

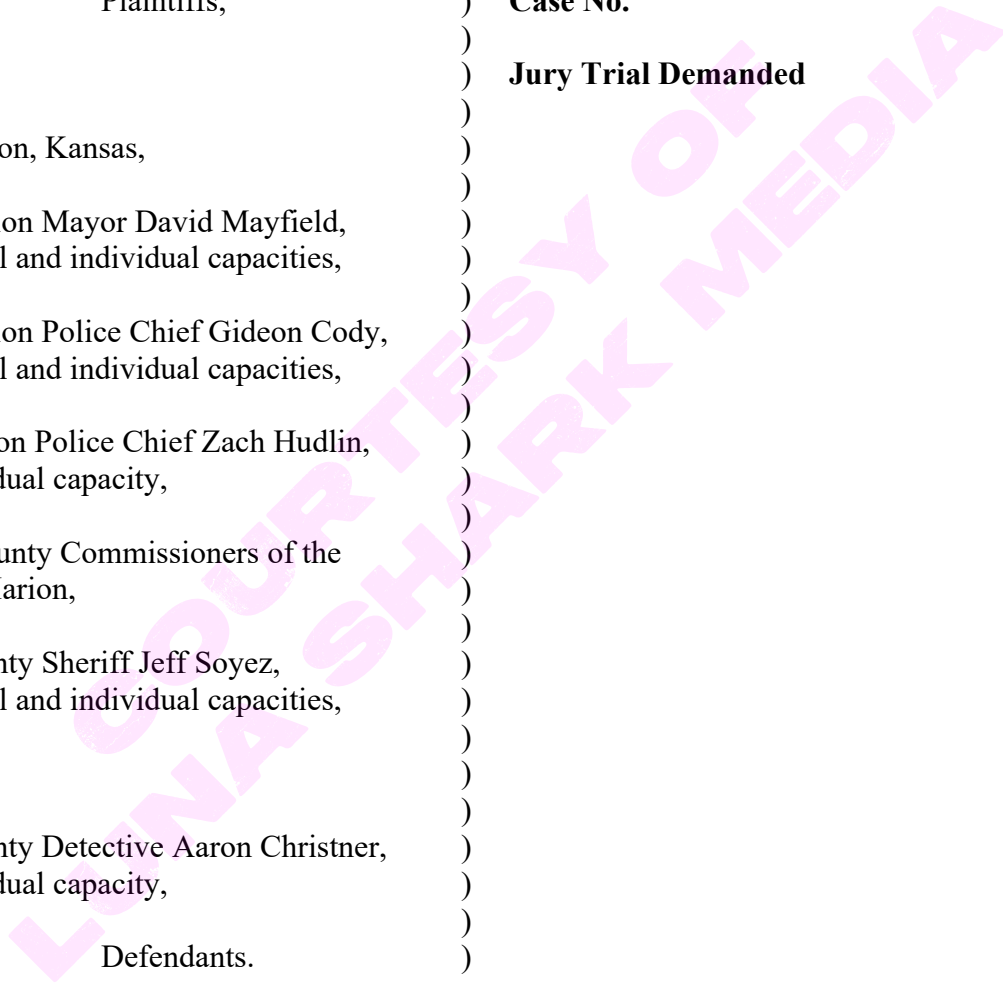
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

Eric Meyer, individually and as executor)
of the estate of Joan Meyer,)
))
and)
))
The Hoch Publishing Co., Inc., doing)
business as the *Marion County Record*,)
))
Plaintiffs,)

v.)

City of Marion, Kansas,)
))
Former Marion Mayor David Mayfield,)
in his official and individual capacities,)
))
Former Marion Police Chief Gideon Cody,)
in his official and individual capacities,)
))
Acting Marion Police Chief Zach Hudlin,)
in his individual capacity,)
))
Board of County Commissioners of the)
County of Marion,)
))
Marion County Sheriff Jeff Soyez,)
in his official and individual capacities,)
))
and)
))
Marion County Detective Aaron Christner,)
in his individual capacity,)
))
Defendants.)

Case No.
Jury Trial Demanded



COMPLAINT

Plaintiffs Eric Meyer, both individually and as executor of the estate of Joan Meyer, and
The Hoch Publishing Co., Inc., doing business as the *Marion County Record*, for their Complaint,
state as follows:

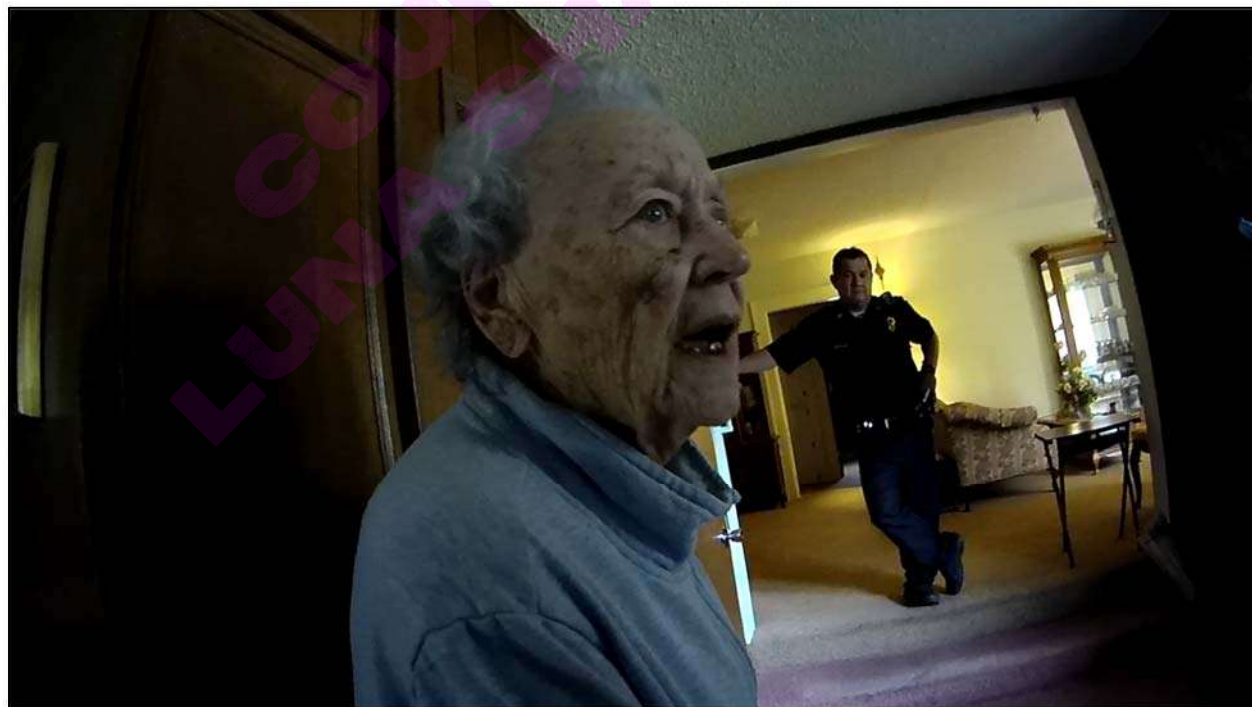
Introduction

1. When Marion Police Chief Gideon Cody led a swarm of armed police officers on a series of illegal raids which included the newsroom of the *Marion County Record* and the home of the newspaper's co-owners, Joan Meyer and her son Eric, Joan hauntingly told the officers, "You know, if I have a heart attack and die it's going to be all your fault."

2. Twenty-four hours later, ninety-eight-year-old Joan Meyer died of a sudden cardiac arrest brought on by the stress of the illegal raid.

3. Eric Meyer and the *Record* bring this lawsuit to seek justice for the intolerable violation of their constitutional rights and the constitutional rights of Joan Meyer, and to deter the next crazed cop from threatening democracy the way Chief Cody did when he hauled away the newspaper's computers and its reporters' cell phones in an ill-fated attempt to silence the press.

4. To do anything less would be a disservice to Joan Meyer, who told Chief Cody during the illegal raid on her home, "Boy, are you going to be in trouble."



Marion Mayor David Mayfield

5. Marion is in south central Kansas and has a population of less than 2,000 people.

6. From 2020 until earlier this year, the city was led by Mayor David Mayfield, a former Kansas Highway Patrol trooper who later became Marion's police chief, and who now works part-time for Marion County Sheriff Jeff Soyez transporting prisoners.

7. Mayor Mayfield is a law enforcement hanger-on; for example, his e-mail address is "khp[****]@yahoo.com," which is Mayfield's old Kansas Highway Patrol badge number.

8. Just last year, Mayor Mayfield's wife, Jami Mayfield, posted a photo of "Trooper Dave Mayfield" from the early 1990s on Facebook, describing him as "Facebook famous."



Sheriff Jeff Soyez

9. In late 2022, the Marion city administrator was fired and the police chief quit.

10. Rather than hiring a new city administrator—who would then select the new police chief—Mayor Mayfield decided to hire a new chief first, ensuring he got a top cop of his liking.

11. Mayor Mayfield asked Marion County Sheriff Jeff Soyez to help him find a new police chief.

12. Prior to being appointed Marion County Sheriff in 2022, Soyez had been a railroad detective for the Union Pacific Railroad in Kansas City, Missouri.

13. During the time he lived in Kansas City, Soyez was friends with Captain Gideon Cody of the Kansas City, Missouri Police Department.

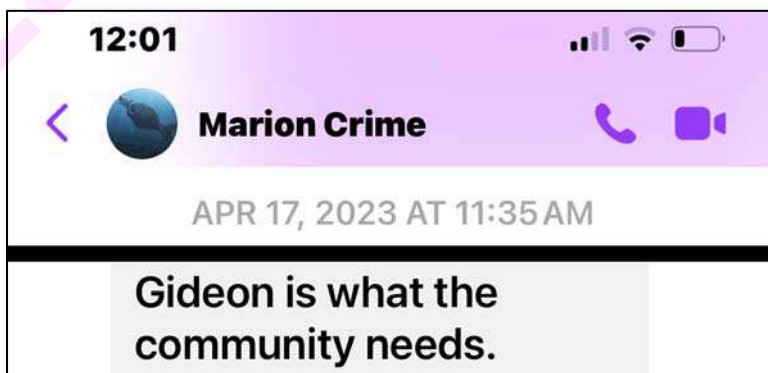
14. Sheriff Soyez contacted Cody and encouraged him to apply for the job.

