IN THE DISTRICT COURT OF FRANKLIN COUNTY, KANSAS
FOURTH JUDICIAL DISTRICT

STATE OF KANSAS,	*	
	*	
Plaintiff,	*	
	*	
v.	*	Case No. 2013 CR 104
	*	
KYLE TREVOR FLACK,	*	
	*	
Defendant.	*	

MOTIONS AND MEMORANDUM IN SUPPORT OF MOTIONS TO INTERVENE, FOR RELEASE OF SEALED DOCUMENTS, AND TO VACATE ORDERS TO SEAL

COMES NOW Intervenor, The Ottawa Herald, by and through counsel Kautsch Law, LLC, and hereby moves the Court for an order recognizing its right to intervene in this matter for the limited purpose of filing and arguing its Motions for Release of Sealed Documents and to Vacate Orders to Seal. Intervenor is in the business of gathering and reporting newsworthy information, has been reporting on this case since its inception, and as a member of the public, has a compelling interest in any effort to restrict access to court records and proceedings. *See Kansas City Star Co. v. Fossey*, 230 Kan. 240, 247 (1981)("The petitioner's right to be present is derived from its status as a member of the public."); *see also Wichita Eagle Beacon Co. v. Owens*, 271 Kan. 710, Syl. ¶ 2 (2001)("news media, as a member of the public").

Thus, Intervenor has a right to intervene for the limited purpose of filing and arguing its Motions for Release of Sealed Documents and to Vacate Orders to Seal in this matter. Intervenor submits the following memorandum in support of all its motions.

FACTUAL BACKGROUND

On or about May 7, 2013, three bodies were found on a farm in Franklin County where the defendant had lived with two of the victims. Days later, the body of a missing 18-month old child was found in a suitcase hidden in a rural creek. *See, e.g.*, Rizzo, T. (2014, March 11). *Testimony in Ottawa quadruple murders: suspect Kyle Flack told police how first death happened.* The Kansas City Star. Retrieved from http://www.kansascity.com/news/local/article341927/Testimony-in-Ottawa-quadruple-murders-Suspect-Kyle-Flack-told-police-how-first-death-happened.html. Intervenor extensively covered the matter at its outset, publishing 22 articles related to the case in May of 2013. Flack Archives master list as of May 11, 2015, Exhibit 1.

The defendant was identified as a suspect and arrested on or about May 8, 2013. In a Complaint filed May 10, 2013, the Defendant's charges included capital murder, murder in the first degree, and felon in possession of a firearm in connection with all four deaths. Local media outlets, including Intervenor, published or produced reports on or about May 10, 2013, identifying the defendant and the charges. *See, e.g.*, Hittle, S. (2013, May 10). *Suspect in Ottawa killings charged with four counts of first-degree murder; could face death penalty.* The Lawrence Journal-World. Retrieved from http://www2.ljworld.com/news/2013/may/10/suspect-ottawa-killings-charged-four-counts-first-/.

On July 1, 2013, the State filed a Motion to File Pleadings Under Seal. Motion to File Pleadings Under Seal, Exhibit 2. The basis for the motion was K.S.A. 60-2617, which is titled "Sealing or redacting court records; closing a court proceeding; motion; notice; hearing;

exceptions." In a hearing on July 8, 2013, Defendant joined in the motion. Carder, D. (2013, July 9, p. 2). *Murder case begins long march to trial.* The Ottawa Herald.

At that July 8 hearing, this Court, "after hearing argument, indicated that it was denying State's Motion...and would not issue a blanket seal." Journal Entry of July 8, 2013 Status/Scheduling Conference, July 31, 2013. However, the Court also "indicated that parties were free to file individual motions under seal, and the Court would make a determination as to each motion and whether or not it should remain under seal." *Id.*

One such motion was apparently filed in the fall of 2013, related to the seal of business records subpoenas that presumably were related to the State's attempt to obtain the Defendant's mental health records. Carder, D. (2013, October 19-20, p. 3). *Business records wanted to quadruple murder case, next court date set for late November.* The Ottawa Herald; Carder, D. (2013, November 27, p. 3). *Prosecutors drop bid for murder suspect's mental health records.* The Ottawa Herald.

Another such motion may have been filed in the fall or winter of 2013 seeking to close the preliminary hearing. State's Motion to Withdraw State's Request to Close the Hearing on State's Filing #9. However, that motion to withdraw was granted, the preliminary hearing took place, and on March 11, 2014, this Court ordered the defendant to stand trial. The preliminary hearing was covered extensively by local media, as well as national media such as Yahoo! News. *See, e.g.*, Sudekum, M. (2014, March 12). *Judge orders trial in Kansas quadruple homicide.* The Associated Press. Retrieved from http://news.yahoo.com/judge-orders-trial-kansas-quadruple-homicide-173032315.html.

Motions to seal were apparently also granted in the spring of 2014 related to the

Defendant's motion or motions to suppress certain statements made by the Defendant and the State's responses to that motion or motions. Carder, D. (2014, June 7-8, p. 3). *Will statements in quadruple homicide be unsealed?* The Ottawa Herald.

At a hearing on August 26, 2014, this Court, on its own motion, issued an Order addressing "issues related to electronic and photographic media coverage of judicial proceedings....in an effort to balance the rights to a free press under the First Amendment and the rights to a fair trial under the Sixth Amendment." Order, August 29, 2014. Along with establishing a designated media coordinator and protocols for recording devices in the courtroom, the Court noted that a "website has been created to provide all court dates, *open court documents*, and any other relevant information." *Id.* (emphasis added).

Although the website in fact does disclose certain court filings, according to media reports subsequent to a hearing conducted in the matter on April 8, 2015, "most of the court records in the quadruple-murder case have been ordered sealed." Dillon, K. (2015, April 8). *Man accused of quadruple murders blamed 'Omar and Chewy for the killings, according to court testimony; records end up sealed.* The Lawrence Journal-World. Retrieved from http://www2.ljworld.com/news/2015/apr/08/man-accused-quadruple-murders-blamed-omar-and-chew/. The Journal-World also reported that "the court administrator...said he could not release the written motion that contained Flack's confession because Judge Eric W. Godderz had ordered it sealed." *Id.* Further, the court administrator told media that the judge "said he did not have to explain his decision to seal records," and that the judge's "written orders that explain why the records are closed also are sealed." *Id.* Further, the State indicated that "Flack's court files had been closed as they were being filed with the court over the last two

years." *Id.*

A review of the contents of the case file as set forth on the website created to keep "open court records" shows no motions to seal or orders to seal court filings, other than the motion and order from July of 2013 discussed *supra* and a motion and response to a motion to file certain subpoenas under seal filed in January of 2015.

