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NFPW speech
Sept. 9, 2016
DoubleTree by Hilton, Wichita Airport

Good afternoon. It's a pleasure to be with you today and share a bit about the Sunshine Laws in Kansas and also my take on what is happening to journalism, where we're headed with open government initiatives and what the trends in the newspaper industry say about the future viability of print journalism.

First, though, I want to thank Gwendolynn Larson for inviting me here today. Gwen is a former editor of the Emporia Gazette, William Allen White's famous newspaper just an hour up the Kansas Turnpike from here. She did a great job as an editor and I'm quite sure she is equally effective in her role at Emporia State University.

The National Federation of Press Women has had three presidents from Kansas through the years. The first was Marie Abels in the 1940s. She was followed a decade later by Helen Ankeny in the 1950s.

The last president from Kansas was Vivien Sadowski, who served as your president in the late 1990s when she was with the Abilene Reflector-Chronicle. Vivien has the distinction of being one of only two women in the Kansas Newspaper Hall of Fame. I served with her on the board of KPA about five years before becoming executive director.

And when I was editor and publisher of the Brookings Register in South Dakota through much of the 1980s, I became acquainted with D.J. Cline, another of your past presidents.

A bit of background about me.

I was born in Topeka on Friday the 13th of July in 1951. It was the worst day of the devastating 1951 flood that inundated much of north Topeka. When I tell that to friends, they say: "Well, that explains a lot!"

And it kind of reminds me of the weather in Wichita today!

I grew up reading the weekly People's Herald in the little burg of Lyndon 30 miles south of Topeka. Jack Miller was the owner and publisher at the time, and though I'm sure he was a nice guy, I learned to spell by finding and correcting the typos in Jack's newspaper each week. They were numerous, often humorous. To this day, I'm still a proud member of the Grammar Police, as my daughters and wife will attest.

I was just 12 years old when John F. Kennedy was assassinated in Dallas in 1963. Obviously, that event was a defining moment for most of those from my generation. In the weeks following that horrible event, I became a vociferous reader of newspapers, and since my parents subscribed to both the Topeka Daily Capital in the morning and the Topeka State Journal in the afternoon, I had plenty of news to pore over each day.

I became obsessed with the Kennedy assassination and was watching live TV on the following Sunday morning when Jack Ruby shot Lee Harvey Oswald. My mother, sensing maybe she had a journalist in her midst, even ordered me my own copy of *"The Warren Report,"* the official investigation of the assassination published the following year.

Well, as you can imagine, by then I was sold on newspapers. I loved English class and went on to study journalism and mass communications at Kansas State University. In my senior year, I was fortunate enough to serve a short internship at the Topeka newspapers I had grown up reading. I was hooked.

I'll not bore you any more other than to tell you I have been a reporter, editor, editorial page editor and editor and publisher at six daily newspapers in Kansas, Missouri, Nebraska and South Dakota. I came to the KPA in 2004 after 31 years in the daily newspaper industry, the final 16 as editor and publisher of the Newton Kansan, just 25 miles up Interstate 135.

Newspapers may not survive as printed publications for more than the next quarter century or so, but what we do will still be vital to our democracy.

We can't agree on the facts

What we do is called journalism, and if printed newspapers some day became a thing of the past, our nation will still depend on "journalists" to help citizens distinguish between facts and opinions.

That, as we all know, is becoming more difficult every day. We often find it difficult to even agree on the facts. And if the facts don't fit our narrative, we sometimes choose to just ignore them.

Far too many of us have chosen up sides and cast our lot with a certain political philosophy — and we judge all information by those distorted standards.

Just like there is a pill for every ill and a potion for every emotion, there is a cable channel, a radio talk show, a website, a blog or a newsletter — and sometimes even a newspaper (think of the Washington Post and the Washington Times) — to fit each and every point of view. Unfortunately, too many of us choose to tune in to the ones that most closely reflect our own views. We're not that interested in hearing what those with other views have to say.