15. Cody agreed and applied to be the Marion police chief in April 2023.

16. Sheriff Soyez strongly urged Mayor Mayfield, who worked part-time for Soyez transporting prisoners, to hire Cody.

The “Marion Crime” Vigilante Group

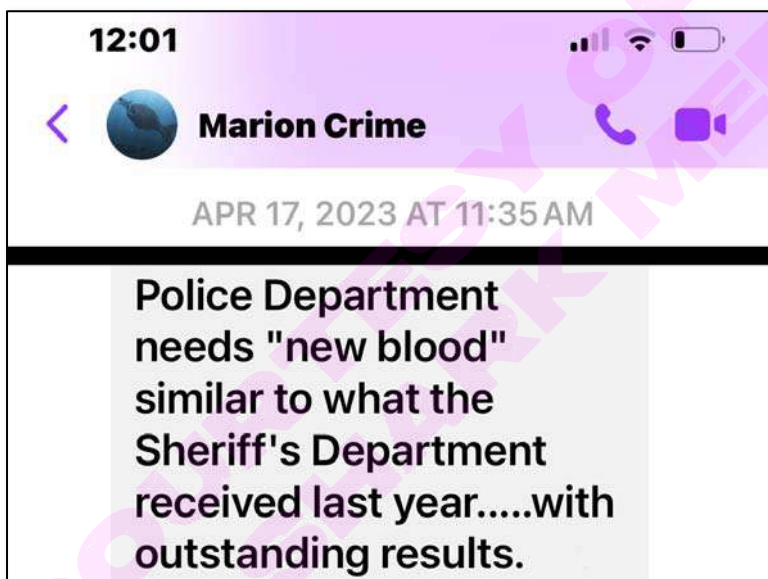
17. Gideon Cody’s candidacy was also strongly supported by “Marion Crime,” a secretive Facebook vigilante group, which sent private messages to community leaders touting Cody’s candidacy, saying he “is what the community needs.”



18. The group touted Cody’s supposed SWAT experience, including “extensive training in active shooter and other highly stressful situations;” the group pushed for a SWAT operator as Marion’s police chief even though Marion is so small it does not have a single stoplight.

19. The messages said, “Marion should be proud that we have attracted someone with his credentials.”

20. The Marion Crime group compared Cody to Sheriff Soyez, saying Cody would bring “new blood” to the police department, just as Soyez did to the Sheriff’s Office.



Marion County Record

21. The *Marion County Record* is a weekly newspaper published in Marion, Kansas, and is the paper of record for the City of Marion and Marion County.



22. Since 1874, the paper has been owned by two families: the Hoch family, which owned it for 124 years, and the Meyer family, which first became involved in the paper in 1948 when Bill Meyer began working at the paper as an associate editor.

23. The Meyer family bought the *Record* in 1998 to keep it locally owned; they chose to keep the “Hoch Publishing” name.

24. Following Bill’s death in 2006, the *Record* has been primarily owned by Joan Meyer (Bill’s spouse), along with Joan and Bill’s son, Eric Meyer.

25. Eric Meyer graduated from the William Allen White School of Journalism at the University of Kansas in 1975, followed by a master’s in journalism from Marquette University.

26. Eric then worked as a reporter and editor for the *Milwaukee Journal* for 16 years, and later spent 25 years teaching journalism at the University of Illinois Urbana-Champaign.

27. Eric Meyer returned to Marion at the outset of the COVID-19 pandemic to take care of his mother and became editor and publisher of the *Record* in 2021.

The Marion County Record Starts Investigating Gideon Cody

28. As soon as the *Record* reported that Gideon Cody was a candidate for the Marion police chief position, the newspaper began receiving tips about Cody from persons who were afraid to be identified for fear of retribution by Cody.

29. One source called Cody “the absolute worst commander I ever experienced,” said “his ego would not allow him to listen to what anyone below his rank said,” and described him as a “toxic/ego-centric commander.”

30. Another source reported that when an officer refused to kick in a door, “Cody ... pushed him out of the way and forced the door open,” and later said that “officer would [now] cross the street in order to avoid Cody because that officer is a coward.”

31. Three sources told the paper that Cody ran over a dead body at a crime scene.

32. The tipsters also reported that Cody was about to be demoted by the Kansas City Police Department from captain to sergeant because of offensive conduct towards other officers.

33. Multiple sources reported a conversation in which Cody expressed his disdain for working in dispatch and said if he had not been transferred out of dispatch he would have found “the skinniest and prettiest girl down there and f*cked her” to force a reassignment.

The City is Warned

34. On April 21, 2023, *Marion County Record* editor Eric Meyer and reporter Deb Gruver met with Zach Collett, a member of the Marion City Council, and asked him to comment on the many tips the paper had received about Cody.

35. Collett told Gruver to stop investigating and “mind your own business.”

Cody Lawyers Up

36. Two days later, *Record* reporter Deb Gruver contacted Cody and asked him to comment on the many reports the paper had received about his time in Kansas City.

37. Cody told Gruver he was angry the newspaper was investigating him.

38. Cody also told Gruver he had hired a Kansas City lawyer, Dawn Parsons.

39. According to her profile on her law firm’s website, Parsons specializes in representing “police officers facing claims of excessive use of force.”

Cody is Hired

40. At the City Council meeting on May 1, 2023, Mayor Mayfield announced he had offered Cody the police chief position and that Cody would be sworn in at the next meeting.

41. No vote was taken at that meeting—or any prior meeting of the City Council—to authorize the mayor to extend an offer of employment to Cody.

42. And in a bizarre City Council meeting on May 30, 2023, Cody took the oath of office before the City Council ever voted to hire him.



43. In his new position, Chief Cody was making \$60,000 a year—or roughly half the \$115,000 a year he was making as a captain in the Kansas City, Missouri Police Department, where he had worked for 24 years.

Cody Begins His Crackdown

44. Immediately upon taking office, Chief Cody began cracking down on the release of information to the *Marion County Record*.

45. For example, Chief Cody stopped providing weekly police activity reports.

46. In response, the newspaper began printing a notice where the reports formerly appeared in the paper, indicating that Chief Cody was refusing to provide the weekly report.

47. This is the notice in the most recent edition the *Record* published prior to the August 11, 2023 raids.

POLICE

ACTIVITY REPORTS

Law enforcement agencies provided these reports of their activities this past week. Routine activities such as patrols, inspections, training, report-writing, and assistance to other agencies are excluded. Dates may reflect starting or ending dates of officers' shifts rather than actual dates of occurrence.

HILLSBORO

July 31 – Questions about a civil matter were answered.

Aug. 1 – An incident involving two juveniles at the city pool was discussed and dismissed. A driver in the 900 block of S. Ash St. was warned about speeding. Another driver was warned about making an exhibition of speed in the 100 block of S. Main St. Police helped a driver locked out of a vehicle on US-56 at K-15/Bison Rd.

Aug. 2 – Vandalism at the city park was investigated. Police helped with a disabled vehicle at Ash St. and Willow Rd. and with a vehicle blocking a driveway.

Thursday – Police helped look for a juvenile who left home without permission. A gate found to be open was secured.

Friday – Drivers at Ash St. and Grand Ave. were warned about speeding and about running a stop sign. At the same intersection, police helped put scaffolding back on a trailer it had fallen off of.

Saturday – Weather caused a false alarm in the 100 block of N. Ash St. Storm debris was removed from streets.

Sunday – Police notified the city pool's manager about storm damage at the pool.

MARION

Newly appointed chief Gideon Cody has discontinued providing a weekly report of Marion police activities.

Last modified Aug. 10, 2023

48. On June 12, 2023, *Record* reporter Deb Gruver sent an e-mail to the Marion City Administrator and Chief Cody asking for a copy of the PowerPoint presentation from that evening's City Council meeting concerning pay scales for the Police Department.

49. The next morning, Chief Cody sent an e-mail to the City Administrator refusing to provide the information and stating: “I don’t want to have our pay scale on the Daily Recorder [sic].”

50. Chief Cody refused to provide this information even though the Kansas Open Records Act explicitly states that “positions [and] salaries ... of officers and employees of public agencies” are open records. K.S.A. 45-221(a)(4).

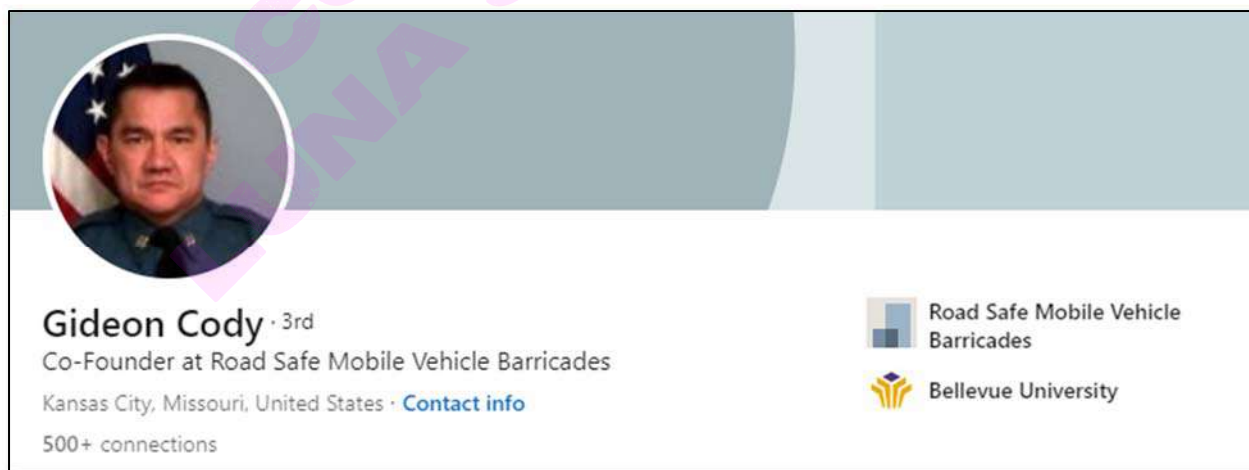
51. Chief Cody also refused to sit down for an interview with Deb Gruver for a profile story on him as Marion’s new police chief.

52. Chief Cody also refused to make Jonathon Benavidez, a newly-hired Marion police officer, available for an interview for a story on the new officer.

Cody the Entrepreneur

53. In addition to having served on the Kansas City police force, Gideon Cody fancies himself an entrepreneur.

54. His LinkedIn profile states that in addition to being a Kansas City, Missouri police officer he co-founded several businesses and self-describes himself as a “real estate investor.”



55. Cody still has the entrepreneurial streak—after he became the Marion Police Chief in May of last year, Cody approached another reporter for the *Marion County Record*, Phyllis Zorn, and offered to invest in a competing newspaper if Zorn would leave the *Record*.

56. Cody told Zorn the *Record* in general—and editor Eric Meyer and reporter Deb Gruver (who was investigating Cody) in particular—were too “negative” and he wanted to see a new, more positive newspaper replace it.

Congressman Comes to Town

57. In late July 2023, U.S. Congressman Jake LaTurner announced he would be visiting Marion on August 1, 2023, for “Coffee With Your Congressman.”

58. Rep. LaTurner represents Kansas’ Second Congressional District; Marion County had recently moved from the First Congressional District to the Second Congressional District as part of Kansas’ 2022 congressional reapportionment.

59. Rep. LaTurner’s Communications Director specifically reached out to *Record* editor and publisher Eric Meyer and invited him to attend the event.

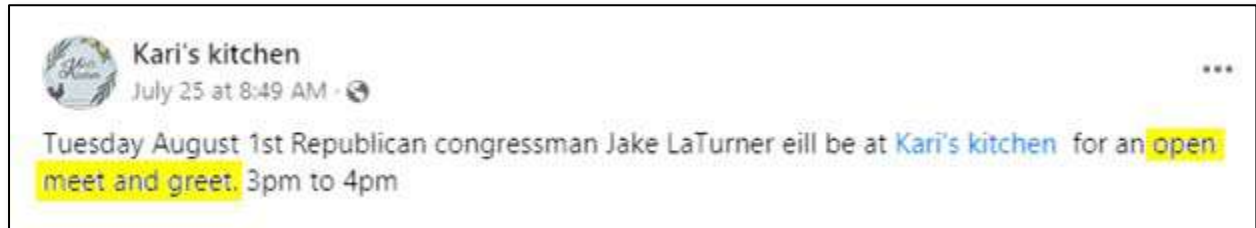
Hi Eric—

I hope you’re doing well. I want to invite you to Rep. LaTurner’s rescheduled *Coffee With Your Congressman* event in Marion County. This event is an opportunity for folks to talk to the Congressman about issues impacting them and their families and ask about his work in Washington. Let me know if you plan to attend. Feel free to share with your readers as well. Thanks!