In the two-week period surrounding the preliminary hearing in March of 2014, Intervenor published nine articles related to the matter. Flack Archives master list as of May 11, 2015, Exhibit 1. Otherwise, since June 2013, Intervenor has published no more than three articles in any one month and none at all in seven of those months. *Id.*

ARGUMENTS AND AUTHORITIES

A. Intervenor is entitled to intervene for the limited purpose of seeking to secure the release of sealed documents and vacate the sealing order or orders.

Intervenor is a member of the local news media seeking to intervene for the limited purpose of requesting that the Court vacate any and all sealing orders related to any district court filings in this case, including but not limited to the orders to seal referenced in the Factual Background, and order the release of all sealed documents. Intervenor's right to intervene under these circumstances is established by the Kansas Supreme Court's decisions in *Kansas City Star v. Fossey*, 630 P.2d 117 (Kan. 1981) and *The Wichita Eagle Beacon Company v. Owens*, 271 Kan. 710, 27 P.3d 881 (2001). In *Owens*, the media petitioned for a writ of mandamus regarding companion criminal cases in which the district court had issued a protective order "sealing certain records related to those cases." *Owens*, 271 Kan. at 710. The Kansas Supreme Court held that "we rely on *Fossey*....the news media, as a member of

the public, may intervene in a criminal proceeding for the limited purpose of challenging a pretrial request, or order, to seal a record or close a proceeding in that case, even without an express statutory provision allowing such intervention." *Owens*, 271 Kan. at Syl. ¶ 2, at 711, 712, 713.

Given this clear authority, Intervenor's motion to intervene should be granted.

B. All sealing orders entered in this case, including but not limited to orders referenced in the Factual Background, should be vacated, and the release of all such documents should be ordered.

Beginning with *Fossey*, the Kansas Supreme Court has long recognized "a strong presumption in favor of open judicial proceedings and free access to records in a criminal case." *Fossey*, 230 Kan. at 248; *see, e.g., State v. Alston*, 256 Kan. 571 (1994); *State v. Dixon*, 279 Kan. 563 (2005), *overruled on other grounds by State v. Wright*, 290 Kan. 194 (2010); *State v. Barnes*, 45 Kan.App.2d. 608 (2011); and *State v. Cox*, 297 Kan. 648 (2013). In *Fossey*, the Court set forth the following test for the closure of hearings or records: "A trial court may close a preliminary hearing, bail hearing, or any other pretrial hearing, including a motion to suppress, and may seal a record only if:

(1) The dissemination of information from the pretrial proceeding and its record would create a clear and present danger to the fairness of the trial, and

(2) the prejudicial effect of such information on trial fairness cannot be avoided by any reasonable alternative means."

230 Kan. at 240, Syl. ¶ 2. *Cited by Owens*, 271 Kan. at 712; *Alston*, 256 Kan. at 583-584; *State v. Cheun-Phon Ji*, 251 Kan. 3, 30 (1992); *State v. Boan*, 235 Kan. 800, 805 (1984).

Fossey involved a criminal case in which the media petitioned for a writ of mandamus "to compel the trial court to allow petitioner access" when the "courtroom was closed and the

suppression hearing was conducted." *Fossey*, 230 Kan. at 241, 242. In deciding the mandamus action in favor of the media, and in addition to establishing the two-part test set forth above, the Kansas Supreme Court established a procedure by which courts are to decide whether or not to close records or proceedings. "To insure compliance with this standard, a record of the hearing where the issue of closure is determined should be prepared. In making a decision of either closure or nonclosure, the trial judge should make findings and state for the record the evidence upon which the court relied and the factors which the court considered in arriving at its decision. Such a procedure will protect both the right of the defendant to a fair trial and the right of the public and news media to have access to the court proceedings." *Fossey*, 230 Kan. at 250.

The Kansas Supreme Court later took a similar approach in *Cox*, a criminal appeal related to the closing of the courtroom doors during trial, which this Court applied in allowing the State to withdraw its motion to close the preliminary hearing. In *Cox*, the Kansas Supreme Court held that "a party seeking to close a hearing must advance an overriding interest likely to be prejudiced, that the closure must be no broader than necessary to protect the public interest, that the district judge must consider reasonable alternatives to closing the proceeding, and that the judge must make findings adequate to support the closure." *Cox*, 297 Kan. 648, Syl. ¶ 2, 655 (2013).

The Kansas Supreme Court's decisions in *Fossey*, *Owens*, *Cox*, and elsewhere reflect a widely recognized public right to know about judicial matters, including a common law right of access to court records. This right has been recognized by both the United States and Kansas Supreme Courts. *See Nixon v. Warner Communications*, 435 U.S. 589, 597 (1978)("It

is clear that the courts of this country recognize a general right to inspect and copy public records and documents, including judicial records and documents."); *Richmond Newspapers v. Virginia*, 448 U.S. 555, 573 (1980)("we are bound to conclude that a presumption of openness inheres in the very nature of a criminal trial under our system of justice."); *Stephens v. Van Arsdale*, 227 Kan. 676, Syl. ¶ 4(1980)("The right of the press or any other person to access court records...is based on common law."); *Alston*, 256 Kan. at 584 ("Kansas case law sets strict guidelines for closure of pretrial proceedings to the press and public.")

The Kansas Supreme Court has noted that courts are open "to enhance the public trust and confidence in the judicial process and to insulate the process against attempts to use the courts as tools for persecution." *Fossey*, 230 Kan. at 247.

Given the strong presumption of openness, the closing of proceedings or records is justified only in the rarest of circumstances. As explained in *Fossey*, even if the defendant desires to waive his Sixth Amendment right to public criminal proceedings, this is insufficient to overcome the presumption:

> The sixth amendment speaks in terms of the right of the accused to a public trial, but this right does not belong solely to the accused to assert or forgo as he or she desires. Many courts have recognized that the public generally has an overlapping and compelling interest in public trials. The defendant's interest, primarily, is to ensure fair treatment in his or her particular case. While the public's more generalized interest in open trials includes a concern for justice to individual defendants, it goes beyond that. **The transcendent reason for public trials is to ensure efficiency, competence, and integrity to the overall operation of the judicial system.** Thus, the defendant's willingness to waive the right to a public trial in a criminal case cannot be the deciding factor. This holds true no matter how personally beneficial private proceedings in a criminal case might be to the defendant. It is just as important to the public to guard against undue favoritism or leniency as to guard against undue harshness or discrimination.