That is a prescription for a divided, angry America, which is exactly what we have today.

What happened to civility?

We Kansans miss the days when former Sens. Nancy Kassebaum and Bob Dole worked with their counterparts on the other side of the aisle to come up with solutions to our problems.

This division has spilled over into politics with a vengeance. Bob Dole remembers when he was in the Senate that Republicans and Democrats often would meet after hours for dinner and conversation, even after fighting hard for what they believed in on the floor of the House and Senate. They didn't hate each other. In fact, they found ways to work together on important issues.

Not any more. Today, if you are seen with a member of the other party, or a representative of a group that is on the "outs" with your side of the aisle, it can cost you dearly.

There's little if any friendly banter in the hallways at the Kansas Legislature any more. In fact, it's sometimes amusing to just watch how legislators look over their shoulders to make sure no one is listening in on their conversations who might cause them damage in the next election.

And our elected officials often have a distorted view of why we have open government laws.

The meetings at Cedar Crest

Here's an example: A few years ago, Kansas Gov. Sam Brownback hosted meetings of legislators at the governor's mansion, Cedar Crest, that included all Republicans and majorities of a number of committees that would work on his proposals. He laid out his agenda and at times took questions and answers from those attending, to us a clear violation of the Kansas Open Meetings Act.

When confronted, his lieutenants argued they had made sure not to have "interactive communications" during the meeting to keep within the boundaries of the law, but it was obvious that they had gone beyond just listening to the governor.

We protested and joined others in asking for an investigation of the meetings as a violation of the Kansas Open Meetings Act. Depositions were taken from a good portion of those who attended by the Shawnee County District Attorney's office.

Most said they had been assured that the meetings were not illegal; a number of them argued that there was no way they had broken the law, and that if they had, the law was obviously wrong.

Here's what one Wichita area representative said when asked this question by an assistant DA: "Do you understand what the Kansas Open Meetings Act says?"

His answer: "I know what you say the law is, but this is what I believe."

Now, it's certainly OK to have beliefs — we all do — but when an elected official believes he or she can substitute personal beliefs in place of the law, we've got real

problems. This is what we're up against. Public officials who say they are for transparency, but then forget they ever said such a thing when the chips are down.

OK, enough of that; let's discuss some of the "wins" and "losses" in the state's Sunshine laws in the past decade or so.

We've had a number of successes. Just this past year, we had two:

Communications on private devices
First, we helped pass legislation that redefines as public records conversations and emails that take place on private devices. If you do public business on your personal email account, that information will be considered just like any other public record and subject to disclosure. You can still keep your personal conversations secret, of course, but public business is fair game now.

The change was spurred when the governor's budget director sent a memo to lobbyists asking for their input on the upcoming budget before the information was shared with legislators or the public. So our state was trying to get feedback from special interests before announcing the budget to the public.

When the Wichita Eagle tried to get the emails, they were blocked because the emails were sent to the private accounts of everyone — except one person at Kansas State University. He received his email on his public account.

But when the Eagle asked for the email from that individual, what the newspaper reporter received was a totally redacted (blacked out) version. The Eagle's reporting was thorough and effective on the issue, and it ended up being sent for interim study through a well-balanced Kansas Supreme Court-appointed Judicial Council Advisory Committee. The committee met five separate times before coming up with the right language to put into bill form.

The result was new legislation to bring such communications under the Kansas Open Records Act. When all was said and done, there was only one "no" vote in the Kansas House of Representatives; the vote in the Kansas Senate was unanimously in favor.

The final legislation wasn't perfect, of course, because of the "sausage-making" realities of politics. But we've been assured publicly by our attorney general that this law is written liberally enough that it will bring many — if not most — of those communications under the Kansas Open Records Act. We'll follow it closely to see how that goes.

