Approved March 14, 1983
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY.

The meeting was called to order by Representative Bob Frey at
Chairperson

3:30 ~~a.m.~~/p.m. on March 2, 19 83 in room 526-S of the Capitol.

All members were present except:

Representative Knopp was excused.
Representatives Erne and Peterson were absent.

Committee staff present:

Mark Burghart, Legislative Research Department
Mike Heim, Legislative Research Department
Mary Ann Torrence, Revisor of Statutes Office
Nedra Spingler, Secretary

Conferees appearing before the committee:

Randy Hearrell, Judicial Council
Nancy Maxwell, Law Professor, Member of Judicial Council Advisory Committee on Family Law
Dr. William Albott, Kansas Psychological Association
Dr. Richard Maxfield, Menninger Foundation
Dr. Martin Leichman, Children's Division, Menninger Foundation
Dr. Walter Menninger, Menninger Foundation, Kansas Psychiatrists Association
Harriet Griffith, Mental Health Association in Kansas
Jack Paradise, Divorced Dads, Inc., Kansas City
Dwight Young, Association of Community Mental Health Centers
Representative LeRoy Fry
Bob Eye, Office of the Attorney General
Stevi Stephens, Tonganoxie

HB 2131 - An act concerning domestic relations.

A hearing was held on the bill. Randy Hearrell, Judicial Council, introduced Nancy Maxwell, law professor and member of the Judicial Council's Advisory Committee on Family Law. She reviewed the changes suggested by the advisory committee in domestic relations laws as outlined in HB 2131, giving the rationale behind the changes (Attachment No.1).

There was discussion regarding the waiver of privileges section on page 2 of the bill. Ms. Maxwell said it was important to protect the best interests of the child, and all evidence would be needed for the judge to make a determination. She did not believe the waiver of privilege and lack of confidentiality would deter people from seeking psychological help. A member noted opposition from mental health groups to this section. Ms. Maxwell could suggest no compromise and said Judge Walton agreed with the inclusion of this section.

In answer to further questions, Ms. Maxwell said the origin of the additional factors added to the law to determine child custody came mostly from statutes from Alaska and Iowa.

In regard to including in the bill the preference for joint custody which went into effect January 1, 1983, Ms. Maxwell said the advisory committee had considered including this in HB 2131 but felt preference for joint custody should prove to be workable first.

Dr. William Albott, Kansas Psychological Association, disagreed that it was in the best interest of the child for the court to have information that may be outdated. His statement is attached (Attachment No.2) and contains suggestions for amendments to Section 1 (a) (2) (C), waiver of privileges, and 60-1615 regarding a child's treatment records. Dr. Albott said it was an oversight that his group did not testify against these provisions last year. It was noted that current law waivers the statutes cited in Attachment No.2 except 60-1608, and an error had been made. The point was made it should be the reverse.

Dr. Richard Maxfield, representing himself, objected to the waiver of privileges section. His statement (Attachment No.3) also addresses concerns pertaining to 60-1610(3). He preferred current law over HB 2131. He said psychologists have expressed no opposition to court-ordered records because they do not believe they can win on that issue.

Dr. Martin Leichman, Director of Psychology, Children's Division, Menninger Foundation, gave a statement (Attachment No.4), giving the viewpoint of a psychologist regarding the waiver of privileges which he opposed.

Dr. Walter Menninger, Menninger Foundation, speaking on behalf of the Kansas Psychiatrists Association, objected to the waiver of privileges section. The reasons for his objections can be found in his statement (Attachment No.5). Dr. Menninger noted it was an oversight that his group did not object to this provision during the 1982 hearing.

Harriet Griffith, Mental Health Association in Kansas, supported the testimony of previous conferees.

Jack Paradise, Divorced Dads, Inc., Kansas City, gave a statement in opposition to the child custody, joint custody provisions in HB 2131 (Attachment No.6). This attachment also contains supportive information regarding his statement.

Dwight Young, Association of Community Mental Health Centers, opposed the waiver of privileges section and suggested it be stricken.

A letter from Ann Learned Fitch, opposing the waiver of privileges section, is attached (Attachment No.7).

HB 2352 - An act relating to radioactive waste.