Fossey, 230 Kan. at 248 (emphasis added).

Both *Fossey* and *Cox* make clear that any decision to close court proceedings or seal records must be made pursuant to a hearing on the record. A decision to close must be accompanied by "findings that are specific enough to permit a reviewing court to determine whether closure was warranted." *Cox*, 297 Kan. at 658, *citing Dixon*, 279 Kan. at 598.

Here, it is apparent from review of the website created to keep "open court records" as well as media coverage that certain district court records have been sealed. Although this Court applied *Cox* to the State's motion to withdraw the request to close the preliminary hearing, it appears not to have considered that *Cox* is among precedents under which a strong presumption of openness applies, not just to a preliminary hearing, but also to proceedings generally, as well as court records. Under the applicable precedents, from *Fossey* to *Cox*, this Court should consider Intervenor's motion to release sealed records essentially in much the same manner in which it considered whether to close the preliminary hearing. Intervenor respectfully submits that maintaining sealed records in this case, without conducting a hearing and without making specific findings on whether unsealing records would prevent a fair trial and whether there is an alternative to closure, fails to meet the requirements set forth by the Kansas Supreme Court.

1. **Although this Court may have sealed records in response to a motion on July 1, 2013, under K.S.A. 60-2617, the procedure for sealing was not fully consistent with statutory requirements.**

Nothing in the plain language of K.S.A. 60-2617 or its legislative history indicates that it relates, in any way, to the media's right to request access to sealed court records. The statute only is applicable to parties. Nevertheless, the statute is generally in accord with precedents that presume openness of court records and proceedings when media seek access.

Other than the motion to seal filed by the State on July 1, 2013, the court documents available on the website as of this filing do not include any specific findings that explain the Court's sealing of records. However, K.S.A. 60-2617 provides in part that in order for closure to occur, a court must make a finding of good cause that includes "an identified safety, property, or privacy interest of a litigant or a public or private harm that predominates the case and such interest or harm outweighs the strong public interest in access to the court record and proceeding." K.S.A. 60-2617(d). The State's July 1, 2013 motion largely quotes the statute, and argues that court records should be sealed because of the "intense media interest exhibited" in the case, which, according to the State's motion, could lead to difficulty in "ensuring that the case is decided by twelve jurors from the county where the crime occurred." Motion to File Pleadings Under Seal, p. 3, Exhibit 2. According to Intervenor's coverage, Defendant apparently joined in that motion.

The parties' position in seeking closure under K.S.A. 60-2617, however, is at odds with the record of the Legislature's intent in enacting the statute. The bill that ultimately resulted in K.S.A. 60-2617 was HB 2825, proposed by Representative Lance Kinzer from the 14th District. In his written testimony before the House Judiciary Committee, he urged passage of the bill because of "the right of the people to open court proceedings." Rep. Lance Kinzer (R), Written Testimony, House Judiciary Committee, February 18, 2008, Attachment 3-1, Exhibit 3. In support, he cited United States Supreme Court precedent in favor of open court proceedings that are in fact cited by Intervenor in this very Memorandum, including *Richmond v. Virginia*, 448 U.S. 555 (1980). According to Representative Kinzer, "it is more important than ever that our judicial process be open and accessible." *Id.*

Although the resulting statute applied only to parties and not the media, it expressly recognized the strong public interest in open courts and provided a procedure by which litigants may request a hearing on closure. K.S.A. 60-2617(c)

Further, the statute requires a court to make a finding identifying the safety, property, or privacy interest or a public or private harm that predominates the case. 60-2617(d). However, in this case, there appears to be no order that actually identifies which particular safety, property, or privacy interest would be compromised if the records were not under seal. Such particularity is not evident in the State's July 1, 2013 motion. Any order based solely on language drawn from K.S.A. 60-2617 is insufficient to meet the requirement in the statute for a finding by the court.

Further, based on Defendant's request to join in the motion at the hearing on July 8, 2013, it appears likely that any orders to seal are agreeable to all parties. However, the statute itself provides that the agreement of the parties may be considered by the court, but cannot be the sole basis for closure. K.S.A. 60-2617(e). The parties' agreement is simply not dispositive of the issue.

The purpose of the statute was not to provide a means by which litigants could obtain an expedited order to seal records by doing that little more than repeat verbatim the statutory language. The statute was enacted in order to compel a court to make findings as to what sort of safety, property, or privacy interest outweighs the strong public interest in access to the court record. Thus, insofar as any order to seal is based on little more than the language in the State's July 1, 2013 motion, such basis is insufficient under that statute.

Apart from K.S.A. 60-2617, the Kansas Supreme Court has taken into account the First

Amendment and the Sixth Amendment and has stated in rulings from 1981 through 2013 that procedural safeguards are necessary before a court can consider the closure of court proceedings or the sealing of court records. The application of K.S.A. 60-2617 in this case, at the initiative of the State, joined by counsel for Defendant, does not appear to have included the necessary procedural safeguards to protect against undue sealing of records.

2. The Court needs to address the issue of sealed records by meeting the standards and following the procedures set forth in *Fossey* or, alternatively, the Court may follow *Cox*, as it did when it opened the preliminary hearing.

Under *Fossey*, the Court would conduct a hearing, in which the burden of proof would be on parties who favor sealing of records. *See Fossey*, 230 Kan. at 249. The Court then would make specific findings on whether unsealing of records "would create a clear and present danger to the fairness of the trial," and whether "the prejudicial effect of such information on trial fairness cannot be avoided by any reasonable alternative means." *Id.*

Under *Cox*, the Court would unseal each and every record unless: the parties could "advance an overriding interest that is likely to be prejudiced"; the parties show that each closure would be "no broader than necessary to protect that interest"; the Court shows that it has considered "reasonable alternatives"; and the Court conduct a hearing where it makes "findings adequate to support" any closure. *Cox*, 297 Kan. Syl. ¶ 4.