Public Speech Protection Act
The second victory in the 2016 session was a gift from heaven … literally! In the 2015 session, a legislator who had switched her political affiliation from Democrat to Republican the previous year proposed the Free Speech Protection Act, a bill that would

prevent deep-pocketed special interests from shutting down someone's public speech by threatening them with financial ruin through a frivolous lawsuit.

I call it a gift because the legislation didn't originate with KPA, the Kansas Association of Broadcasters or the Kansas Sunshine Coalition for Open Government. I doubt it came from ALEC, the American Legislative Exchange Council.

We didn't care! Because it didn't come from journalists, it almost skated through the 2016 session. We testified in favor, but laid low so someone wouldn't suspect it was our bill, which sometimes can be the kiss of death.

In other states that have similar legislation, you probably call it an "anti-SLAPP" law. SLAPP stands for Strategic Lawsuits Against Public Participation, so anti-SLAPP laws are designed to address situations where a rich individual or a corporation doesn't like what someone is saying, so they file a lawsuit to try to intimidate the speakers into silence. The threat of financial ruin is a strong incentive to back off. Anti-SLAPP laws help level the playing field for citizens and the media.

That one dropped in our lap, and we are forever grateful!

The Kansas Shield Law

One of our larger victories came in the 2010 session when our current attorney general helped us write and pass a reporters' shield law. Derek Schmidt was Senate Majority Leader at the time. His undergraduate degree was in journalism, and he worked with his former journalism school dean — now a professor of media law in the University of Kansas School of Law — to push that legislation forward.

The original catalyst for the legislation was the threatened incarceration of a reporter in Dodge City who had done a jailhouse interview with a suspect in a murder. Legislators actually were appalled at the thought of this woman being jailed. It was a perfect storm for getting that legislation passed.

Since passage of the shield law, we've had only a few instances where it had to be cited, and it has proved effective.

We have a current case where two staff members of a small newspaper in Johnson County have been subpoenaed to testify in a wrongful discharge case. Their attorney has filed a motion to quash both subpoenas because he believes in both cases they were acting as journalists.

The case is still pending, so I can't discuss it beyond that, but suffice it to say it presents us with a surprising dilemma.

The problem of serial communications

In 2008, we agreed to a change in the definition of a public meeting so that we could get language to address the growing use of serial communications through email. Public

officials would often use their public email accounts to try to avoid KORA. They would hit "Reply All" and share strategies and information outside the meeting room. We even caught them once polling each other about how they would vote if a particular issue came up.

We had lost a case in the early 2000s when we tried to gain access to those communications in a case out in Hays. A court ruled that those communications could remain private. Ouch!

Redefining a meeting

What we agreed to do was to redefine a meeting as involving a majority of a public body rather than a majority of a quorum. Most states at that time, more than 35, had that "majority of the body" requirement. We believed that the change in definition was worth it.

Here's the language we ended up with: interactive communications in a series shall be open if they collectively involve a majority of the membership of the body or agency, share a common topic of discussion concerning the business or affairs of the body or agency, and are intended by any or all of the participants to reach agreement on a matter that would require binding action to be taken by the body or agency."

Notice the phrase "intended by any or all of the participants." That was critical because in some cases not everyone has the intent to violate KOMA. Only one — usually the instigator of the serial meeting — needs to have nefarious intent for the serial communications definition to kick into gear. If it does, those participants have had a meeting under KOMA.

The Lew Perkins Provision

One other victory in the past 10 or so years involved personnel issues. In 2004, the Lawrence Journal-World sued the University of Kansas to gain access to the entire compensation package for then-Athletic Director Lew Perkins.

Perkins came to KU from the University of Connecticut and saw a gold mine. The prime seats in Allen Fieldhouse — home of the perennially strong Kansas Jayhawks — had been in the same families for years without much requirement of a donation to the athletic department's Williams Fund.