60. The event was to be held at Kari’s Kitchen, a Marion coffee shop owned by Kari Newell, who also owns the upscale Chef’s Plate in the Historic Elgin Hotel across the street.

61. The hotel is owned by Jeremy and Tammy Ensey, the brother and sister-in-law of Marion County Attorney Joel Ensey.

62. Kari's Kitchen posted its own invitation to the event on its Facebook page, describing it as an "open meet and greet."¹



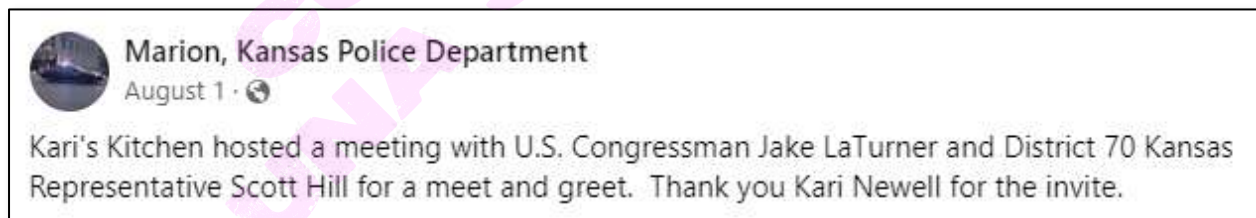
63. *Record* editor Eric Meyer and reporter Phyllis Zorn attended the August 1st "open meet and greet"—or at least intended to.

64. While waiting for Rep. LaTurner to arrive, Kari Newell told Zorn to leave, saying "I will not have members of the media in my establishment. You have to leave."

65. Shortly thereafter, Chief Cody approached both Meyer and Zorn and told them to leave; he said that Newell asked that the two journalists "be evicted."

"Thank You Kari Newell"

66. Later that same day, the Marion Police Department posted a "thank you" to Kari Newell on Facebook for inviting Chief Cody to the event.



67. The post included a photo of Newell and Chief Cody, at the head of the room, along with Rep. LaTurner.

¹ This post has disappeared from Kari's Kitchen's Facebook page.



The Confidential Tip on Kari Newell

68. The following day, Wednesday, August 2, 2023, *Marion County Record* reporter Phyllis Zorn received a message via Facebook about Newell.

69. The tipster stated that Newell's driver's license was suspended due to a prior DUI conviction.

70. The tipster also told Zorn that local law enforcement had known for years that Newell was driving without a valid driver's license, but had taken no action against Newell.

71. That same day, the tipster sent Zorn, via Facebook messenger, a copy of an August 1, 2023 letter from the Kansas Department of Revenue to Newell.

72. The header to the message shows it was received by Zorn on August 2, 2023.


8/2/23, 2:41 PM	Facebook
-----------------	----------

73. And the footer shows the letter was received as an attachment to a message sent via Facebook Messenger.

https://www.facebook.com/messenger_media/?attachment_id=987825275877677&message_id=mid.%24cAABa-Qw-B8GP6QkKnWJt8Qst6m2Z&thra...

74. The letter is addressed to Newell and includes Newell's full name, address, driver's license number and date of birth (to comply with this Court's redaction rules, all but the last four

of Newell's driver's license number and all but the year of her birth have been redacted; that information was not redacted from the letter provided to Zorn by her source).

<p>Driver Solutions 300 SW 29th Street PO Box 12021 Topeka KS 66601-2021 Mark A. Burghart, Secretary</p>	 <p>Kansas Department of Revenue Division of Vehicles</p>	<p>Telephone: (785) 296-3671 Fax: (785) 296-6851 www.ksrevenue.gov Laura Kelly, Governor</p>
<p>08/01/2023</p>		
<p>NEWELL KARI ANNE 301 E SANTA FE ST 301 E SANTA FE ST MARION, KS 66861</p>	<p>DL Number: [REDACTED] 5505 Date of Birth: [REDACTED] 1977</p>	

75. The letter set forth various requirements Newell would have to meet in order to restore her driving privileges, including having an ignition interlock device installed on her car.

<p>Pending Suspension Driver's License Examination Requirement (K.S.A 8-241)</p>
<p>Before your driving privileges can be restricted to only operate a motor vehicle equipped with an ignition interlock device you must complete the following requirements within 30 days from the date of this letter:</p>

76. Zorn printed the copy of the letter from Facebook and shared it with Eric Meyer.

Who, What, Where, When and Why

77. After talking to Zorn and reviewing the letter, Eric Meyer had several questions, including, how did the source obtain the letter and why had local law enforcement allowed Newell to drive for years without a valid license?

78. Meyer's first question, *i.e.*, how did the source obtain the letter, was of interest to Meyer because Meyer knew the source had law enforcement connections and Meyer wondered whether the source had obtained the letter illegally.

79. The second question, *i.e.*, why had local law enforcement allowed Newell to drive for years without a valid license, was only triggered if the information about Newell's driver's record was true.

80. The source had told Zorn that she (Zorn) could confirm the status of Newell's license through the Department of Revenue website, by using Newell's name, address, driver's license number, and date of birth—all of which were on the letter from the Department of Revenue.

81. The source also told Zorn she could obtain a copy of the August 1, 2023, letter from the Kansas Department of Revenue to Newell from the same website.

Kansas Driver's License Status Check Tool

82. The following day, Thursday, August 3, 2023, Eric Meyer located the webpage titled "Kansas Driver's License Status Check" on the Kansas Department of Revenue website by performing a simple Google search.



83. The tool allows anyone to check the status of a Kansas driver's license so long as the person knows the driver's license number, first and last name, and date of birth of the driver they are checking on.

84. This public-facing webpage does not require a log-in, does not require a username or password, and does not contain any warning about accessing information on the site.

85. In fact, the so-called “Disclaimer” on the website merely warns users that the information “is a summary only and will not display any sanctions from another state.”



Journalism 101 – Verify Facts

86. Using the information from the August 1, 2023 Department of Revenue letter which the source had provided Zorn, *i.e.*, Newell’s first and last name, address, driver’s license number, and date of birth, Eric Meyer used the Kansas Driver’s License Status Check tool on the webpage to confirm Newell’s DUI conviction and the fact Newell’s license was suspended.

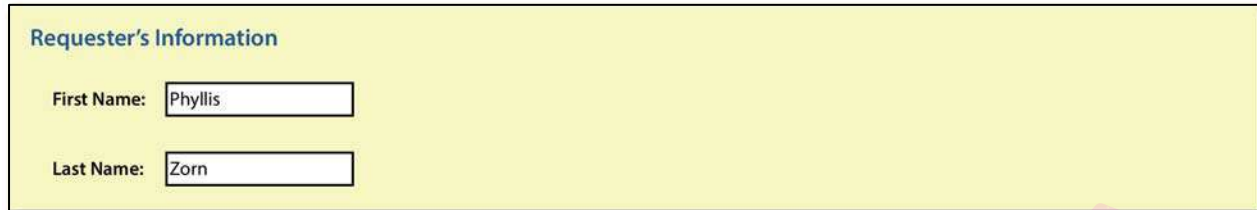
87. Meyer did not, however, see the August 1, 2023 letter from the Kansas Department of Revenue to Newell which Zorn’s source had provided via Facebook Messenger.

88. The next day, Zorn called the Department of Revenue and was told the document was available on the same public-facing website, a user simply must keep clicking to find the link.

89. Zorn then went to the same website Eric Meyer had used and saw that at the bottom of the screen showing Newell’s DUI conviction and suspension there was a box to click to view “Documents.”

90. When Zorn clicked on that box, a form appeared on the webpage and asked for “Requester’s Information.”

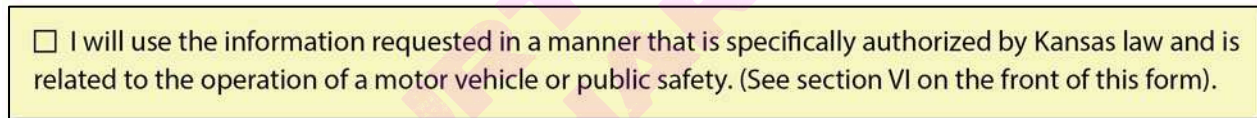
91. Zorn then inserted her own name (*i.e.*, Phyllis Zorn) into the form.



The image shows a screenshot of a web form titled "Requester's Information" in blue text. The form has a light yellow background and a black border. It contains two input fields: "First Name:" with the text "Phyllis" entered, and "Last Name:" with the text "Zorn" entered. Both fields have a small rectangular button to their right.

92. Zorn then entered Newell’s driver’s license number and address.

93. The Kansas Driver’s License Status Check tool on the webpage then required Zorn to check a box that read: “I will use the information requested in a manner that is specifically authorized by Kansas law and is related to the operation of a motor vehicle or public safety. (See section VI on the front of this form).”



The image shows a screenshot of a checkbox. The checkbox is unchecked and is located to the left of the text: "I will use the information requested in a manner that is specifically authorized by Kansas law and is related to the operation of a motor vehicle or public safety. (See section VI on the front of this form)." The entire text is enclosed in a black-bordered box with a light yellow background.

94. After Zorn checked the box and clicked “Accept,” nineteen “Documents” appeared on the screen—the first of which was the August 1, 2023, letter from the Kansas Department of Revenue to Newell, *i.e.*, the same document the source had previously provided Zorn.

95. Having confirmed that the document her source had provided was legitimate, Zorn informed Eric Meyer that she had verified that the information (and document) provided by the confidential source was accurate.

96. Zorn’s use of the Driver’s License Status Check tool for this purpose was 100% legal under both state and federal law.

Kansas Law Regarding Driver's License Records

97. Kansas law on driver's license records is clear: the very first sentence of the "Division of vehicles; records; disclosure" statute provides that all driver's license records "shall be subject to the provisions of the open records act, except" (a) "records which relate to the physical or mental condition of any person," (b) "records which have been expunged," or (c) "photographs [on] drivers' licenses." K.S.A. 74-2012(a)(1) & (b).

98. Zorn's use of the Kansas Driver's License Status Check tool to confirm that Newell's driver's license was suspended due to a DUI conviction—and that she could get her license reinstated only by installing an ignition interlock device—does not relate to any of the three exempted topics set forth in K.S.A. 74-2012(a)(1) & (b).

99. Furthermore, Zorn's use of the Kansas Driver's License Status Check tool to confirm that Newell's driver's license was suspended due to a DUI conviction plainly related "to the operation of a motor vehicle and to public safety," given the allegation that local law enforcement knowingly permitted an unlicensed driver to drive in the City of Marion and in Marion County.

100. Accordingly, Zorn's use of the Kansas Driver's License Status Check tool to confirm the authenticity of the letter and that Newell's driver's license was suspended due to a DUI conviction and that she could get her license reinstated only by installing an ignition interlock device fully complied with Kansas law.