The State's July 1, 2013 motion indicates that the desire of the parties to seal court records in this case stems in large part from a concern that openness would interfere with impaneling an impartial jury. The State claims in its motion that it seeks to protect "the constitutional rights of the defendant and the integrity of the judicial proceedings. In addition, the State has a vested interest in ensuring that the case is decided by twelve jurors from the county where the crime

occurred." Motion to File Pleadings Under Seal, p. 3, Exhibit 2. Apparently, the parties believe that disclosure of the sealed records is necessary to protect jurors from "intense media interest" that would otherwise render them incapable of reaching an impartial verdict. *Id.*

Without more, the concern that the disclosure of the sealed documents filed in district court resulting in tainting the jury pool is not an "overriding interest likely to be prejudiced." In fact, "media publicity alone has never established prejudice per se." *State v. Jorrick*, 269 Kan. 72, 77 (2000); *see also State v. Higgenbotham*, 271 Kan. 582, 593 (2001) *quoting State v. Ruebke*, 240 Kan. 493, 500, cert. denied 483 U.S. 1024 (1987).

High-profile cases on both a national and state level have demonstrated that it is possible to impanel an unbiased jury even in the light of pretrial publicity well beyond the scope of publicity in this case. *See Columbia Broadcasting Systems, Inc. v. United State Dist. Court for Cent. Dist.*, 729 F.2d 1174, 1179 (9th Cir. 1983) ("Recent highly publicized cases indicate that even when exposed to heavy and widespread publicity many, if not most, potential jurors are untainted by press coverage.").

Further, Intervenor is aware of no Kansas Supreme Court case where the Court found that the defendant failed to receive a fair trial because of pretrial publicity alone[1], even though the contention has been frequently advanced. *See, e.g., Higgenbotham*, 271 Kan. 582 (2001); *State v. Cravatt*, 267 Kan. 314 (1999); *State v. Jackson*, 262 Kan. 119 (1997); *State v. Shaw*, 260 Kan. 396 (1996); *State v. Knighten*, 260 Kan. 47 (1996); *State v. Shannon*, 258 Kan. 425 (1995); *State v. Brown*, 258 Kan. 374 (1995); *State v. Swafford*, 257 Kan. 1023 (1995), *modified*

[1] In *State v. Lumbrera*, the defendant was granted a new trial based on cumulative errors, one of which was the failure to change venue due to pretrial publicity. The defendant was convicted again on retrial.

on other grounds, 257 Kan. 1099 (1996); *State v. Anthony*, 257 Kan. 1003 (1995); *State v. Butler*, 257 Kan. 1043 (1995), *modified on other grounds*, 251 Kan. 1110 (1996); *State v. Lumbrera*, 257 Kan. 144 (1995)[1]; *State v. Wacker*, 253 Kan. 664 (1993); *State v. Grissom*, 251 Kan. 851 (1992); *State v. Tyler*, 251 Kan. 616 (1992); *State v. Mayberry*, 248 Kan. 369 (1991); *State v. Goss*, 245 Kan 189 (1989); *State v. Hunter*, 241 Kan. 629 (1987); *Ruebke*, 240 Kan. 493, *cert. denied*, 483 U.S. 1024 (1987); *State v. Bird*, 240 Kan. 288 (1986), *cert. denied*, 481 U.S. 1055 (1987); *State v. Mckibben*, 239 Kan. 574 (1986); *State v. McNaught*, 238 Kan. 567 (1986); *State v. Haislip*, 237 Kan. 461, *cert. denied*, 474 U.S. 1022 (1985); *Boan*, 235 Kan. 800 (1984); *State v. Crispin*, 234 Kan. 104 (1983), *State v. Crump*, 232 Kan. 265 (1982); *State v. Moore*, 229 Kan. 73 (1981); *State v. May*, 227 Kan. 393 (1980); *State v. Soles*, 224 Kan. 698 (1978); *State v. Filder*, 223 Kan. 220 (1977); *State v. Black*, 221 Kan. 248 (1977); *Green v. State*, 221 Kan. 75 (1976); *State v. Ayers*, 198 Kan. 467 (1967); *State v. Poulus*, 196 Kan. 253, *cert. denied*, 385 U.S. 827 (1966); *State v. Furbeck*, 29 Kan. 532 (1883); *State v. Arculeo*, 29 Kan.App.2d 962 (2001); *State v. Moss*, 7 Kan.App.2d 215, *rev. denied*, 231 Kan. 802 (1982); *State v. Allen*, 4 Kan.App.2d 534, *rev. denied*, 228 Kan. 807 (1980).

The Kansas Supreme Court has been extremely consistent in finding that pre-trial publicity did not prevent fair trials. The Court's approach has included analysis of particular factors when determining whether a trial judge erred in denying a motion for a change of venue. The factors received thorough review in a very recent case, *State v. Carr*, 300 Kan. 1; 331 P.3d 544 (2014).[2] Intervenor submits that a number of the factors reviewed in *Carr* could be helpful

[2]On March 30, 2015, the United States Supreme Court accepted the Kansas Attorney General's Petition for Certiorari on issues unrelated to the discussion here. *See State v. Carr*, Petition for Certiorari. Retrieved from http://ag.ks.gov/docs/default-source/documents/carr-jonathan-petition-%282%29.pdf?status=Temp&sfvrsn=0.2684190257132711 4; United States Supreme Court Order List, March 30,

in determining whether disclosure of the sealed district court records would create a clear and present danger to trial fairness, or result in the likelihood that an "overriding interest" would be prejudiced.

Carr involved heinous crimes committed in Wichita in December of 2000 that included rape, robbery, and execution-style killings on a local soccer field and is generally known for the Kansas Supreme Court's reversal due to the trial judge's failure to sever the defendants' sentencing phases. However, the Court also conducted a lengthy analysis of whether pretrial publicity deprived the defendants of a fair trial. *See Carr*, 331 P.3d at 591-610; Syl. 1-11. The Court did so at least in part because the it believed it had "not previously been precise about how analysis of presumed prejudice differs from analysis of actual prejudice, how the two theories are supported by and applied under the federal and state constitutions and in concert with our state venue change statute, or about how our standard of review on appeal may be affected." *Carr*, 331 P.3d at 596. The Court's ultimate finding that the trials were fair involved a "discussion of the defendants' venue challenge by tearing apart and then reassembling these concepts." *Id.*

As actual prejudice only takes place once the jury has been impanelled, the relevant inquiry in an early stage of proceedings is whether the defendant suffers presumed prejudice that would interfere with his ability to get a fair trial. Intervenor submits that the Court's through approach to the presumed prejudice issue in *Carr* provides a framework for analyzing whether disclosure of the court records currently subject to orders to seal would create a clear and present danger to trial fairness, or result in the likelihood that an overriding interest would

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2015. Retrieved from http://www.supremecourt.gov/orders/courtorders/033015zor_5iek.pdf.

be prejudiced.

