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If you don't serve your industry well, it won't serve you well.



Chairman's Message:

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With the 2013 Convention in the books we hope everyone is back to the business of broadcasting with new ideas, enthusiasm and maybe just a little more appreciation for the fine business we all work at each day. KAB hadn't been back to Manhattan for seventeen years, so we locals hoped that our broadcasting brethren enjoyed the event and took home a new enlightened outlook on the challenges that face us all.

Judging from the round of applause at the end of this year's convention we hope KAB returns to Manhattan soon!

As usual Kent and Judy from the state office did a fantastic job of organizing and scheduling the convention. We hope everyone enjoyed their stay given the Hilton's comfortable facilities, rooms, food, and convenient free parking.

Congratulations to 2013 KAB Hall of Fame inductees Bob Newton and Mark Vail. Ken Greenwood was honored posthumous with the Mike Oatman Award and KLWN's late Carol McCaffrey was honored with the Sonny Slater Award. These long time broadcasters all join an impressive list of recipients who have been honored through the year by the KAB.

We need to express our appreciation to the facilitators who help with introductions, panel moderation and post session evaluations. Finally we need to mention the sponsors who contribute significantly to the convention each year. Without these sponsors support of sessions, banquets and displays, the convention wouldn't be what it is today.

For those broadcasters who were not able to attend this year I am sorry we missed you as there was excellent attendance and interest at all sessions. Hopefully you will make plans now to attend next year. The addition of social media to the management and operations of our business has caused the sessions to be more interesting and offer attendees more online ideas and on the spot training.

Thanks for coming and we hope you enjoyed a bite of the Little Apple...Manhattan.

2013 KAB Convention



If you missed the 2013 KAB Convention – you missed a lot. We had 350 attendees in Manhattan over the 2 ½ days, and the evaluations completed by them were very complimentary. There is no question the Hilton and Convention Center were very well received, and I'm sure we will back at some point in the future. It was great having so many people attend the Sunday night Hall of Fame inductions and for past recipients to renew old and new acquaintances. When you hear the biographies of these Kansas broadcasters, it's a reminder why we have such a tremendous industry filled with outstanding people.

On our website, <http://kab.net/ConventionInformation/> we have a link to photographs from the convention, as well as the power points from many of our presenters. If you were unable to attend, these might be helpful to you as they provided unique takeaways in the areas of management, sales, programming, engineering and news. I hope you will be able to join us in 2014 in Wichita October 19-21. One final note. Below are the companies that helped bring this convention to you and if you have a chance to use their equipment or service, please do so!

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A Question of Privilege

(This column was written by KAB Hotline attorney Mike Merriam at the request of the Kansas District Attorneys Association for their newsletter, *The Prosecutor*. Their editorial board refused to print it because it was “too opinionated”)

We have been allowed to address you on the subject of the journalist privilege of K.S.A. 60-480 et seq. You all have easy access to this statute and we won't use this space to detail the fine points of it. Instead, we think it is useful to discuss how the statute is working since its enactment in 2010.

After several years of deliberation and negotiation, the legislature finally enacted this law. Previously, we defended subpoenas to the media based on the Powell concurrence in *Branzburg v. Hayes*, and many subsequent cases exploring the issues, including, in our jurisdiction, the 10th Circuit cases of *Granbouche v. Clancy* and *Silkwood v. Kerr-McGee*. The Kansas privilege statute differs very little from the elements of those cases. We continue to argue this constitutional privilege, along with the Kansas statutory privilege to address all issues in a given case.

Since 2010, we are aware of perhaps a dozen cases in Kansas in which a party, including the State, has issued subpoenas to the media. Others have not been resisted by the media. Of those that have been, the media has prevailed in all but one. Our experience has shown that counsel is frequently unaware of the existence of the privilege, and we have even encountered courts that are unaware of it.

That experience has also shown that the most common outcome, when an objection is filed to the subpoena, especially in civil cases, is that the matter is dropped (dismissed) by the party seeking information from the media. In a few criminal cases, defense counsel seeking information have also dropped the issue when facing assertion of the privilege and the protocol for resolution set out in K.S.A. 60-483 (incidentally, we are unaware of any case assessing costs or fees under K.S.A. 60-484). Because of this experience, we find that many counsel are unprepared for the evidentiary showings required under K.S.A. 60-482.