Federal Law Regarding Driver's License Records

101. The federal law regarding driver's license records is the Driver's Privacy Protection Act.

102. The Driver's Privacy Protection Act was designed to protect the public from criminal conduct resulting from disclosure of "personal information" from state motor vehicle records

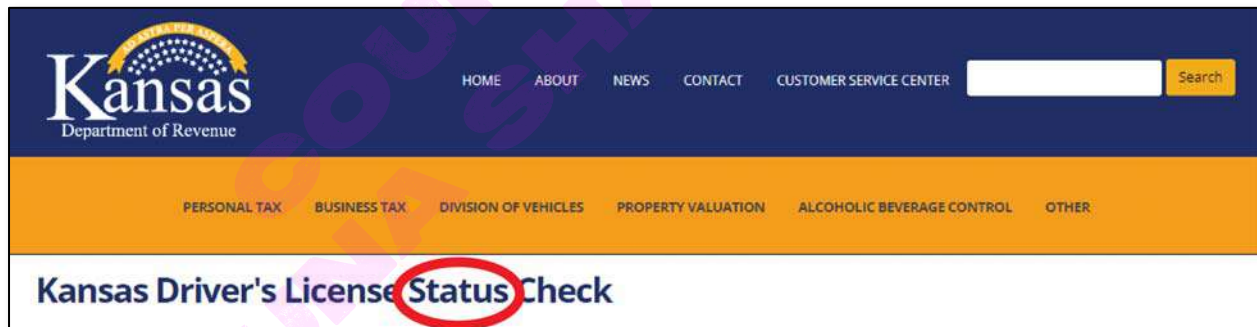
(*i.e.*, preventing stalkers from learning the name and address of a driver by looking up their vehicle license plate number) while at the same time ensuring access to information for legitimate purposes, such as public safety.

103. The Act struck this balance in two ways.

104. First, the Act defines protected “personal information” as “information that identifies an individual, including an individual’s photograph, social security number, driver identification number, name, address (but not the 5-digit zip code), telephone number, and medical or disability information, **but does not include information on vehicular accidents, driving violations, and driver’s status.**” 18 U.S.C. § 2725(3) (emphasis added).

105. Therefore, an individual’s “**driver’s status**” is explicitly **not** “protected information” under the Driver’s Privacy Protection Act.

106. Thus, the “Kansas Driver’s License **Status** Check” tool on the Kansas Department of Revenue’s public-facing website is **not** covered by the Driver’s Privacy Protection Act.



107. To be clear, no one from the *Record* used the Driver’s License Status Check tool to obtain “information that identifie[d]” Kari Newell; rather, the *Record* had been already provided with Newell’s name, address, driver’s license number, and date of birth by the tipster when the tipster furnished the paper with a copy of the August 1, 2023 Kansas Department of Revenue letter.

Driver Solutions
300 SW 29th Street
PO Box 12021
Topeka KS 66601-2021
Mark A. Burghart, Secretary



Telephone: (785) 296-3671
Fax: (785) 296-6851
www.ksrevenue.gov
Laura Kelly, Governor

08/01/2023

NEWELL KARI ANNE
301 E SANTA FE ST
301 E SANTA FE ST
MARION, KS 66861

DL Number: [REDACTED] 5505
Date of Birth: [REDACTED] 1977

108. Instead, what Zorn did was use this information to obtain the status of Newell’s driver’s license, *i.e.*, the fact her license was suspended due to a DUI conviction and that to restore her driving privileges, Newell would have to obtain an ignition interlock device.

**Pending Suspension
Driver’s License Examination Requirement
(K.S.A 8-241)**

Before your driving privileges can be restricted to only operate a motor vehicle equipped with an ignition interlock device you must complete the following requirements within 30 days from the date of this letter:

109. Because the Act explicitly states that protected personal information “does not include information on vehicular accidents, **driving violations, and driver’s status**,” the information which the *Record* obtained from the Kansas Driver’s License Status Check tool (*i.e.*, the status of Newell’s driver’s license) is not covered by the Driver’s Privacy Protection Act.

110. Moreover, the Driver’s Privacy Protection Act provides that “A State department of motor vehicles ... shall not knowingly disclose or otherwise make available to any person ... personal information.” 18 U.S.C. § 2721(a)(1).

111. It would therefore be illegal for the Kansas Department of Motor Vehicles to have a public-facing website that provides protected “personal information.”

112. The official spokesperson for the Kansas Department of Revenue, Zach Denney, has repeatedly confirmed that so long as the requester has the identifying information it is perfectly legal to use the Kansas Driver’s License Status Check to verify the status of anyone’s driver’s license.

- “That’s legal. The website is public facing, and anyone can use it.” (AP)
- “As long as the requestor has the required information, this information is public record and available online.” (KC Star)
- “The motor vehicle driver’s checker is public-facing and free-use. If you have my [identifying] information, you can pull it [my driver’s record] out.” (NBC News)

113. The second way the Driver’s Privacy Protection Act achieves this balance is through a list of permitted exceptions.

114. One permitted exception allows for personal information to be disclosed for “any ... use specifically authorized under the law of the State that holds the record, if such use is related to the operation of a motor vehicle or public safety.” 18 U.S.C. § 2721(b)(14).

115. As noted above, Kansas law provides that all driver’s license records “shall be subject to the provisions of the open records act, except” (a) “records which relate to the physical or mental condition of any person,” (b) “records which have been expunged,” or (c) “photographs [on] drivers’ licenses.” K.S.A. 74-2012(a)(1) & (b).

116. Thus, the information which the *Record* accessed, *i.e.*, that Newell’s driver’s license was suspended due to a DUI conviction, was specifically authorized under Kansas law, which states such information is subject to the Kansas Open Records Act.

117. Another permitted exception allows for personal information to be disclosed “for use in connection with matters of motor vehicle or driver safety.” 18 U.S.C. 2721(b)(2).

118. The *Record*’s use of the Kansas Driver’s License Status Check tool to confirm the authenticity of the source’s letter and the fact that Newell had been driving with a suspended license was “for use in connection with matters of motor vehicle or driver safety” because the *Record* was investigating allegations that local law enforcement routinely permitted an unlicensed driver to drive in and around Marion, posing an obvious risk to other drivers. 18 U.S.C. 2721(b)(2).

119. Another permitted exception allows personal information to be disclosed “for use in research activities . . . so long as the personal information is not published, redisclosed, or used to contact individuals.” 18 U.S.C. 2721(b)(5).

120. The *Record*’s use of the Kansas Driver’s License Status Check tool to confirm the authenticity of the source’s letter and the fact that Newell had been driving with a suspended license constituted “research,” *e.g.* “studious inquiry or examination, the collecting of information about a particular subject.” (<https://www.merriam-webster.com/dictionary/research>).

121. Moreover, the *Record* had no intent to publish that information, to redisclose that information, or to use the information to contact anyone; instead, it was the newspaper’s intent only to report the failure of local law enforcement to stop an unlicensed person from driving.

122. Thus, even if the information which the *Record* accessed was “personal information” under the Act—which it was not—the *Record*’s use of the Kansas Driver’s License Status Check tool to confirm the authenticity of the letter and the fact that Newell’s driver’s license was suspended due to a DUI conviction and that she could get her license reinstated only by installing an ignition interlock device fell within one or more of the permitted exceptions under the Driver’s Privacy Protection Act.

Kari Newell's Divorce

123. Even though Zorn's use of the Kansas Driver's License Status Check tool on the public-facing Kansas Department of Revenue website was legal, Eric Meyer ultimately decided not to publish the information.

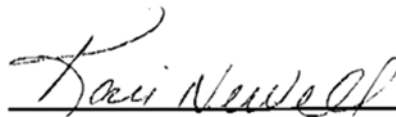
124. Meyer was concerned the newspaper might be being used as a pawn in a bitter ongoing divorce proceeding between Newell and her estranged husband, Ryan Newell.

125. In that divorce proceeding, Kari Newell had asked the court to order her husband to give her the couple's Toyota Rav4 and even requested the assistance of law enforcement to do so.

5. Petitioner further requests the following items of marital property currently in the respondent's possession which the petitioner needs to maintain a habitable home and which the petitioner fears the-respondent will dispose of unless she is given temporary possession pending the trial of this action:

Toyota Rav 4 he will continue to make payments

6. Petitioner requests the aid of local law enforcement officers to obtain possession, if necessary.



Kari Newell
Petitioner

126. It is easy to see from this motion—and other pleadings in the hotly-contested divorce proceeding—why Eric Meyer could believe the newspaper might be being used as a pawn by one of the litigants.

The *Record* Notifies Law Enforcement

127. While Eric Meyer elected not to publish a report on Newell’s DUI conviction and the fact she was driving without a valid license, he did write an e-mail to the Marion Police Chief and the Marion County Sheriff to “alert” them about the document the paper had received.

128. Specifically, on Friday, August 4, 2023, Meyer e-mailed Chief Cody and Marion County Sheriff Jeff Soye and told them that a confidential source had provided the paper with a letter from the Kansas Department of Revenue “to a Marion businesswoman who recently had been in the news.”

129. Meyer stated that the letter from the Department of Revenue outlined the steps the businesswoman—whom Meyer did not identify by name—would need to take to get her driver’s license reinstated, including installing an ignition interlock device on her car.

130. Meyer stated that he was initially concerned the letter may have been obtained illegally, because the source “has personal and family history with law enforcement [and] implied that she obtained the document because of ‘connections.’”

131. The e-mail explained, however, that the *Record* had checked with the Kansas Department of Revenue and was told “that anyone could obtain the document if he or she possessed the recipient’s Kansas identification card number, name, and date of birth.”

132. The e-mail further explained that after some investigation of his own, Meyer came to believe the letter came from the businesswoman’s “soon-to-be-former spouse,” who was apparently contesting an award of vehicles to her as part of their ongoing divorce.

133. The e-mail also noted that “[o]ur source contends that local law enforcement officers are fully aware that she ... ha[s] been driving for some time without [an] active, valid license[.]”

134. Meyer went on to explicitly warn both Chief Cody and Sheriff Soyez that he was considering reporting the fact local enforcement had knowingly allowed someone to drive for many years without a license: “We obviously are concerned how someone could escape detection as having an expired or suspended license for nearly a quarter of a century and might pursue a news story in that regard.”

135. Meyer specifically noted that while the fact local law enforcement had enabled the businesswoman’s illegal driving to occur, “we have no desire to invade the privacy of any individual.”