Perkins angered these long-time ticket holders when he announced a plan to require them to give large donations in exchange for keeping their tickets. Soon after, the Journal-World starting digging into a story to see what kind of financial arrangements had been made with Perkins, but the university and its private athletic council refused to cooperate.

So the Journal-World sued in district court. The J-W won that lawsuit, and within a day or two the head coaches at KU, Kansas State and Wichita State all released their contracts that laid out all compensation — both public and private — they were receiving. A huge

victory for open government — and a huge eye-opener for those who didn't know the extent of those financial deals.

We had attempted to change that language in that year's legislative session, but the Legislature took the easy way out, arguing that since there was a pending lawsuit on the issue, we should defer to the courts to make a determination.

That next legislative session, following the Journal-World victory on the KU lawsuit, we proposed and succeeded in passing an amendment to the open records act that would incorporate the lawsuit's particulars. Since then, all compensation has been a record available to the public.

Settlement agreements

An offshoot of that change is all compensation including in settlement agreements became open records as well. If your city commission paid the city manager a year's salary in exchange for his resignation, that became a public record.

In the early years, we had to fight in court a few times for those agreements, but won each time. Our KPA attorney at the time said it was like fishing in a barrel, and he once boasted to me that his fees from those lawsuits — often paid by the defendants — put one of his children through college.

No longer can cities, counties, school districts and universities fire someone and pay them compensation in return for silence. Some still try it, though.

We've had our share of setbacks through the years as well.

Probable cause affidavits

Two years ago, we fought to remove a blemish from the Kansas Open Records Act that has plagued journalists here for three decades. Back in the 1980s, a reporter from Topeka picked up an arrest warrant affidavit at the district attorney's office and published it. It turned out that the people had not yet been found and that the publication of that information supposedly tipped them off, and they fled the jurisdiction. They were caught a few days later.

In the next legislative session, at a late-night conference committee meeting where, of course, no media were present, someone tacked on language that changed our probable cause affidavits statutes to be presumed closed rather than open. It was a terrible decision made because of a single mistake that really wasn't even the reporter's fault.

When we looked into the matter nationally, we found that not one other state presumed these records closed. Not one!

Kansas was an outlier. How did some legislators look at that: "Well," one of them argued one day, "maybe they are all wrong and we are right."

A few years ago, we identified a champion for our cause — a retired federal judge from Johnson County. We worked together for two years to make a change. The district and county attorneys threw a fit at first. And they were quickly joined by defense attorneys.

But our champion argued from a position of knowledge: such affidavits were open records in the federal court system. Finally, when it appeared the prosecutors were going to lose, they decided to sit down with us and fashion a compromise.

It took more than 30 years to get that legislation changed, and by the time it went through the legislative process, it was weaker than what we preferred. Most attorneys had spent their entire careers never knowing anything other than closed affidavits and, consequently, they were slow to get on board. Judges who had known nothing other than granting secrecy, were as well.

We still have jurisdictions in Kansas where closing the affidavits is still the course of least resistance. One judge in southeast Kansas even called it the worst legislation he's ever seen. You can imagine how often he releases affidavits.

A quick aside: KPA's current director of governmental affairs, Richard Gannon, was a state senator from Goodland at the time. He said that little tidbit was slipped in without the remainder of the Legislature knowing it. He voted for the conference committee report and has spent the past 13 legislative sessions trying to make up for it as our lobbyist.

Obsession with secrecy

Our other losses through the years have been through the drip-drip-drip of additional exceptions in the wake of the 9-11 tragedy. Certainly, security is important and we won't argue against all exceptions, but we've experienced an interesting phenomenon these past few years: Law enforcement, prosecutors, attorney general's staff members and others seeking to have records eliminated that might refer to where they live or other personal information.

This obsession with secrecy has actually backfired in some cases. Some have signed up to remove their Register of Deeds office records only to find out later it made it more difficult to purchase or sell a home. Karma? Maybe.

Vehicle and body cams

We had a near-loss this past year with a bill to shield body and vehicle cams from the Open Records Act.

