. The Dillard's store there is a regional discount center and is quite successful. It attracts customers from all over the midwest.

Aetna considered remodeling the center and turning it into a discount center. However, an estimated 9 percent return on its investment wasn't enough to convince the insurance company to go ahead.

Maybe the solution will be for a company that specializes in buying distressed merchandise to take it over. Or maybe an area nonprofit corporation could take it over if the price is right and the right management group could be

Peter W. Stauffer .....Editor and publisher
R. Joe Sullivan.....Executive editor
Michael Ryan .....Editorial page editor
Editorials 295-1199

Thursday, September 2, 1993 Page 4-A

EDITORIALS

Showing contempt

As if we need it, from Atchison comes another example of how paper thin are our rights. How thin? About the thickness of the parchment containing the Bill of Rights.

A reporter from the Atchison Daily Globe was in court to report to that community the proceedings in a drug case. Presiding Judge Maurice O'Keefe decided he wasn't busy enough as a judge, so he opted to play publisher: He placed a gag order on the drug defendant's prior record and, what's more, ordered the newspaper reporter not to even report the existence of the gag order.

The Globe didn't print the man's prior record, but did mention the gag order. And that prompted O'Keefe to issue a contempt citation against the newspaper. After he was disqualified from the case, another judge, Phillip Lacy, ordered Globe publisher Gary Dickson to spend 48 hours in jail, serve five more days on probation and pay a $2,500 fine.

All for giving the Atchison community an update on the war on drugs. And for sharing information with the public that belongs to that public, not the judge.

Ironically, it is the judges who are showing contempt for the law.

First off, there's the First Amendment. Then there's plenty of case law to consider, such as Nebraska Press Association vs. Stewart, in which the U.S. Supreme Court said it couldn't even conceive of a need for such prior restraint. Then there's Fosse vs. Kansas City Star, in which the Kansas Supreme Court said such chokeholds on the freedom of information are *never* in order.

Why? Quite simply, if Dickson's contempt citation stands, then public officials will be given authority to tell news organizations what they can share with the public — after hundreds of years and thousands of lives have been spent fighting against such tyranny.

On the other hand, if the case is overturned on appeal, the legal system should consider seeking sanctions against Judge O'Keefe for his unceremonious shredding of the First Amendment and the law.

Judges, no doubt, must make sure that defendants get fair trials. But there are always better means than covering the public's eyes and ears.

Those who do so are showing contempt not only for the

Date: Thurs. 2-3-

[ ] Topeka Capital Journal
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15-9

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We support the proposed legislation and offer Reardon a well deserved applause for considering the public's best interest when such issues are before our state leaders.

Open government needed

Recent action by Kansas legislators should help assure that government is conducted in an open manner. The measures which would close the loopholes in the Open Meetings Law and also limit gag orders are needed.

As a result of a recent ruling by the Kansas Supreme Court, telephone conservations were excluded from the Open Meetings Law. Excluding telephone conversations certainly wasn't the intent of those who helped draft the law. Nonetheless, the law must be corrected.

Kansas has a reasonably good open meetings law although we have seen too many public officials, including those in Wyandotte County, who have abused it. Public business should not be conducted behind closed doors.

There appears to be bi-partisan support for the needed legislation to correct the law. Attorney General Bob Stephan, a Republican and

State Rep. Tom Sawyer (D-95th Dist.), the house minority leader, are supporting the change.

The "gag order" bill comes as a result of a district judge in Atchison County who found a newspaper publisher in contempt because his newspaper wrote a story about a gag order. A co-sponsor of the bill is State Rep. Bill Reardon (D-37th Dist.)

"Supporters of the First Amendment consider the Atchison gag order a slap in the face to free press as well as the public's right to know," Rep. Reardon said last week. "The public's right to know through a free press is very important in these times of high crime and violence."

Legislators need to give both of these matters high priority. Open government is at stake.

Rozella Caldwell Swisher

The community lost one of its finest and most dedicated leaders last week. Rozella Caldwell Swisher, 86, died while attending a meeting at a motel in the Rosedale area.

Rozella Swisher retired from teaching social studies at Northeast Junior School in 1976. But she never stopped teaching. She was always interested in keeping folks informed about important public issues--particularly those that affected older adults.

She was active in various organizations including the Con-

Let's save the Springs!

Views West
By
Murrel Bland

Last week it became public knowledge what several of us had known for some time—Aetna Life Insurance Company will try to sell the Indian Springs Shopping Center. Now it will up to the community to find someone who can buy it and make it successful.

Some 18 months ago, the Aetna company repossessed the center from a company that included the late Frank Morgan as one of its principals.

We are both amused and disappointed at some of the silly suggestions that newspaper columnists have offered as solutions to the problems at the center. A writer for the Smaller Daily says that better marketing is the answer. How foolish. You can't market what isn't there.

A columnist for the Big Daily Over Town jokingly suggested that the center could be turned into a sin emporium, complete with strip joints and porno movies. Maybe if these columnists knew a little more about retail, they would have more practical suggestions.

The 23-year-old center once was very profitable. We recall talking to a representative of the management company a couple of years before the center was built. He arrogantly told us that he was doing the community a big favor by building the center here.

Unfortunately center management, when things were going well, often ran rough shod over the community. When it finally brought in management that cared about the community, it was too late.

only about 40 stores and services which take up about 60 percent of the mall's floor space.

Public officials in this town have also taken a very arrogant attitude when it comes to retail. One only has to look at outrageous tax bills that are passed on to struggling merchants including those in the center. One of the main reasons that taxes are high is that economic development officials at City Hall are more interested in failed social programs rather than doing things that benefit merchants.

The center will never come back as a traditional mall. Its best chance is to become a specialty center. The Dillard's store there is a regional discount center and is quite successful. It attracts customers from all over the midwest.

Aetna considered remodeling the center and turning it into a discount center. However, an estimated 9 percent return on its investment wasn't enough to convince the insurance company to go ahead.

Maybe the solution will be for a company that specializes in buying distressed merchandise to take it over. Or maybe an area non-profit corporation could take it over if the price is right and the right management group could be

Testimony before

Senate Judiciary Committee
on House Bill No. 2779.
March 18, 1994

Steve Bennett, managing editor of the Atchison Daily Globe, is not able to attend today's hearing but would like the following to be added to the committee record: "Since the sentence was handed down against former *Globe* publisher Gary Dickson, we have been concerned about our ability to effectively cover the news coming from the Atchison County Courthouse."

"We have concerns about future coverage because the ruling against us has shown we have no right to violate a gag order. We do hope the ruling will be overturned on our appeal."

"Strangely, the gag order was designed to stop us from printing John Alston's prior conviction record. We had printed that months earlier when he was arrested to show why his bond was so high."

"To us, this is a simple matter of protecting people's right to know what is going on in their community. We are the reader's representative and the best way to know what is happening. To stop that in even a small way is to effectively keep the people ignorant about a subject. That is not what our democracy was set up to do."

Senate Judiciary
3-18-94
attachment 16-1

Gary Dickson, former publisher of the Atchison Daily Globe and recipient of the contempt citation, has since taken a job out of state.

The Atchison Daily Globe and the Kansas Press Association are strong proponents of this bill and hopes the committee will allow it to pass favorably.