A hearing was held on the bill. Representative Fry, one of its sponsors, gave a statement supporting the bill (Attachment No.8), noting that states should have the right to protect its citizens from potential long-term damages from high-level radioactive waste. Attachment No.8 also contains the federal law and laws of other states regarding this subject. Representative Fry said HB 2352 was a message to the federal government that Kansas objects to this storage.

Bob Eye, Office of the Attorney General, summarized the federal mandate in selection of acceptable sites and noted the deadline for federal action would be April 7, 1983, with an additional 60 days before notice is given. He believed HB 2352 was needed before the deadline as it specifically states that no salt beds will be used, and no other sites in Kansas would be compatible with provisions of Public Law 97-425 and its definition of high-level radioactive material. Because of possible future developments, the suggestion was made to expand the bill to include any site. In further discussion, it was noted the Governor now has the power to reject a federal selection in the state, but the bill would mandate that he reject it.

Stevi Stephens, citizen, described high and low-level radioactive material and noted the activities of the Rickano Corporation, a disposal company, in Kansas. She supported HB 2352 to protect the health of Kansans. Her statement is attached (Attachment No.9).

The Chairman adjourned the meeting at 5:15 p.m.

ATTACHMENT # 1

HOUSE BILL No. 2131

By Representative R. Frey

(By request)

1-27

AN ACT concerning domestic relations; relating to actions for divorce, annulment and separate maintenance; amending K.S.A. 1982 Supp. 60-1610, 60-1613 and 60-1618 and repealing the existing sections; also repealing K.S.A. 1982 Supp. 60-1619.

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

Section 1. K.S.A. 1982 Supp. 60-1610 is hereby amended to read as follows: 60-1610. A decree in an action under this article may include orders on the following matters:

(a) *Minor children.* (1) *Child support and education.* The court shall make provisions for the support and education of the minor children. The court may modify or change any prior order when a material change in circumstances is shown, irrespective of the present domicile of the child or the parents. The court may order the child support and education expenses to be paid by either or both parents for any child less than 18 years of age, at which age the support shall terminate unless the parent or parents agree, by written agreement approved by the court, to pay support beyond the time the child reaches 18 years of age. In determining the amount to be paid for child support, the court shall consider all relevant factors, without regard to marital misconduct, including the financial resources and needs of both parents, the financial resources and needs of the child and the physical and emotional condition of the child. Until a child reaches 18 years of age, the court may set apart any portion of property of either the husband or wife, or both, that seems necessary and proper for the support of the child.

(2) *Child custody.* (A) *Changes.* Subject to the provisions of

the uniform child custody jurisdiction act (K.S.A. 38-1301 *et seq.* and amendments thereto), the court may change or modify any prior order of custody when a material change of circumstances is shown.

(B) *Examination of parties.* The court may order physical or mental examinations of the parties if requested pursuant to K.S.A. ~~1982 Supp.~~ 60-235 *and amendments thereto.*

(C) *Waiver of privileges.* All physician-patient and psychologist-client privileges, except with respect to communications arising in counseling pursuant to K.S.A. ~~1982 Supp.~~ 60-1608 and amendments thereto, shall be waived when the custody of a child is in dispute.

(3) *Child custody criteria.* The court shall determine custody in accordance with the best interests of the child.

(A) If the parties have a written agreement concerning the custody of their minor child, it is presumed that the agreement is in the best interests of the child. This presumption may be overcome and the court may make a different order if the court makes specific findings of fact stating why the agreement is not in the best interest of the child.

(B) In determining the issue of custody, the court shall consider all relevant factors, including but not limited to:

~~(A)~~ *(i)* The length of time that the child has been under the actual care and control of *either parent or* any person other than a parent, and the circumstances relating thereto;

(ii) the active involvement of each parent in the care of the child before and since the parties' separation;

~~(B)~~ *(iii)* the desires of the child's parents as to custody;

~~(C)~~ *(iv)* the desires of the child as to the child's custodian;

~~(D)~~ *(v)* the interaction and interrelationship of the child with parents, siblings and any other person who may significantly affect the child's best interests; ~~and~~

~~(E)~~ *(vi)* the child's adjustment to the child's home, school and community*;*

(vii) the proximity of each parent to the other and to the child's school;

(viii) the feasibility of travel between the parents;

FAMILY LAW ADVISORY COMMITTEE COMMENT

The Committee amended the child custody criteria because the committee members believed that, generally, parents are in a better position than the district court to consider the best interests of the child when determining custodial arrangements. Therefore, if the parents have agreed to a custody arrangement for their children, the agreement should be presumed to be in the best interests of the child. However, this presumption can be rebutted if the court states reasons why the agreement is not in the child's best interest.