136. Meyer concluded his e-mail by writing:

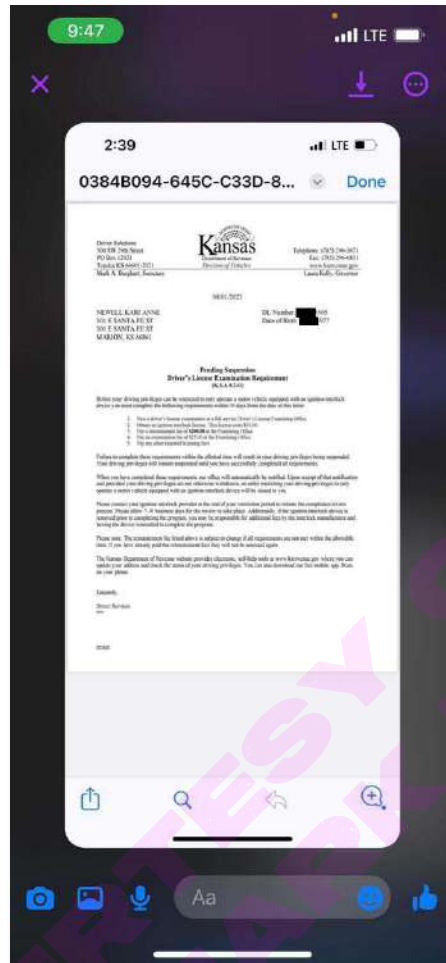
Because of the confidential nature of our source and privacy expectations of the individual targeted, I am not comfortable sharing additional information unless you inform me that you have cause to believe some crime or misbehavior might have occurred and additional information we might be able to provide could assist in any investigation.

137. Neither Chief Cody nor Sheriff Soyez ever responded to Meyer’s offer to provide any additional information that might help in an investigation of an actual crime.

The Vice Mayor Forwards a Copy of the Same August 1 Letter

138. The same day Eric Meyer sent his e-mail to Chief Cody and Sheriff Soyez, the Marion Vice Mayor, Ruth Herbel, sent an e-mail to the Marion City Administrator, Brogan Jones.

139. Herbel attached to her e-mail a screenshot of the same August 1, 2023 letter from the Kansas Department of Revenue to Newell setting forth the requirement that Newell have an ignition interlock device installed on her car before her driver’s license could be reinstated (again, the redactions to the screenshot below are to comply with this Court’s redaction policy.)



140. Herbel told the City Administrator she had received the copy of the letter on August 2, 2023, from a local resident, Pam Maag, who Herbel said had law enforcement connections.

141. Pam Maag would later publicly identify herself as the person who had provided the August 1, 2023 letter to Phyllis Zorn at the *Marion County Record* on August 2, 2023.

The City Administrator Decides Not to Investigate

142. The City Administrator—who was sending Mayor David Mayfield all of his communications with Herbel—forwarded Herbel’s e-mail about Newell to Mayfield.

143. Specifically, the City Administrator e-mailed the Mayor and the City Clerk and stated that Chief Cody and the police department would not be looking into this because “the State is the oversight for this.”

From: Brogan Jones <BJones@marionks.net>
Date: August 4, 2023 at 4:44:28 PM CDT
To: David Mayfield <d.mayfield@marionks.net>
Cc: Janet Robinson <JRobinson@marionks.net>
Subject: Email from Ruth

I received this from Ruth just earlier. First I want to state that Chief/PD will not be looking into this. Secondly the State is the oversight for this and will conduct all this type of research. We as a city need to stay out of this “hear say” or whatever else you want to call it. We will go forward like any other individual and or business and let the State handle their business.

144. Despite the City Administrator’s declaration “that Chief/PD will not be looking into this,” Mayor David Mayfield had a different plan.

The Mayor’s Loudest Critics: Ruth Herbel and Eric Meyer

145. Ruth Herbel assumed office as a member of the Marion City Council in 2020, the same year Eric Meyer moved back to Marion to take care of his mother during the pandemic.

146. Since then, the pages of the *Marion County Record* have been chock full of reports of attacks and counterattacks between Ruth Herbel and Mayor Mayfield—with Herbel accusing the mayor of repeatedly violating the city charter, giving out unauthorized raises to favored city employees, holding illegal secret meetings, and much more.

147. During that same time, Eric Meyer’s editorials in the *Record* have referred to Mayor Mayfield as a dictator, a bully, as someone who “shows his disdain for the democratic process,” as someone who “desires to take all power for himself,” and as someone who lies so much he “metaphorically set[s] his pants on fire” on a regular basis.

148. The conflict between Mayor Mayfield on the one side and Herbel and Meyer on the other came to a head in 2022, when Mayfield proposed amending the city charter to remove the requirement that voters approve adding to the city’s debt.

149. Mayor Mayfield denied that the proposed amendment would disenfranchise voters and accused both Herbel and Meyer—who strongly opposed the proposed amendment—of lying.

150. The voters, however, agreed with Herbel and Meyer, and Mayor Mayfield’s proposed amendment was defeated by a 10-1 margin at the polls in December 2022.

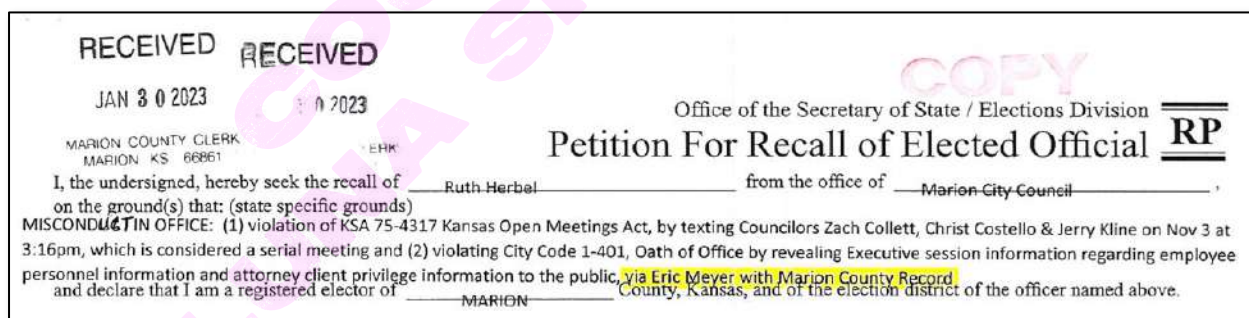
The Mayfields Launch a Recall Effort Against Herbel

151. The next month, Mayor David Mayfield’s wife, Jami Mayfield, filed a petition with the Marion County Clerk to recall Vice Mayor Ruth Herbel.

152. The recall petition stated two wholly frivolous grounds.

153. First, the petition alleged that Herbel violated the Kansas Open Meetings Act when Herbel “replied all” to a text message to four city council members by writing: “Thanks.”

154. Second, the petition alleged that Herbel had violated the Kansas Open Meetings Act when Herbel informed the public, “via Eric Meyer with the Marion County Record,” about Mayor Mayfield’s decision to fire former city administrator Mark Skiles, an act which potentially exposed the city to liability for a \$75,000 severance payment.



155. Neither of these alleged violations had any merit whatsoever; instead, they were a mere pretense for Mayor Mayfield’s effort to remove Herbel from the City Council.

156. The petition listed six persons as “sponsors,” including both Jami Mayfield and Mayor David Mayfield.

RECEIVED
FEB 08 2023
MARION COUNTY CLERK
MARION KS 66861

SPONSORS FOR COLLECTING SIGNATURES FOR RECALL PETITION ON RUTH HERBEL:

1. Jami Mayfield, [REDACTED] Marion, KS 66861
2. Kathern Swan, [REDACTED] Marion, KS 66861
3. Margaret Wilson, [REDACTED] Marion, KS 66861
4. David Mayfield, [REDACTED] Marion, KS 66861
5. Morgan Makovec Looney, [REDACTED] Marion, KS 66861
6. Steve Hart, [REDACTED] Marion, KS 66861

157. In a Facebook post about the recall effort, Jami Mayfield (who was known around town as the “shadow mayor”) stated she was not only seeking to recall Herbel, but she was also intending for the recall effort to “silence the MCR” (the *Marion County Record*) because, in her view, the *Record* had published “way more information than was necessary to report ‘news.’”

158. Mayor David Mayfield promptly reposted his wife’s message—with its explicit goal of seeking to “silence the MCR”—to his own Facebook page.



159. The recall effort was failing, so Mayor Mayfield and his wife Jami intensified their efforts to convince citizens to sign the petition.

160. For example, ten days after Mayor Mayfield reposted his wife's post confirming that the effort was intended to "silence the MCR," Jami Mayfield made a second post.

161. In this second Facebook post, Jami Mayfield described the recall effort as intending to punish "MCR" because the newspaper "had the audacity to print" information critical of the mayor, which Jami Mayfield described in her Facebook post as an act of "insanity."



162. The recall effort failed when the Mayfields could not collect the required signatures.

163. Again, Mayor Mayfield was furious that his public effort to remove Vice Mayor Herbel had failed.

164. But Mayor Mayfield was not about to stop.

The Fake Oath of Office

165. After the recall effort failed, in June of last year, Mayor Mayfield made still another attempt to remove Vice Mayor Herbel from the council by directing the city administrator to have

all city council members—including Herbel—sign an acknowledgment that read: “I also understand and acknowledge that my term with the council of the City of Marion, Kansas, is at will.”

166. This would have effectively allowed Mayor Mayfield to simply remove Herbel, given that her term would be “at [the] will” of the mayor.

167. Mayor Mayfield’s plan was thwarted, however, when Vice Mayor Herbel scratched through the offensive line.

I also understand that these “Marion Policies & Procedures Guidelines” are not to be construed as a contract of employment, that it can be changed at any time, ~~I also understand and acknowledge that my term with the council of the City of Marion, Kansas is at will and hereby agree to the Policies and Guidelines of the City of Marion, Kansas.~~ *RCH*

168. The City Administrator, Brogan Jones, refused to accept the form.

Brogan refused to accept this statement to accept sentence deleted - 6-26-2023

Ruth C. Herbel
Signature:

Ruth C. Herbel
Printed Name:

“The Real Villains”

169. The following month, Mayor Mayfield turned to Facebook to vent about Ruth Herbel’s so-called co-conspirator Eric Meyer—who, as noted above, taught journalism before returning to Marion to become editor of the *Record*.

170. Specifically, Mayor Mayfield posted on his Facebook page that the “real villains in America” are “journalists,” “teachers,” & “professors” who challenge authority, *e.g.*, Eric Meyer, who is a ‘journalist,’ ‘teacher,’ & ‘professor’.



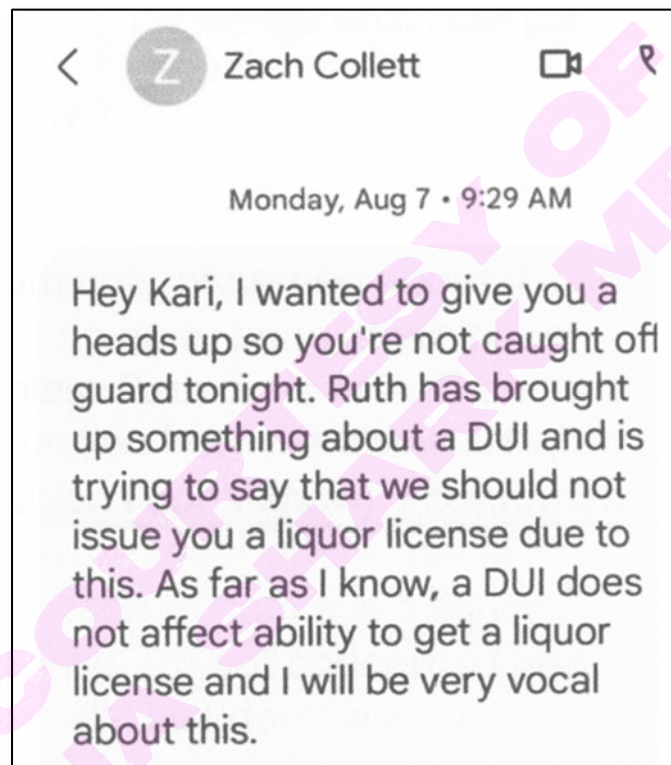
171. Days later, Mayor Mayfield would seize an opportunity to seek retribution against “[t]he real villains in America.”