The elements for a party seeking information from the media are threefold: (paraphrasing) 1) that it is material and relevant to the proceeding; 2) that it could not be readily obtained from another source; 3) that it is of compelling interest. By far the most contentious issue under the statute is 60-482(a)(2), what we call unavailability. Seldom are subpoenas issued by responsible counsel which seek immaterial or irrelevant information, although compelling interest is sometimes at issue - compare a recent Wichita criminal case in which unaired video was sought under circumstances in which the suspect was killed. The burden of showing unavailability is squarely upon the party seeking information from the media. So, objectively speaking, how would one show that there is no other readily available source for the information sought? It's a pretty tough burden.

There are exceptions, of course. A recent Shawnee County criminal case subpoena was ably presented by the prosecution, which prevailed in a showing that an on-line comment to a media story about a trial may have been posted by a sitting juror. While we showed that the identity of the poster was known to the defense (no 5th Amendment, attorney-client or work product issues), the court nevertheless enforced the subpoena.

The media is not an adversary in the civil or criminal court system, but neither is it a detective service for party litigants. We do not choose to resist each and every subpoena, and many media organizations will comply with information requests in certain circumstances, such as where there are emergencies, or when a particularly vulnerable victim may be at risk, such as a child, a female, or an elderly person.

We repeat that we do not see ourselves as adversaries to the prosecutor's interests in criminal cases. A need for cooperation exists. We are good citizens; we often assist law enforcement in published and broadcast stories for investigating crimes, soliciting tips, finding suspects, etc., almost always at the request of a law enforcement agency. If we can assist without betraying journalistic principles, we almost always will. So use subpoenas sparingly: if your need for information meets our policies, you will get it with a phone call. If not, prepare yourselves for the privilege requirement showing under this statute. We don't prevail in every case, but it is a pleasure for media counsel to have able and prepared opposing counsel.

Young Seller – Old School Broadcasting



I have been approached several times in the past couple of years by younger broadcast sellers who feel uncomfortable because they don't personally use all of the products they are selling. In other words, they (and their friends) don't listen to traditional radio. They (and many of their friends) find traditional television so old-school they don't even HAVE one in their living rooms.

Their moral dilemma seems to be, "How can I sell something I secretly don't really use or even like?"

I went into radio because I loved rock music. I wound up working at a Country station and a Beautiful Music station. My dilemma then was, "What a shame. I like rock but I have to sell Beautiful Music and Country Music formats (sigh)." Frankly, that attitude lasted about two months, when I realized

how easy our formats were to sell and **HOW MUCH** we could charge to play our clients' commercials on our stations.

I have a male friend who made a fortune opening stores that sold women's clothing. As far as I know, he never wore the clothes he sold (?) but he knew what women wanted and he catered to them and made a lot of money.

There is no question that we are rapidly moving into a new digital world. New technologies are, and will continue to have, an incredible impact on how people watch us and listen to us. But the bottom line is that right now, **90 percent** of the U.S. population still listens to broadcast radio and watches traditional television each and every week.

What's not to like about that? You can't sell that? Sure you can. Package it up with mobile texting, streaming, social media, and whatever new digital opportunities come your way and will continue to land on your plate. But remember, right now traditional broadcast is still the entrée.

With this fact in mind, when you hear from clients, "Boy, I'll bet (satellite radio, Pandora, Google, Hulu, iRadio, DVR, Roku, whatever...) is kicking your a**!" do your job and remind them about the 90 percent thing. It's your job to dispel myths. As Daniel Moynihan famously said, "Everybody is entitled to their own opinions, but not their own set of facts." And again, the fact is that an overwhelming percentage of Americans still enjoy traditional radio and television.

Did you know that the average age of a car on the road right now is 12 years? Never before in history have Americans hung onto their cars for that period of time. And the driver's dash still has a radio in it. Television viewing increases with the brilliant new HD and 3-D products that are now affordably available to us. DVRs actually cause **MORE** people to watch television than ever before. Engineers are developing very nice new interactive products to ensure radio's place in the dashboard of the future.

Now is a great time to be in the broadcasting business. Additionally, for the first time, traditional Yellow Page customers are up for grabs. Direct mail devotees are looking at alternative ways to advertise. The formerly most-adamant newspaper advertiser is now looking for new media venues. You're in the catbird seat. Sell the new technology as it becomes available to your stations. But don't ignore the elephant in the room. Traditional broadcast stations still have **90 percent** population penetration. And that is really better than a slap across the belly with a sack full of wet mice.

Originally printed in *Radio Ink*. (Paul Weyland is a broadcast sales trainer, author and speaker. You can reach him at paul@paulweyland.com or at www.paulweyland.com or by phone at (512) 236 1222. Read Paul's book *Successful Local Broadcast Sales*, available on line or at bookstores)

If you have anything you would like to place in the newsletter send it to kent@kab.net