Presumed prejudice occurs "where the pretrial publicity is so pervasive and prejudicial that we cannot expect to find an unbiased jury pool in the community. We 'presume prejudice' before trial in these cases, and a venue change is necessary." *Carr*, 331 P.3d at 596, *citing Gross v. Nelson*, 439 F.3d 621, 628 (10th Cir. 2006) (*citing Rideau v. Louisiana*, 373 U.S. 723 (1963)). Federal courts since then "have refined the parameters of presumed prejudice claims, setting an extremely high standard for relief." *Carr*, 331 P.3d at 597. "A 'court must find that the publicity in essence displaced the judicial process, thereby denying the defendant his constitutional right to a fair trial.' Reversal of a conviction will occur only 'where publicity "created either a circus atmosphere in the court room or a lynch mob mentality such that it would be impossible to receive a fair trial."' *Carr*, 331 P.3d at 597 (citations omitted).

In *Carr*, the Court identified factors based on *Skilling v. United States*, 561 U.S. 358, 381-85 (2010) that a judge should take into account in deciding whether a change of venue is warranted because of publicity. The *Skilling* factors are: "media interference with courtroom proceedings"; "the magnitude and tone of the coverage"; "the size and characteristics of the community in which the crime occurred"; "the amount of time that elapsed between the crime and the trial"; the jury's verdict": "the impact of the crime on the community"; and "the effect, if any, of a codefendant's publicized decision to plead guilty" *Carr*, 331 P.3d at 598-599.

Factors involving the verdict or the guilty plea of any codefendant are irrelevant in this matter, where there are no codefendants. The remaining factors set forth in the Court's analyses of presumed prejudice that could be applied here are as follows: (1) media interference with courtroom proceedings; (2) the magnitude and tone of the coverage; (3) The amount of time that

elapsed between the crime and the trial; (4) the size and characteristics of the community in which the crime occurred; and (5) the impact of the crime on the community. Unless the movants for sealing can prove that these factors weigh in favor of presumed prejudice, and thus make a showing that disclosure of the court records currently subject to orders to seal would create a clear and present danger to trial fairness, or result in the likelihood that an overriding interest would be prejudiced, the Court should order disclosure of the records, either in their entirety or in a reasonably redacted form.

a. Media interference with courtroom proceedings.

Here, as in *Carr*, there is "no suggestion...that any media representative interfered with courtroom administration in this case at any time." *Carr*, 331 P.3d at 600, *citing Skilling*, 561 U.S. at 380. "In each of the cases in which the United States Supreme Court has presumed prejudice and overturned a conviction, it did so in part because the prosecution's 'atmosphere...was utterly corrupted by press coverage.'" *Id.* That is not the case here. This factor weighs in favor of disclosure of the requested affidavit.

b. The magnitude and tone of the coverage.

Intervenor has published many articles with regard to the allegations in this matter since its inception. These are factual stories that do not suggest any sort of objectionable coverage by Intervenor. Moreover, other than the month that the Defendant was charged and the month during which the preliminary hearing occurred, Intervenor has published no more than three articles in any one month related to this case since its inception, and none at all in seven of those months.

Moreover, the publicity generated by this case pales in comparison to the publicity

generated from the outset in *Carr*. In *Carr*, the Court considered the "magnitude and tone" of the media coverage in the context of presumed prejudice, and found the magnitude and tone were "extremely high." *Carr*, 331 P.3d at 600. However, the Court's "review of at least the mainstream press coverage likely to reach a wide audience leads us to the conclusion that it was more factual that gratuitously lur*Id.*" *Carr*, 331 P.3d at 601. Negative coverage of the defendant included "especially intense" coverage "immediately after...the defendants' arrests" and later, a local television campaign advertisement supporting Phil Kline for attorney general that identified the defendant by name and "labeled him a murderer." *Carr*, 331 P.3d at 592, 593. Regardless, the trial judge cited the "factual tone of the press coverage" as a reason the Court found the "factor did not weigh in favor of presumed prejudice." *Carr*, 331 P.3d at 601.

In *State v. Roeder*, 336 P.3d 831 (2014), where the Kansas Supreme Court endorsed the presumed-prejudice analysis by the *Carr* case but declined to analyze the issue because the defendant did not raise the issue of presumed prejudice on appeal, the defendant was convicted of killing Wichita doctor George Tiller in 2009. Dr. Tiller had survived at least two serious attempts on his person when his medical clinic was bombed in 1986 and when he was shot in both arms in 1993. *Roeder*, 336 P.3d at 838. On June 1, 2009, the day after the defendant shot and killed the victim while the victim was acting as an usher during a church service, seven articles in the Wichita Eagle-Beacon regarding the murder appeared in the paper on that day alone, including three on the front page. *Id*, 336 P.3d at 841. "Several articles identified Roeder as the suspect in Dr. Tiller's murder." *Id.* The case generated much additional publicity, which included an interview with the Kansas City Star "where Roeder admitted killing Dr. Tiller and discussed his trial strategy." *Id.* In response, the defendant filed a pretrial

"motion for change of venue based on the long history of public conflict and controversy surrounding the abortion portion of Dr. Tiller's medical practice and, more particularly this homicide case." *Id.*

Even given the extensive media coverage in *Roeder*, the Court found that the defendant had "not met his burden simply by establishing the existence of a large amount of pretrial publicity. This court has opined that media publicity alone *never* establishes prejudice." *Roder*, 336 P.d 3d at 842 (emphasis in original), *citing State v. Verge*, 272 Kan. 501, 508 (2001).

Intervenor is the primary daily newspaper in Franklin County. It can only be considered mainstream press in this community. As in *Carr*, Intervenor's reporting has been factual. Intervenor has certainly not created either a "circus atmosphere in the court room" or a "lynch mob mentality" such as contemplated in *Carr*. This factor weighs in favor of disclosure of the sealed records.

c. The time that elapsed between the crime and the trial.