Mayor Mayfield and Chief Cody Go in Search of a “Crime”

172. At 7:53 a.m. on Monday, August 7, 2023, Brogan Jones, the City Administrator, forwarded to Mayor Mayfield and the other council members (but not Vice Mayor Herbel) Ruth

Herbel's e-mail from the Friday before in which Herbel had forwarded the August 1, 2023, Department of Revenue letter to Kari Newell.

173. Shortly thereafter, both Mayor Mayfield and Councilmember Zach Collett told Kari Newell that Herbel had learned of Newell's DUI; both men falsely claimed that Herbel planned to use Newell's DUI conviction to oppose Newell's application for a catering license for her upscale restaurant Chef's Plate, which was coming before the city council later that same day.



174. Newell was requesting the catering license (which would allow her to serve liquor) because the liquor license for Chef's Plate was held in the name of Tammy Ensey—one of the owners of the Historic Elgin Hotel and the sister-in-law of Marion County Attorney Joel Ensey—and Tammy Ensey had chosen not to renew the liquor license.

175. Mayor Mayfield told Newell the only way he could get Herbel off the city council was if she (Herbel) was convicted of a crime.²

176. Accordingly, that same day, Mayor Mayfield overruled City Administrator Jones and directed Chief Cody to begin an investigation into Herbel and the *Marion County Record*.

177. Mayfield could do this because, according to the Marion City Code, the mayor “shall ... [h]ave superintending control of all officers and affairs of the city.” Code of the City of Marion, Kan. § 1-205(a).

178. Chief Cody then contacted Newell and told her someone had stolen her mail.

179. When Newell said she did not believe anyone had stolen her mail, Chief Cody said he would get back to her.

180. When Chief Cody got back to Newell, he told her that someone had stolen her identity in order to access her driver’s license record.

181. Specifically, Chief Cody told Newell that a reporter at the *Record* had stolen Newell’s identity and provided Herbel with a copy of her driver’s license record.

182. Chief Cody told Newell this even though Cody knew that:

- (a) Pam Maag—and not anyone at the *Record*—had provided Herbel with a copy of the letter; and
- (b) Maag put the letter on Facebook on August 2, 2023—two days before the *Record* obtained a copy of the letter via the Kansas Department of Revenue website.

² See K.S.A. § 21-6613 (“A person who has been convicted in any state or federal court of a felony shall, by reason of such conviction, be ineligible to hold any public office under the laws of the state of Kansas”).

183. Later the same day, Newell appeared before a meeting of the Marion City Council (at which Mayor Mayfield presided) as part of her attempt to obtain a catering license for Chef's Plate.

184. The catering license would allow Newell to serve liquor on the premises once Tammy Ensey's liquor license expired.



185. During her appearance, Newell lashed out at Ruth Herbel, calling her “vile,” and repeated Chief Cody's false claim that the *Record* had “illegally” obtained Newell's driver's record and had provided Herbel with a copy of Newell's record.

186. Newell also said that she was going to “place this with the County Attorney” and “this is going to become a case.”

187. The Marion County Attorney is Joel Ensey—the brother-in-law of Tammy Ensey, whose liquor license was expiring.

188. Following Newell's appearance, Eric Meyer—who was there to report on the council meeting—stood up and said that no one at the *Record* had provided Vice Mayor Herbel with a copy of Newell's driver's record or the August 1, 2023 Kansas Department of Revenue letter.

189. Marion Police Officer Zach Hudlin was present at the meeting and recorded it.

Marion County Sheriff Jeff Soyez Joins the Investigation

190. The very next day, Tuesday, August 8, 2023, Chief Cody met with Marion County Sheriff Jeff Soyez.

191. Like Chief Cody, Sheriff Soyez had expressed animus toward the *Marion County Record*, editor Eric Meyer, and its staff.

192. For example, like Chief Cody, Sheriff Soyez regularly said he did not approve of Meyer's negative outlook, saying that Meyer and the paper should be more positive about Marion and, in particular, Marion government and Marion businesses.

193. And like Chief Cody, Sheriff Soyez was worried the *Marion County Record* was going to expose his office—along with the Marion Police Department—for allowing Kari Newell to drive around Marion for years without a valid driver's license.

194. During that meeting, Sheriff Soyez agreed to join with Chief Cody and Mayor Mayfield in their illicit plan to take down the *Marion County Record*.

The Joint Investigation

195. On the same day Chief Cody met with Sheriff Soyez, the two men met with Marion County Sheriff's Detective Aaron Christner, whom Soyez had appointed to help with the joint investigation of the *Marion County Record* by the Marion Police Department and the Marion County Sheriff's Office (just as Cody had appointed Marion Police Officer Zach Hudlin to help with the joint investigation the day before).

196. Chief Cody requested Det. Christner to obtain a “preservation warrant” to serve on the *Marion County Record*’s internet provider.

197. Det. Christner, however, learned that the newspaper’s “record domain is hosted by a small hosing [sic] company out of Wisconsin.”

198. Det. Christner told Chief Cody that he had “no legal authority” to make a request to the Wisconsin company and that “they may notify the Marion Record if I do so.”

199. Accordingly, Det. Christner told Chief Cody, “My advice is if you have PC for a search warrant is that we just write that and skip a preservation.”

“I am not comfortable swearing to an affidavit”

200. By the next day, Det. Christner had drafted an eight-page application for a search warrant for the *Marion County Record*.

201. The application included multiple pages titled “DETAILS OF INVESTIGATION,” even though Det. Christner—when he forwarded the draft to Chief Cody—admitted he “did not do the investigation.”

I attached a draft for a SW. I am not comfortable swearing to an affidavit that I did not do the investigation on. I left my training and experice in red so you can change it to yours. Let me know what you think.

202. As a result, the application was replete with either intentional, knowing, or reckless false statements.

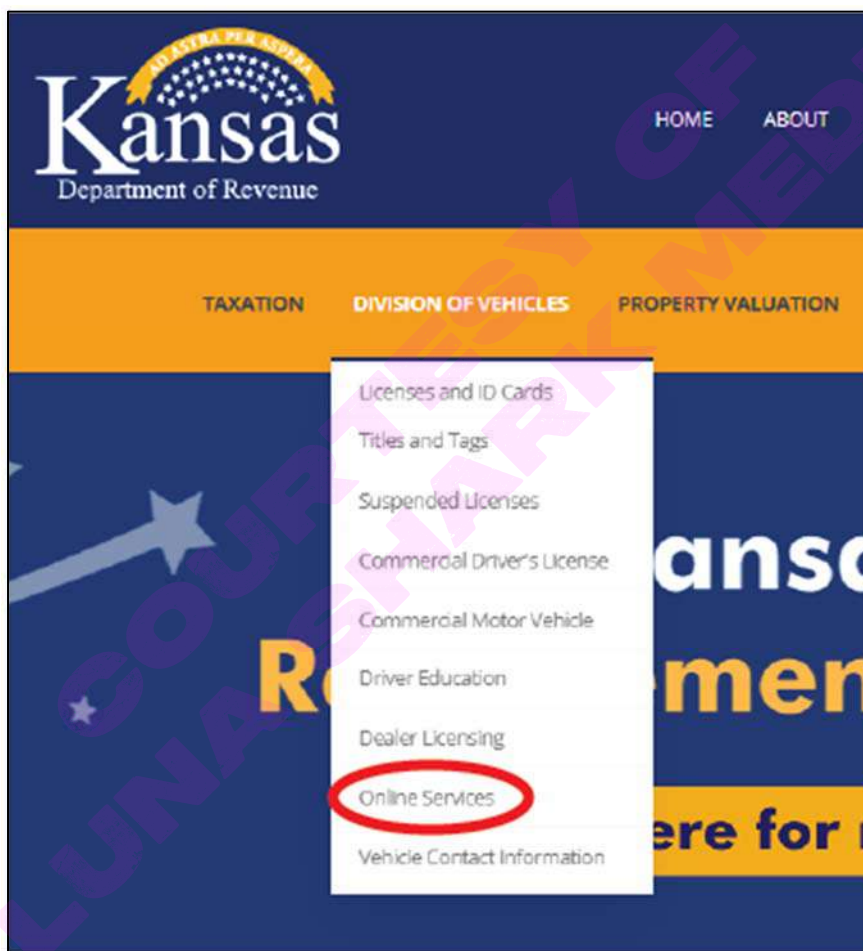
203. For example, the affidavit included the false statement that in order to access the Kansas Department of Revenue website Zorn was required to select from several “options available on the Kansas DOR records website.”

204. Christner even included in his draft a screenshot from some website appearing to list the options.

205. But the Kansas Driver’s License Status Check tool has no such requirement and contains no such listing.

206. If Christner had gone to the Kansas Driver’s License Status Check tool he would have known this statement was false.

207. The Driver’s License Status Check tool is readily available from the Kansas Department of Revenue homepage, by clicking “Online Services.”



208. Det. Christner was directed to this webpage by the August 1, 2023 letter itself, which tells readers to go the Department of Revenue homepage to “check the status of your driving privileges.”

The Kansas Department of Revenue website provides electronic, self-help tools at www.ksrevenue.gov where you can update your address and check the status of your driving privileges. You can also download our free mobile app, IKan, on your phone.

209. Det. Christner could also have found the tool with a simple Google search; for example, the Kansas Driver's License Status Check tool is among the first listing for searches of "kansas driver record lookup;" "kansas driver's license suspended;" "kdor driver's license;" "kdor driver suspended;" "kdor suspension;" and "kansas drivers license status."



210. Det. Christner therefore either knew the information he stated in the affidavit, *i.e.*, that someone has to provide a reason for accessing the records on the website, was false or he was grossly reckless in failing to perform even the most basic investigation, which would have revealed the falsity of his claims.

211. Det. Christner also falsely stated that the only way Zorn could have accessed the Kansas Department of Revenue records was through "either impersonating or lying about the reasons why the record was being sought."

212. As noted above, the records are open records under both federal and state law and Zorn did not have to impersonate another person or lie about her reasons for obtaining a record in order to lawfully use the Kansas Driver's License Status Check tool.

213. Again, anyone who used the Kansas Driver's License Status Check tool would have known these statements were false.

214. Det. Christner also falsely claimed that someone at the *Record* had supplied Vice Mayor Ruth Herbel with the August 1, 2023 letter as part of a plan to retaliate against Kari Newell for having Eric Meyer and Phyllis Zorn removed from the meet-and-greet for Rep. LaTurner.

215. Det. Christner knew that Phyllis Zorn did not access the Kansas Department of Revenue website until Friday, August 4, 2023, but also knew that Ruth Herbel had received a copy of the letter from Pam Maag on Wednesday, August 2, 2023.