The child custody criteria also were amended by enlarging the specific criteria the court must consider in awarding child custody. Criteria were added because of two legislative changes in the custody statute. First, the legislature created a preference for joint custody. And, second, the legislatue required the court to make a record of "specific findings of fact upon which the order for custody other than joint custody is based." See K.S.A. 1982 Supp. 60-1610(a)(4)(A). Because of these legislative changes, FLAC believed the court should be given more guidance in determining when joint custody is appropriate. By weighing these additional factors, the court, the parties and expert witnesses will be better prepared to investigate and determine the feasibility of joint custody.

(ix) the mental and physical health of all individuals involved;

(x) the parents' ability to communicate with each other regarding the child's needs;

(xi) each parent's ability to be supportive of the child's relationship with the other parent; and

(xii) whether the child's emotional and psychological needs and development will be enhanced because of active contact with both parents.

Neither parent shall be considered to have a vested interest in the custody of any child as against the other parent, regardless of the age of the child, and there shall be no presumption that it is in the best interests of any infant or young child to give custody to the mother.

(4) *Types of custodial arrangements.* Subject to the provisions of this article, the court may make any order relating to custodial arrangements which is in the best interests of the child. The order shall include, but not be limited to, one of the following, in the order of preference:

(A) *Joint custody.* The court may place the custody of a child with both parties on a shared or joint-custody basis. In that event, the parties shall have equal rights to make decisions in the best interests of the child under their custody. When a child is placed in the joint custody of the child's parents, the court may further determine that the residency of the child shall be divided either in an equal manner with regard to time of residency or on the basis of a primary residency arrangement for the child. The court, in its discretion, may require the parents to submit a plan for implementation of a joint custody order upon finding that both parents are suitable parents or the parents, acting individually or in concert, may submit a custody implementation plan to the court prior to issuance of a custody decree. If the court does not order joint custody, it shall include in the record the specific findings of fact upon which the order for custody other than joint custody is based.

(B) *Sole custody.* The court may place the custody of a child with one parent, and the other parent shall be the noncustodial

parent. The custodial parent shall have the right to make decisions in the best interests of the child, subject to the visitation rights of the noncustodial parent.

(C) *Divided custody.* In an exceptional case, the court may divide the custody of two or more children between the parties.

(D) *Nonparental custody.* If *during the proceedings* the court ~~finds~~ *determines that there is probable cause to believe that the child is a child in need of care as defined by subsections (a)(1), (2) or (3) of K.S.A. 1982 Supp. 38-1502 and amendments thereto or* that neither parent is fit to have custody, the court may award *temporary* custody of the child to another person or agency if the court finds the award of custody to the other person or agency is in the best interests of the child. The court may make ~~any~~ *temporary* orders for care, support, education and visitation that it considers appropriate. *Temporary custody orders are to be entered in lieu of temporary orders provided for in K.S.A. 1982 Supp. 38-1542 and 38-1543, and amendments thereto, and shall remain in effect until there is a final determination under the Kansas code for care of children.* An award of *temporary* custody under this paragraph shall not be a severance of parental rights nor give the court the authority to consent to the adoption of the child. ~~A nonparent or agency custodian shall be deemed to have the same powers concerning the child as a parent. The court may refer a transcript of the proceedings to the county or district attorney for consideration with regard to the best interests of the child, with the costs to be paid from the county general fund. Any finding of unfitness under this paragraph shall not be binding with regard to any proceedings under article 8 of chapter 38 of the Kansas Statutes Annotated, and any order under that article shall supersede any order under this paragraph.~~ *When the court enters orders awarding temporary custody of the child to an agency or a person other than the parent, the court shall refer a transcript of the proceedings to the county or district attorney. The county or district attorney shall file a petition as provided in K.S.A. 1982 Supp. 38-1531 and amendments thereto and may request termination of parental rights pursuant to K.S.A. 1982 Supp. 38-1581 and amendments thereto. The costs of the proceedings shall be*