The crime in this case was discovered in May of 2013. The preliminary hearing in this matter took place during the second week of March in 2014, and trial is not scheduled to begin until September 21, 2015. Although in *Carr* the Court found that the elapsed-time factor was inconclusive in that particular case, it made that finding only after reviewing an extensive study supporting defense counsel's position that pretrial publicity had "staying power" despite a 17 month time lapse between the event and the defendant's first motion to change venue. *Carr*, 331 P.3d at 602. However, it also stated that "[i]n the ordinary case, one might expect these time frames to mean that public interest in the crimes and defendants had begun to wane and that it would continue to do so." *Id.*

The decline in coverage of this matter since the intense coverage in May of 2013 is prima facie evidence that a time period of almost two-and-a-half years between the crime and the trial indicates interest has indeed waned. "The substantial lapse of time between peak publicity and the trial also weighs against a finding of prejudice." *Carr*, 331 P.3d at 602, *citing United States v. Lehder-Rivas*, 955 F.2d 1510, 1524 (11th Cir. 1992) and *Nebraska Press Association v. Stuart*, 427 U.S. 539, 554 (1976). Moreover, the Kansas Supreme Court has held that a three-month time lapse between when information is disseminated and trial "would ordinarily be sufficient to dissipate any pretrial publicity arising at the preliminary hearing." *Boan,* 235 Kan. at 805.

Given the time between the crime and the trial, as well as the Court's holding in *Boan*, this factor weighs in favor of disclosure of the sealed records.

d. The size and characteristics of the community in which the crime occurred.

The *Carr* case originated in the Wichita metropolitan area. The Court found that publicity there was extensive but did not affect prospective jurors in a way that necessitated a change of venue. *Carr*, 331 P.3d at 605. Even in small jurisdictions, a change of venue has not been necessary because of pretrial publicity. For example, a relatively recent murder conviction in Labette County was not overturned even though "there was widespread publicity regarding the victim's murder throughout the community." *State v. Krider*, 41 Kan.App.2d 368, 373 (2009). There, the Court considered "the severity of the offense and the relatively small size of the community," and "firmly conclude[d] the district court did not abuse its discretion in denying the defendant's motion for change of venue." *Krider*, 41 Kan.App.2d 368 at 373, 374.

Ottawa, where the instant case originated, is larger than any community in Labette

County, and well within the range of communities in which courts have found publicity was not prejudicial. Any argument that the outright sealing of the records in this case is necessary to protect the purity of the jury pool overestimates the effect of pretrial publicity and underestimates the ability of the citizens of Franklin County to be fair. This factor weighs in favor of disclosure.

e. The impact of the crime on the community.

In *Carr*, the defense presented evidence of "strongly hostile statements by members of the public in response to press coverage of the crimes and prosecution." *Carr*, 331 P.3d at 602. Taking into account specific pretrial news reports about "widespread public reaction to the crimes," the Court found that even though the impact factor favored a change in venue, it did not weigh heavily enough for it to find the trial court erred in denying the motion. *Carr*, 331 P.3d at 602. At the same time, the Court noted judges "'have properly denied'" requests for a change of venue in "'cases involving substantial pretrial publicity and community impact, for example, the prosecutions resulting from the 1993 World Trade Center bombing ... and the prosecution of John Walker Lindh, referred to in the press as the American Taliban.'" *Id.* (citation omitted).

The instant case unquestionably impacted the citizens of Ottawa, but that impact does not rise to the level necessitating venue change. For example, in May of 2013, hundreds attended a candlelight vigil to remember the victims, and a small crowd of citizens stood outside the courthouse watching when Defendant was escorted to his first appearance. Patton-Paulson, M. (May 11-12, 2013). *'We will come together, and we will love'*. Ottawa Herald; Carder, D. and Corsthwait, A. (May 11-12, 2013). *Accused killer faces rape, capital murder charges.*

Ottawa Herald. However, in the instant case, such coverage has since waned, and there is no evidence of "strongly hostile statements by members of the public in response to press coverage of the crimes and prosecution."

The *Carr* case was a social and political firestorm, far beyond what has happened or will happen in this case, and even there, the impact was insufficient to justify change of venue on appeal. This factor weighs in favor of disclosure of the sealed records.

With reference to these five foregoing factors adapted from the presumed-prejudice analysis in *Carr*, the Court in this case may assess whether disclosure of the court records currently subject to orders to seal would create a clear and present danger to trial fairness, or result in the likelihood that an overriding interest would be prejudiced. As demonstrated *supra*, the factors most certainly weigh in favor of disclosure. If any party moving for seal fails to meet its burden under *Fossey* or *Cox*, the Court must vacate the sealing orders in this case.

As indicated by the voluminous precedent, fears over jury impartiality provide an insufficient basis for sealing records unless and until this Court has, first, found the publicity poses a clear and present danger to the fairness of the trial or that it likely would prejudice an overriding interest. Second, the basis for sealing records is insufficient unless and until the Court considers alternative measures such as reasonable redaction, as well as change of venue, change of venire, intensive voir dire and additional peremptory challenges. Given the skill of this Court and the attorneys representing the parties in this matter, Intervenor has little doubt that the jury ultimately seated in this case will have been sufficiently screened in voir dire so as to assure that they will decide the matter based solely on the evidence presented at trial.

There is no indication that this Court made specific findings of fact to support any order

to seal, as *Fossey* and *Cox* require. Without specific findings to support the sealing of records in this case, the extent to which the records may include sensitive information is an entirely open question. It is uncertain that there is anything in the documents sealed by the Court that would have any more impact on the potential jury pool than reporting to date from multiple news media outlets identifying the defendant as the suspect, the nature of the crime, and the coverage of the preliminary hearing.

CONCLUSION

The citizens of Franklin County and the 4th Judicial District are entitled to a presumption of openness in this case. Applicable precedent make clear that district court should not be hidden from public view except in the rarest of circumstances. Continuing the seal of the records risks breeding suspicion, distrust and cynicism. Intervenor submits that the only way to truly protect the integrity of the proceedings is to return to the presumption of openness mandated by law.