216. Had Det. Christner been truthful, the affidavit would have failed to state even arguable probable cause.

217. Det. Christner also either intentionally, knowingly, or recklessly omitted material facts which, if included, would have prevented a finding of probable cause, including:

- (a) the fact the *Record* already had Kari Newell's first name, last name, date of birth, and driver's license number, because as Meyer explained to Chief Cody and Sheriff Soyez, the *Record* was given the August 1, 2023 letter by a source, and the letter contained all this information;
- (b) the Driver's License Status Check tool permits any requester with Newell's first name, last name, date of birth, and driver's license number to view the status of Newell's driver's license;
- (c) the Driver's License Status Check tool permits any requester with Newell's first name, last name, date of birth, and driver's license number to view documents concerning the status of Newell's driver's license—including the August 1, 2023 letter—so long as they certify that “I will use the information requested in a manner that is specifically authorized by Kansas law

and is related to the operation of a motor vehicle or public safety. (See section VI on the front of this form);”

- (d) the fact that the Kansas statute on driver’s license records explicitly states that driver’s license records are “open records” under the Kansas Open Records Act, with exceptions not applicable here;
- (e) the fact that records concerning a person’s “driving violations” or “driver’s status” are not covered by the federal Driver’s Privacy Protection Act;
- (f) the fact the Driver’s Privacy Protection Act allows “personal information” to be disclosed pursuant to state law; for matters of motor vehicle or driver safety; or for research purposes;
- (g) the fact it would be illegal for the State of Kansas to operate a public-facing webpage that allows users to access protected “personal information;”
- (h) the fact that both Chief Cody and Sheriff Soyez knew the *Record* was investigating allegations that local law enforcement had wrongly permitted Kari Newell to drive for years without a valid license;
- (i) the fact that Eric Meyer had offered to assist in any law enforcement investigation into this allegation;
- (j) the fact the United States Supreme Court has stated that “[w]here the materials sought to be seized may be protected by the First Amendment, the requirements of the Fourth Amendment must be applied with ‘scrupulous exactitude;”
- (k) the fact the United States Supreme Court has stated that “rummag[ing] at large in newspaper files” is not allowed;

- (l) the fact the United States Supreme Court has stated that “[w]here presumptively protected materials [under the First Amendment] are sought to be seized, the warrant requirement should be administered to leave as little as possible to the discretion or whim of the officer in the field.” *Zurcher v. Stanford Daily*, 436 US. 547, 564 (1976);
- (m) the fact the United States Supreme Court has stated that “the warrant requirement [should be applied] with particular exactitude when First Amendment interests would be endangered by the search;”
- (n) the fact the federal Privacy Protection Act prohibits the search of a newsroom or other place where reporters maintain newsgathering materials, with certain exceptions not applicable here; and
- (o) the fact the Kansas Shield Law protects the disclosure of newsgathering material without a prior court hearing, during which a reporter can object to the production of such materials.

218. Det. Christner knew all of the material facts listed above or would have known them had he performed even the most basic investigation.

219. Det. Christner intentionally, knowingly or recklessly omitted these material facts from the draft affidavit.

220. Had these facts not been omitted, the affidavit would have failed to state even arguable probable cause.

221. Det. Christner then sent his completed draft search warrant application to Chief Cody, who shared it with Officer Hudlin.

Garbage In, Garbage Out

222. By the next morning, August 10, 2023, Chief Cody had taken Det. Christner's draft application for the *Record* and copied over contents of the draft application and pasted them into virtually identical applications for the homes of Vice Mayor Ruth Herbel and Pam Maag.

223. Chief Cody shared those draft applications with Officer Hudlin and Det. Christner.

224. Later the same day, Chief Cody discussed the drafts with Sheriff Soyez, and a decision was made to add a fourth target of the raids: the home Eric Meyer shared with his mother.

After speaking with Jeff Soyez, the sheriff reminded me that Eric Meyer works from home. His computer will be at his residence.

I attached a SW and affidavit for his residence.

Chief Gideon Cody

225. Each of Chief Cody's affidavits contain all the same false statements as Det. Christner's draft affidavit.

226. Chief Cody knew or should have known these statements were false for the same reasons Det. Christner knew or should have known they were false.

Additional Garbage

227. Chief Cody's affidavits also included additional false statements.

228. For example, Chief Cody's affidavits state that:

While the initial front page of the website is public, as seen above a selection must be made to show a legal reason to obtain the information according to the Drivers' Privacy Protection Act of 1994. To access the records a confidentiality agreement is displayed prior to a user accessing the search function. A section of the confidentiality agreement states 'Under the Driver's Privacy Protection Act of 1994, as amended (DPPA) (18 U.S.C. § 2721), personal information obtained by the Kansas Department of Revenue cannot be released unless the request for information falls within one of the exceptions within the Act.

229. This statement is false; the Kansas Driver's License Status Check tool contains no such language.

230. Cody's affidavits also state that:

Under the confidentiality agreement it states "By proceeding past this screen, I declare that I am eligible and have the express authority to receive the requested information pursuant to the federal Drivers' Privacy Protection Act of 1994, as amended. I further declare that any personal information I receive will not be used to sell or offer for sale any property or service."

231. Again, this statement is false; the Kansas Driver's License Status Check tool contains no "confidentiality agreement" and contains no such language.

232. Had Chief Cody performed even the most basic of investigation, such as going to the actual Kansas Driver's License Status Check tool (which he could have found from either the August 1, 2023 letter or by performing a simple Google search) he would have known these statements were false.

233. Had Chief Cody been truthful, the affidavits would have failed to state even arguable probable cause.

234. Chief Cody likewise made the same omissions of material fact in his affidavits that Det. Christner made in his draft.

235. Chief Cody knew all of the material facts listed above or would have known them had he performed even the most basic investigation.

236. Chief Cody intentionally, knowingly or recklessly omitted these material facts from the affidavits.

237. Had these facts not been omitted, the affidavits would have failed to state even arguable probable cause.

Christner Drafts the Actual Search Warrants

238. After receiving Chief Cody's final draft of the affidavits, Det. Christner prepared the actual search warrants for the magistrate to sign (which would be submitted with the search warrant applications) and sent those draft warrants to Chief Cody.

The Search Warrant Applications Are Submitted to Magistrate Judge Laura Viar

239. The Honorable Susan Robson is the District Judge for Marion County; Judge Robson had previously served as the Marion County Attorney.

240. The four search warrant applications,³ however, were not presented to Judge Robson, but were presented to Magistrate Judge Laura Viar, of Morris County.

241. Judge Viar, who was appointed January 1, 2023, to fill a vacant magistrate judge position, had twice been previously arrested for driving under the influence; at the time of both arrests she was the prosecutor for Morris County.

242. In January 2012, Judge Viar was arrested for DUI and later entered into a diversion agreement; the agreement was later extended by six months when she refused to get an alcohol and drug evaluation.

243. While she was on diversion for her first DUI, Judge Viar was arrested a second time for DUI; the second DUI arrest should have been a violation of her diversion agreement.

244. There is no record of the result of Judge Viar's second arrest; nor is there a record of what, if any, consequences Judge Viar suffered as a result of violating her diversion agreement from her first arrest.

³ One of the applications was for a search of the offices of the *Marion County Record*, one was for the home of Joan and Eric Meyer, one was for the home of Vice Mayor Ruth Herbel, and one was for the home of Pam Maag.

245. Judge Viar knew or should have known from reviewing the search warrant applications prepared by Chief Cody and Det. Christner that Kari Newell’s driver’s record included one or more DUIs and that the *Marion County Record* was attempting to learn about Newell’s DUI infractions.

246. As such, Judge Viar was plainly not a “neutral and detached” magistrate.

The Search Warrants Were Based on False Statements and Material Omissions

247. Judge Viar signed the search warrants for the newsroom of the *Marion County Record*, the Meyer home, and the Herbel home, based on the false statements of material facts contained in the affidavits.

248. Had the affidavits been truthful—and had the affidavits included the material facts which were omitted from the affidavits—Judge Viar would not have signed the search warrants.⁴

Chief Cody Did Not Personally Appear Before Magistrate Viar

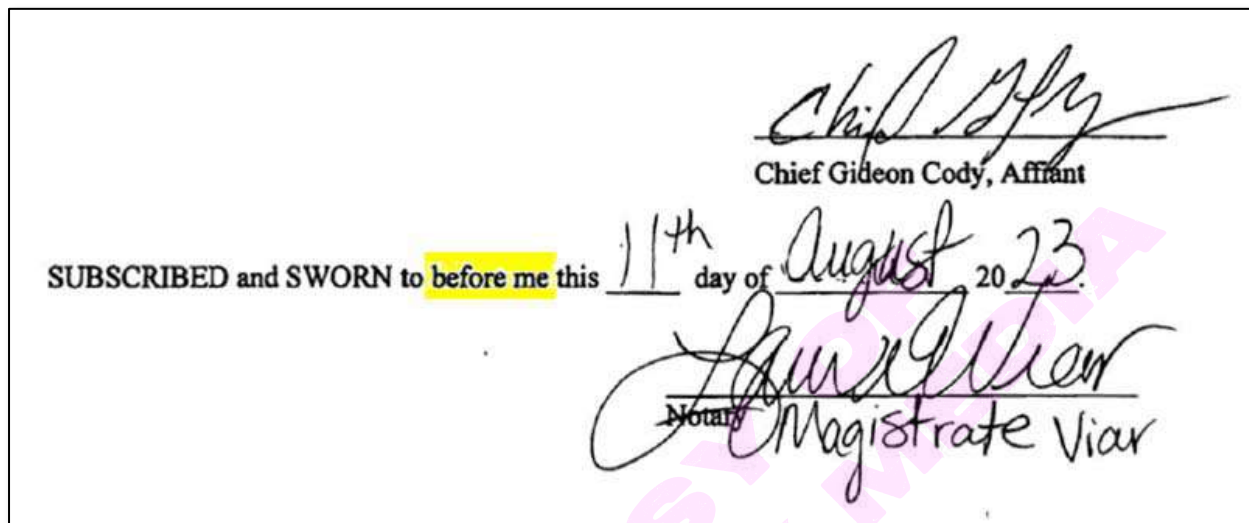
249. The Fourth Amendment to the United States Constitution states that “no Warrants shall issue, but upon probable cause, and **supported by Oath or affirmation.**” U.S. Const. amend. IV (emphasis added).

250. Kansas law similarly provides that a search warrant may only be issued “upon the oral or written statement ... of any person **under oath or affirmation.**” K.S.A. 22-2502(a) (emphasis added).

251. Pursuant to that provision, the written search warrant applications for the *Record*’s offices, Joan and Eric Meyer’s home, and Ruth Herbel’s home each had a space for a notary to sign the application.

⁴ Notably, Judge Viar refused to sign a search warrant for the home of Pam Maag—the individual who actually provided the August 1, 2023 letter to Ruth Herbel.

252. However, on each of the applications, Judge Viar scratched out “Notary” and signed the applications herself, attesting that Chief Cody swore the applications had been “SUBSCRIBED and SWORN to **before me**.” (Emphasis added).



253. But Chief Cody never appeared before Judge Viar, making Judge Viar’s statement that Cody swore to the applications “before me” false.

254. On August 30, 2023, former *Marion County Record* reporter Deb Gruver sued Chief Cody in the United States District Court of the District of Kansas for violating her civil rights when he raided the *Record*’s offices, yanked her cell phone out of her hand and injured her, and searched her desk in the *Record*’s newsroom.