FAMILY LAW ADVISORY COMMITTEE COMMENT

Subsection (D) now provides for nonparental custody where the court finds that neither parent is fit to have custody, but such custody placement does not permanently deprive the parents of their parental rights nor give the court authority to consent to the adoption of the child. The present provision makes it permissive as to whether the court refers a transcript of the proceedings to the county or district attorney for further consideration and likewise makes it permissive as to whether or not the county or district attorney will file proceedings to determine whether the child is in need of care or to file proceedings to determine parental fitness. The present provision gives the court power to place children with a person other than the parent for an indefinite period of time, possibly years, without follow-up evaluation or effort to reintegrate the child into the parental home. This situation could leave children in an untenable position where they are placed outside the custody of their parents without being adoptable and with no required plan for reintegration back into the home. The Committee has concluded that the present provision allows a finding of unfitness by the court hearing the divorce case without appropriate and fundamental due process.

The Kansas Code for Care of Children provides the necessary and appropriate due process safeguards to determine the question of parental fitness. Some general provisions in the Kansas Code for Care of Children which insure fundamental fairness and due process of law are: (1) Provision for the county or district attorney to proceed under the parens patriae interests of the State. (2) Provision for the appointment of an attorney and guardian ad litem for the child and the appointment of an attorney for the parent or guardian if indigent. (3) Provision for appropriate notice to the parties, confidentiality of proceedings, rules of evidence for the adjudicatory hearing and provision for investigation and preparation of evaluations and social reports. (4) Provision setting forth specific factors for

the court to consider in determining whether the child is in need of care and factors for the court to consider in determining the question of parental fitness. (5) Provision for "clear and convincing" burden of proof on the part of the State.

When a child is found to be in "need of care" under the Kansas Code for Care of Children, appropriate protections for the child and the parents are provided such as: (1) Provision for evaluation and development of the needs of the child and an evaluation of parenting skills. (2) Provision for placing the child with the parent subject to terms and conditions, including supervision of the child and parent by the court services officer. (3) Provision where the court may require the child and parent to participate in appropriate programs and the court may require treatment and care necessary for the child's physical and emotional health.

When the child is placed with an agency or persons other than a parent, the Kansas Code for Care of Children provides: (1) A plan must be presented to the court for reintegration into the parental home within 60 days after the placement order. (2) Written reports of progress of the child and parents are required at least every six months. (3) Specific criteria are set out for consideration of permanent parental severance if parents fail to carry out a reasonable plan or otherwise fail to assume the reasonable duties and responsibilities of a parent.

The proposed revision makes mandatory the referral of the divorce transcript by the court to the county or district attorney and the institution of proceedings by the county or district attorney to appropriately ascertain whether the "child is in need of care". The decision of the county or district attorney to request parental severance is discretionary. The proposed revision empowers the court hearing the divorce matter to place the children in the temporary custody of an agency or person other than the parent if the court finds probable cause to believe that the child is a child in need of care or that the parents are unfit. This temporary order is in lieu of the provisions of the Kansas Code for Care of Children which requires a probable cause temporary custody hearing and the temporary placement order is in effect only until the final determination. The proposed revision provides for further orders of the district court hearing the divorce matter if the child is found "not to be in need of care" and the parents are "found not to be unfit".

paid from the general fund of the county. When a final determination is made that the child is not a child in need of care, the county or district attorney shall notify the court in writing and the court, after a hearing, shall enter appropriate custody orders pursuant to this section. If the same judge presides over both proceedings, the notice is not required. Any disposition pursuant to the Kansas code for care of children shall be binding and shall supersede any order under this section.

(b) *Financial matters.* (1) *Division of property.* The decree shall divide the real and personal property of the parties, whether owned by either spouse prior to marriage, acquired by either spouse in the spouse's own right after marriage or acquired by the spouses' joint efforts, by:

(A) A division of the property in kind;

(B) awarding the property or part of the property to one of the spouses and requiring the other to pay a just and proper sum; or

(C) ordering a sale of the property, under conditions prescribed by the court, and dividing the proceeds of the sale.