WHEREFORE, Intervenor respectfully requests that the Court hear its motions at the next motions hearing date scheduled in this case, June 9, 2015 at 9:00 a.m.; that the sealing orders in this case be vacated; that any sealed records be ordered disclosed; and that any future requests to seal documents be heard in open court preceded by notice to the Intervenor so it might be heard on such requests.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 19, 2015 a true and correct copy of the preceding was delivered by first-class mail to the following:

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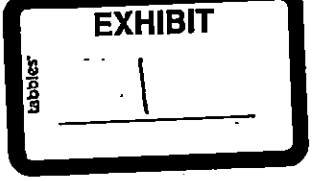

(N) = Newspaper copies
(P) = PDF Pages (newspaper copies not available)
(W) = Web only stories/PDFs

FLACK ARCHIVES

2013

MAY 2013

May 7, 2013: (P) Two bodies discovered, sheriff's office probing (Pg. 1, 6)
May 7, 2013: (W) Two men sought in Ottawa killings
May 7, 2013: (W) Sheriff: Third body found at rural Ottawa home

May 8, 2013: (W) Missing baby prompts social media search effort
May 8, 2013: (W) "Person of interest" in triple homicide in custody
May 8, 2013: (W) Victims identified, baby still missing

May 9, 2013: (P) Family Plea: Return Lana (Pg. 1,8)
Missing Baby Casts Shadow Over Homicide Investigation (Pg. 1, 8)
'Person of interest' was convicted in 2005 shooting (Pg. 3)
Triple Challenge: Sheriff needs community cooperation to help solve case (Pg. 4)

May 9, 2013: (W) Agents on horseback, FBI plane, search dogs scouring farm for missing baby
May 9, 2013: (W) County attorney hasn't ruled out seeking death penalty in triple homicide
May 9, 2013: (W) Man arrested in triple homicide, baby presumed dead
May 9, 2013: (W) "Nothing worse than killing an innocent baby"

May 10, 2013: (W) Court appearance set in quadruple homicide, criminal charges expected

May 11-12, 2013: (P) 'We will come together, and we will love' (Pg. 1, 10)
Accused killer faces rape, capital murder charges (Pg. 1, 6)

May 11, 2013: (W) "Major case squad" disbanding, search for toddler continues

May 12, 2013: (W) Body of missing baby reportedly found

May 13, 2013: (W) Man accused in quadruple homicide back in court

May 14, 2013: (P) Security tight as Flack faces court, families (Pg. 1, 3)
Investigation taking toll on sheriff's office (Pg. 1, 2)
Obituaries: Steven Eugene White
Kaylie Kathleen Smith (All Pg. 2)
Andrew Adam Stout

May 16, 2013: (P) Just or not, death penalty comes at a cost for county (Pg. 1,8)
Helping our children after violence (Rebecca McFarland) (Pg. 5)

May 17, 2013: (W) Kansas AG taking lead on quadruple homicide case

May 18-19, 2013: (P) Wife recalls wonderful father, friend after deaths (Pg. 1, 3)
Kansas AG joins murder case against Flack (Pg. 1, 3)
Obituary: Steven Eugene White (Pg. 2)

May 21, 2013: (P) County sheriff, attorney show wisdom in asking for help (Pg. 4)

May 23, 2013: (P) Are you proud of this? (Pg. 5)

JUNE 2013

June 27, 2013: (P) Deputy honored for finding baby's remains (Pg. 1, 6)

JULY 2013

July 6-7, 2013: (P) Baby's body officially ID'd (Pg. 3)

July 9, 2013: (P) Murder case begins long march to trial (Pg. 1, 2)

AUGUST 2013

Aug. 3-4, 2013: (P) Judge OKs DNA testing in quadruple homicide case (Pg. 3)

Aug. 29, 2013: (P) Investigation taxes sheriff's overtime costs (Pg. 1, 3)

Aug. 31-Sept. 1: (P) Judge Oks DNA testing in Ottawa quadruple killing; defense objects (Pg. 2)

SEPTEMBER 2013: None

OCTOBER 2013

Oct. 19-20, 2013: (P) Business records wanted in quadruple murder case, next court date set for late November (Pg. 3)

NOVEMBER 2013

Nov. 27, 2013: (P) Prosecutors drop bid for murder suspect's mental health records (Pg. 1, 3)

DECEMBER 2013

Dec. 21-22, 2013: (P) Judge OKs more DNA testing in Ottawa quadruple homicide case (Pg. 3)

Dec. 31, 2013: (P) A year of challenges, heartache, redemption (Pg. 1, 2)

2014

JANUARY 2014

Jan. 18-19, 2014: (P) Judge OKs closing next hearing in Ottawa quadruple homicide case (Pg. 1, 3)

FEBRUARY 2014

Feb. 11, 2014: (P) Murder hearing reopened to public, moved to March (Pg. 1, 3)

MARCH 2014

March 1-2, 2014: (P) State seeking "Hard 50" in quadruple homicide case (Pg. 1, 3)

March 8-9, 2014: (P) Preliminary hearing in quadruple homicide case set to begin Tuesday (Pg. 3)

March 11, 2014: (W) Testimony in quadruple homicide case: Baby's body was found in suitcase in Osage County creek

March 11, 2014: (W) Detective: Flack admitted killing Steven White, but said someone else fired first shot

March 11, 2014: (W) Two bodies discovered buried under clothes, crime lab says

March 11, 2014: (P) "I can't imagine why anyone would kill my friend" (Pg. 1, 2)

March 12, 2014: (W) Testimony in quadruple homicide case: All four homicide victims died of shotgun wounds

March 12, 2014: (W) Judge finds probable cause to send Flack to trial; rape charge dismissed

March 13, 2014: (P) Flack to face jury trial for homicides (Pg. 1, 6)
Timeline shows Flack's path to trial (Pg. 12)

APRIL 2014

April 17, 2014: (N) Homicides shaped sheriff's first year (Pg. 1, 6)

April 22, 2014: (N) Flack expected to enter plea in quadruple homicide case (Pg. 3)

April 24, 2014: (N) Prosecutors: "Heinous, cruel" crime deserves death penalty (Pg. 1, 6)

MAY 2014: None

JUNE 2014

June 7-8, 2014: (N) Will statements in quadruple homicide be unsealed? (Pg. 3)

June 12, 2014: (N) County forecasts costly court case in budget plans (Pg. 1, 3)

June 28-29, 2014: (N) Analysis: Death penalty case brings unique challenges, costs (Pg. 1, 5)

JULY 2014: None

AUGUST 2014

Aug. 21, 2014: (N) Judge could rule on defendant's statements (Pg. 1, 8)

Aug. 30-31, 2014: (N) Statements can be used in murder trial (Pg. 1, 2)

SEPTEMBER 2014: None

OCTOBER 2014: None

NOVEMBER 2014

Nov. 26, 2014: (N) Statement ruling to be held until trial (Pg. 1, 3)

DECEMBER 2014

Dec. 30, 2014: (N) 2014 a year of joy and sorrow (Pg. 2, 3)

2015

JANUARY 2015: None

FEBRUARY 2015:

Feb. 3, 2015: (N) Graphic photos from scene of killings in focus (Pg. 1, 3)

Feb. 7-8, 2015: (N) Death penalty still possible in quadruple homicide (Pg. 1, 2)

MARCH 2015: None

APRIL 2015:

April 9, 2015: (N) Accused killer said fictional prison characters shot four Ottawa victims (Pg. 1, 5)

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IN THE DISTRICT COURT OF FRANKLIN COUNTY, KANSAS
FOURTH JUDICIAL DISTRICT

STATE OF KANSAS,	)	
Plaintiff,	)	
vs.	)	**Case No. 2013 CR 104**
	)	
KYLE TREVOR FLACK,	)	
Defendant.	)	

MOTION TO FILE PLEADINGS UNDER SEAL

The Plaintiff requests that the Court order that all pleadings be filed under seal. If the Court imposes this rule, it can then review each pleading when filed and make a determination whether to unseal the document.