In the wake of shootings where police officers and citizens have been victims, this issue has jumped to the forefront. While the outcome on the legislation is far more restrictive than we wanted, we did manage to get those videos labeled as investigative records.

While they'll be subject to the limitations on such records in KORA, they are at least subject to disclosure under certain conditions.

What sense does it make to put such videos under lock and key when the very reason for such recordings is to provide a more accurate accounting of what actually took place during a confrontation between a law enforcement officer and a suspect or citizen?

We're concerned that the limitations placed on disclosure might encourage law enforcement to pick and choose what videos to release. This new technology should help prove — and disprove — the official descriptions of these encounters. That serves the public and the honest cops.

I'll make a few more points about the trends I see developing that will affect the future of journalism — and of newspapers, then throw it open for questions.

Social media explosion
When I left the position of editor and publisher 13 years ago, social media were just cranking up. Now, writers and editors can utilize these avenues to go "digital first," but the explosion of social media also has created some real issues.

Twitter bombs can blow up an issue in seconds, long before those involved have any opportunity to make amends or correct what they have said.

Comments after stories often can be helpful in a discussion, but they usually deteriorate to determine who can be the most outrageous. Many newspapers have gone to Facebook IDs or other methods of identifying the posters to bring some civility back to the process, but that hasn't always worked either.

Bullying is magnified on social media and has even led to youth suicides.

All this has made being a communicator even more difficult.

Newspaper trends
In 1999, Kansas had 49 daily newspapers; today, we have 28. In 1999, just about every daily, and a number of weeklies, had presses in their buildings.

The Wichita Eagle, the Topeka Capital-Journal and the Lawrence Journal-World have all shut down their presses and moved their printing to the Kansas City Star. Can you imagine the effect that has had on deadlines? We Kansas City Royals fans can tell you a thing or two about that.

Two central Kansas newspapers — the Hutchinson News and the Salina Journal — now print about a fourth of the titles in the state between them. We're down to fewer than 25 working presses in the state.

Frequency of publication also has been affected by the downturn since the mid-2000s. We've lost a number of dailies to weekly or twice-a-week publication, but we've also had dailies that went from six to five publications a week as well.

More and more newspapers are trying the digital route, with websites and mobile applications, but only a few can say they've made money at it. We still have a large number of newspapers that have no presence online.

KPA recently added a digital newspaper membership category to try to attract those newspapers that are going to digital publication only and those news websites that might bring expertise we can share with our print members.

Just recently, the Newspaper Association of America announced that it had renamed itself the News Media Alliance. They joined the former Suburban Newspapers of America, now the Local Media Association, and a few of our state press associations that have made the name change as well.

The declining profitability of newspapers, besides decimating staff numbers at many of our dailies, has another effect: it means we will likely file fewer court challenges to adverse public record and court opinions because we simply can't afford it. This, of course, will provide more opportunity for mischief from those who wish to operate in the dark.

Another nice trend has been that newspaper ownership — at least among the smaller ones — is returning to the individual and family rather than corporations with stockholders. This trend must continue so that communities are served by owners who live there, work there and are active participants in the community.

I want to leave time for questions, but I'll end by commending you on your organization's Code of Ethics. Here it is:

NFPW Code of Ethics
As a professional communicator, I recognize my responsibility to the public which has placed its trust and confidence in my work, and will endeavor to do nothing to abuse this obligation.

With truth as my ultimate goal, I will adhere to the highest standards of professional communication, never consciously misleading reader, viewer, or listener; and will avoid any compromise of my objectivity or fairness.

Because I believe that professional communicators must be obligated only to the people's right to know, I affirm that freedom of the press is to be guarded as an inalienable right of the citizens of a free society.

I pledge to use this freedom wisely and to uphold the right of communicators to express unpopular opinions as well as the right to agree with the majority.

— Adopted in 1975