255. In his Answer to Gruver’s lawsuit, Chief Cody specifically states that “[t]he Applications for Search Warrant [were] taken by the County Attorney’s office to Judge Viar for approval.” Answer ¶ 22, *Gruver v. Cody*, No. 23-cv-01179, Dist. of Kan. (Oct. 4, 2023).

256. Additionally, Marion County Attorney Joel Ensey provided Jessica McMaster, an investigative reporter at KSHB-TV in Kansas City, a statement following the filing of Chief Cody’s Answer in the Gruver case.

257. In his written statement, Marion County Attorney Ensey confirmed that “my office staff did take the warrants up for the judge to review.”

I don't want to comment extensively on the pending litigation between Ms. Gruver and Mr. Cody. I will say that, although I was aware that the Marion PD was investigating what it believed was a crime in which Kari Newell was a victim, my involvement in that investigation is being overstated. I was first emailed the search warrants on Thursday the 10th, while I was out of the office dealing with personal matters. I first saw the search warrants when I returned to work on Friday. I previewed the warrants, but did not fully review them as I was prepping for a full day in Court. I did not know the warrants were going to be served on that Friday, until my staff received a call from Mr. Cody stating he had a team ready to serve the warrants. At that time, my office staff did take the warrants up for the judge to review, but at no time prior to their execution did I approve them or provide a legal opinion as to their sufficiency.

258. Judge Viar's act of notarizing the applications was invalid under Kansas law, which provides as follows: “If a notarial act relates to a statement made in or a signature executed on a record, the individual making the statement or executing the signature shall appear **personally** before the notarial officer.” K.S.A. 53-5a606 (a) (emphasis added).

259. The search warrants were not issued “upon the oral or written statement ... of any person under oath or affirmation” and were therefore invalid and void.

Chief Cody Leads the Raids

260. On Friday, August 11, 2023, Chief Cody spearheaded a team of armed law enforcement officers in conducting raids on the offices of the *Marion County Record*, the home of Joan and Eric Meyer, and the home of Ruth Herbel.

261. The first raid occurred at the offices of the *Marion County Record*, where Chief Cody led a squad consisting of himself, Marion police officer Zach Hudlin, Marion police officer Jonathon Benavidez, Marion County Sheriff's detective Aaron Christner, and Marion County Sheriff's detective Steven Janzen.

262. The officers approached the building from the rear, where they confronted *Record* reporters Phyllis Zorn and Deb Gruver.

263. Chief Cody forcibly yanked Gruver's cell phone from her hand, injuring her.



264. The officers then entered the offices of the *Record*, led by Chief Cody.



The Sham “Preview Search”

265. The “warrant” obligated the officers to conduct a “preview search” of any electronic devices so that the officers only seized items that were actually used in connection with the so-called “identity theft.”

5. Conduct a preview search of all located digital communications devices and digital storage media to exclude from seizure those which have not been involved in the identity theft, by use of manual or automated preview tools.

266. In accordance with this requirement, Marion County Sheriff’s Det. Aaron Christner connected an external drive via a USB port to reporter Phyllis Zorn’s desktop computer in the *Record*’s newsroom.

267. He then executed a software application titled osTriage, which he had previously loaded onto the external drive.

268. The program allows a user to conduct a keyword search on the connected computer and its storage media, thereby allowing a user to make a determination in the field as to whether the device was used in the commission of a crime.

269. But the keywords selected for the preview search of the *Record*’s desktop computers and network server were so vague and indistinct they constituted a sham search.

270. For example, one of the keywords was the word “vehicle,” while another keyword was the word “Kansas.”

271. As a result, the search returned scores of “hits” that were utterly irrelevant.

272. Predictably, when searching the computer files of a Kansas newspaper, the keyword “Kansas” produced scores of irrelevant “hits,” including a “hit” for a job applicant’s writing sample titled “The Haunted Hotel of *Arkansas*.”

Behind-the-scenes: THE HAUNTED HOTEL OF ARKANSAS

Posted Thursday, October 20, 2016, at 3:26 PM



The Haunted Hotel is now open for business!

273. The keyword “Kansas” also produced a “hit” for the logo of the “*Kansas* Eighth Judicial District.”



274. Other search terms produced similarly worthless results.

275. For example, the keyword “DOR” produced a “hit” for the logo for the Pandora internet radio station website.



276. The keyword “DOR” also produced a “hit” for a newspaper advertisement for a local car dealership which sponsored a drive-in movie-showing of “FINDING DORY.”



The Keyword Searches – Part 2

277. Det. Christner also ran searches on certain names—but those searches returned similarly irrelevant “hits.”

278. For example, the only “hits” for “Maag” (it was Pam Maag who gave the letter to both Vice Mayor Ruth Herbel and the *Record*) were to prep sports stories on *Maag’s* son, who graduated from Marion High School in 2010.

279. The only “hit” for “Pam” was to another *Pam* who was formerly a city council member in Peabody, Kansas, another city in Marion County.

280. Similarly, the only “hit” for “Kari” was to a twenty-year-old article on the former administrator of a Marion nursing home whose first name also happened to be *Kari*.

281. And the only “hit” for “Ruth” was for *Ruth* Meyer, Eric’s grandmother and a former *Wichita Eagle* reporter who, after retiring from the *Eagle* in the 1960s, worked for the *Record*.

The “Preview Searches” Reveal No Evidence of Criminality

282. As a result, none of the “hits” from the “preview search” of Phyllis Zorn’s computer were even suggestive of a crime.

283. Instead, it is obvious the keyword search terms were a sham and were never designed to comply with the requirement in the “search warrant” that officers conduct a preview search “to exclude from seizure those which have not been involved in the identity theft.”

284. The name searches similarly produced false “hits” 100% of the time.

285. Despite the fact the “preview searches” revealed no evidence Phyllis Zorn’s computer was used to commit any crime, Chief Cody nevertheless directed Zorn’s computer be seized.

“Do YOU Want to Look Through This Desk?”

286. While Det. Christner was running the preview search on Phyllis Zorn’s computer, Officer Zach Hudlin was conducting a physical search of the *Marion County Record’s* newsroom, reading papers on countertops, going through reporter’s purses, and rifling through files in reporter’s desks.

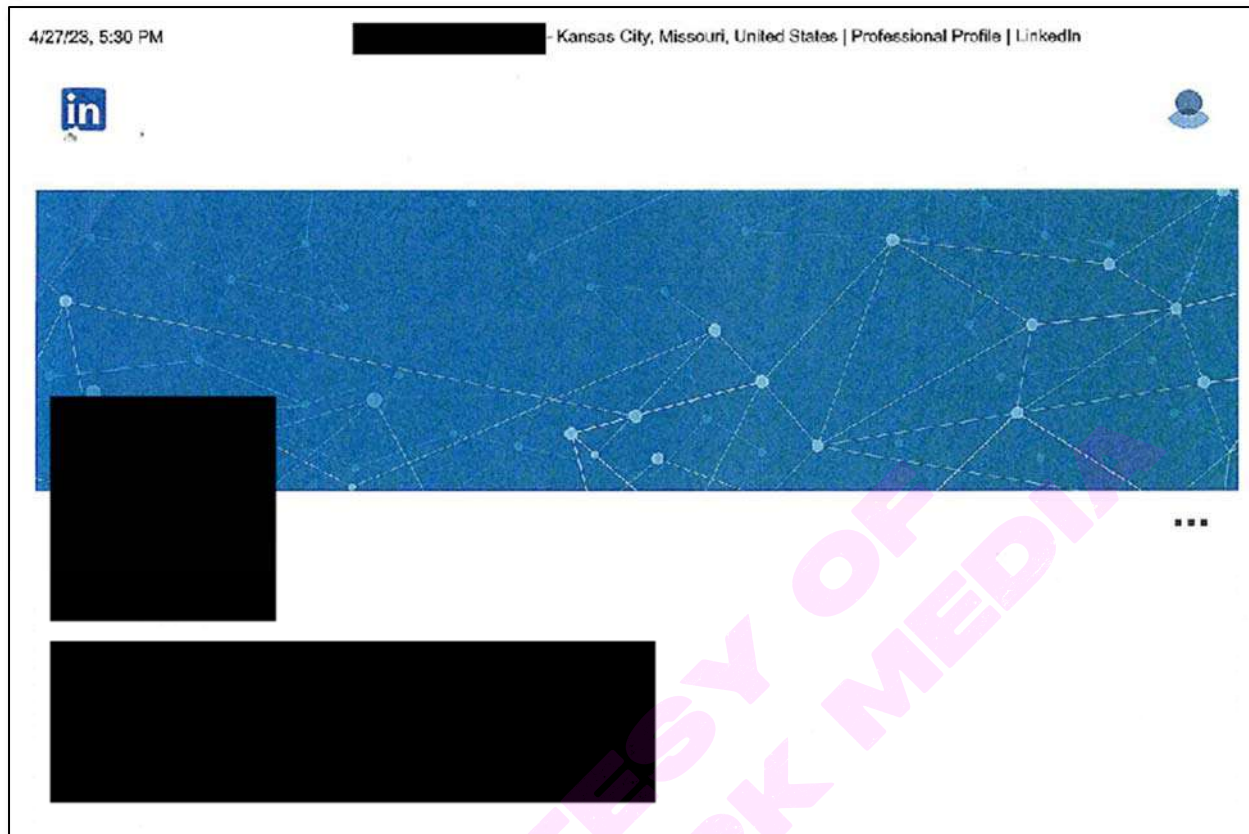
287. When Officer Hudlin got to Deb Gruver's desk (it was Gruver who had been investigating the tips which the paper had received about Chief Cody) Hudlin paid particular attention to the files in the bottom, right-hand drawer in Gruver's desk.



288. Among the files Officer Hudlin observed in Gruver's desk drawer was Gruver's investigative file on the confidential tips the *Record* had received about Gideon Cody from officers with the Kansas City, Missouri Police Department describing Cody's rampant misconduct; the file was in a folder titled "Capt. Gideon Cody," which was Cody's rank in the Kansas City Police Department when he applied to be Marion's top cop.



289. Inside the folder was a color-printed copy of the LinkedIn profile (complete with photograph) of Gruver's primary confidential informant; the profile had been printed at 5:30 p.m. on April 27, 2023.



290. Also inside the folder was information about other confidential sources who provided information about Gideon Cody.

291. After Officer Hudlin located Gruver’s file on Cody—and while Hudlin was standing next to Gruver’s desk—Hudlin had the following conversation with Chief Cody:

Hudlin: “You want to look through this desk?”

Cody: “You have the right to look for yourself.”

Hudlin: “I know, I’m asking do YOU want to look through this desk?”

Cody: “Man, you got a right to ...”

Hudlin: “I understand. You will understand shortly.”

292. Chief Cody is then seen on Officer Hudlin’s body camera footage bending down to look inside Gruver’s bottom right-hand desk drawer, where Gruver’s file on Cody was located.



293. A short time later, Chief Cody is recorded as saying: “Hmm. ... Keeping a personal file on me.”

294. Chief Cody thereby admits to having viewed Gruver’s file on her investigation of the many tips the *Record* had received about him, which included information about (and even at least one photograph of) Gruver’s confidential sources.

The Missing Body Camera Footage

295. The Marion Police Department produced hours of video in response to a Kansas Open Records Act request for Chief Cody’s body camera footage of the raids; that footage includes video of Chief Cody relieving himself at Casey’s General Store between the search of the Herbel home and the search of the Meyer home.