Facts

In early May 2013, the Franklin County Sheriff's Office initiated an investigation concerning the deaths of Steven White, Andrew Stout, Kaylie Bailey, and Lana Bailey. On May 10, 2013, the Franklin County Attorney filed murder charges against the defendant involving these four individuals. Throughout the initial investigation and subsequent charging, the case generated intense local and regional media interest.

Argument and Authorities

Issue

Due to the nature of this case and the intense media interest exhibited to this point, the State requests that all pleadings be sealed. After a pleading is filed, the Court can weigh whether the harm of release outweighs the public interest in the case, and determine if unsealing is appropriate.

Statutory and Case Law

K.S.A. 60-2617, and amendments thereto, provides that upon any party's request, the Court may hold a hearing concerning the sealing of court records. K.S.A. 60-2617(a), and amendments thereto. However, such a hearing requires reasonable notice be given to the victim's family. *Id.* After a hearing on the issue, the Court may order court files and records in the proceeding to be sealed. K.S.A. 60-2617(b), and amendments thereto. If the Court so orders, it must make and enter a written finding of good cause. *Id.*

Kansas statutory law requires that if the Court grants the order, it "shall recognize that the public has a paramount interest in all that occurs in a case, whether at trial or during discovery and in understanding disputes that are presented to a public forum for resolution." K.S.A. 60-2617(c), and amendments thereto. Good cause to seal records does not exist unless the court makes a finding on the record that there exists an identified "public or private harm that predominates the case and such interest or harm outweighs the strong public interest in access to the court record and proceedings." K.S.A. 60-2617(d), and amendments thereto.

Application

This filing initiates the procedure under K.S.A. 60-2617, and amendments thereto. The State believes that the process suggested protects the constitutional rights of the defendant and interests of the State.

The complaint filed in this case included capital murder. Although no decision has been made by the State concerning notice of intent to seek the death penalty, the heightened scrutiny standard of a capital murder case requires extreme diligence in protecting the constitutional rights of the defendant and the integrity of the judicial proceedings. In addition, the State has a vested interest in ensuring that the case is decided by twelve jurors from the county where the crime occurred.

Pursuant to K.S.A. 60-2617(a), and amendments thereto, the State will notify the families of the victims in this case of the substance of this motion and the date, time, and location that this motion will be heard before this Court.

By filing each pleading under seal, the Court can properly assess whether the public or private harm outweighs the strong public interest in access to the document. After making that determination, the Court can release the pleading for public viewing or keep it sealed. This process allows the Court to protect the defendant's right to a fair trial and prevent public dissemination of alleged facts that may or may not be allowed at jury trial.

Conclusion

The State respectfully requests the Court enter an order requiring that all pleadings be filed under seal with the Clerk of the District Court of Franklin County, Kansas.

Respectfully submitted,

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EXHIBIT
tabbies
3

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STATE OF KANSAS
HOUSE OF REPRESENTATIVES

TOPEKA

LANCE KINZER
REPRESENTATIVE, 14TH DISTRICT

COMMITTEE ASSIGNMENTS
TAXATION
JUDICIARY
FEDERAL AND STATE AFFAIRS

TESTIMONY REGARDING HB2825

HB 2825 is a short bill about a serious topic: The right of the people to open court proceedings. In the case of RICHMOND NEWSPAPERS, INC. v. VIRGINIA, 448 U.S. 555 (1980), the United States Supreme Court expressed the high stakes associated with this issue. The following quotes from the majority and concurring opinions in that case are illustrative of the gravity that attaches to this matter.

According to Chief Justice Burger:

"The Bill of Rights was enacted against the backdrop of the long history of trials being presumptively open. Public access to trials was then regarded as an important aspect of the process itself; the conduct of trials "before as many of the people as chuse (SIC) to attend" was regarded as one of "the inestimable advantages of a free English constitution of government." 1 Journals 106, 107. In guaranteeing freedoms such as those of speech and press, the First Amendment can be read as protecting the right of everyone to attend trials so as to give meaning to those explicit guarantees."

According to Justice Brennan:

"Tradition, contemporaneous state practice, and this Court's own decisions manifest a common understanding that "[a] trial is a public event. What transpires in the court room is public property." Craig v. Harney, 331 U.S. 367, 374 (1947). As a matter of law and virtually immemorial custom, public trials have been the essentially unwavering rule in ancestral England and in our own Nation. See In re Oliver, 333 U.S., at 266 -268; Gannett Co. v. DePasquale, 443 U.S., at 386 , n. 15; id., at 418-432, and n. 11 (BLACKMUN, J., concurring and dissenting). 18 Such abiding adherence to the principle of open trials "reflect[s] a profound judgment about the way in which law should be enforced and justice administered." Duncan v. Louisiana, 391 U.S. 145, 155 (1968)."

In recent months I have been troubled by the fact that the Kansas Supreme Court has been conducting at least two important judicial proceedings in complete secrecy. (Planned Parenthood v. Kline & State of Kansas, EX REL., Paul Morrison v. The Honorable Richard Anderson, Judge of the Third Judicial District). For the very reasons cited by Justices Burger and Brennan I believe that the public has a fundamental interest in all cases that are submitted to a court for resolution, and that restricting media coverage and other public access to court proceedings should only be allowed under very rare circumstances.

Under HB 2825, a court could not close a hearing or allow pleadings to be filed under seal unless it first made a finding on the record that an identified safety, property or privacy interest predominates the case and outweighs the strong public interest in access to the court record and proceedings. It is an unfortunate reality that many of the most important public policy issues facing our State are being decided by courts. As such it is more important than ever that out judicial process be open and accessible.

House Judiciary
Date 2-18-08
Attachment # 3