In making the division of property the court shall consider the age of the parties; the duration of the marriage; the property owned by the parties; their present and future earning capacities; the time, source and manner of acquisition of property; family ties and obligations; the allowance of maintenance or lack thereof; dissipation of assets; and such other factors as the court considers necessary to make a just and reasonable division of property.

(2) *Maintenance.* The decree may award to either party an allowance for future support denominated as maintenance, in an amount the court finds to be fair, just and equitable under all of the circumstances. The decree may make the future payments modifiable or terminable under circumstances prescribed in the decree. In any event, the court may not award maintenance for a period of time in excess of 121 months. *If the original court decree reserves the power of the court to hear subsequent motions for reinstatement of maintenance and such a motion is filed prior to the expiration of the stated period of time for maintenance payments,* the court~~, upon the expiration of the stated period of~~

FAMILY LAW ADVISORY COMMITTEE COMMENT

Under the proposed amendments, if maintenance is to be continued beyond the time period of the original award, the decree must reserve the power of the court to hear motions for reinstatement. The recipient must file the motion for reinstatement prior to the expiration of the time period of the previous award of maintenance.

~~time for maintenance payments to be made,~~ shall have jurisdiction to hear a motion by the recipient of the maintenance to reinstate the maintenance payments. Upon motion and hearing, the court may reinstate the payments in whole or in part for a period of time, conditioned upon any modifying or terminating circumstances prescribed by the court, but the reinstatement shall be limited to a period of time not exceeding 121 months. The recipient may file subsequent motions for reinstatement of maintenance ~~at~~ *prior to* the expiration of subsequent periods of time for maintenance payments to be made, but no single period of reinstatement ordered by the court may exceed 121 months. Maintenance may be in a lump sum, in periodic payments, on a percentage of earnings or on any other basis. At any time, on a hearing with reasonable notice to the party affected, the court may modify the amounts or other conditions for the payment of any portion of the maintenance originally awarded that has not already become due, but no modification shall be made without the consent of the party liable for the maintenance, if it has the effect of increasing or accelerating the liability for the unpaid maintenance beyond what was prescribed in the original decree. ~~Nothing in this paragraph shall limit the right of the recipient of the maintenance to request by motion that the court reinstate maintenance payments at the expiration of the duration of time set for the maintenance payments by the court.~~

(3) *Separation agreement.* If the parties have entered into a separation agreement which the court finds to be valid, just and equitable, the agreement shall be incorporated in the decree. The provisions of the agreement on all matters settled by it shall be confirmed in the decree except that any provisions for the custody, support or education of the minor children shall be subject to the control of the court in accordance with all other provisions of this article. Matters settled by an agreement incorporated in the decree, other than matters pertaining to the custody, support or education of the minor children, shall not be subject to subsequent modification by the court except: (A) As prescribed by the agreement or (B) as subsequently consented to by the parties.

(4) *Costs and fees.* Costs and ~~attorneys'~~ *attorney* fees may be

awarded to either party as justice and equity require. The court may order that the amount be paid directly to the attorney, who may enforce the order in the attorney's name in the same case.

(c) *Miscellaneous matters.* (1) *Restoration of name.* Upon the request of a spouse, the court shall order the restoration of that spouse's maiden or former name.

(2) ~~*Effective date.*~~ *Effective date as to remarriage.* ~~Every decree of divorce shall contain a provision to the effect that the parties are prohibited from contracting marriage with any other persons within or without the state until the expiration of the time for appeal from the judgment of divorce or, if an appeal is taken, until the judgment of divorce becomes final.~~ Any marriage contracted *by a party, within or outside this state, with any other person* before ~~the~~ *a* judgment *of divorce* becomes final shall be ~~null and void, but any~~ *voidable until the decree of divorce becomes final. An* agreement which waives the right of appeal ~~and which is approved in the decree~~ *from the granting of the divorce and which is incorporated into the decree or signed by the parties and filed in the case* shall be effective to shorten ~~that~~ *the* period of time *during which the remarriage is voidable.*

Sec. 2. K.S.A. 1982 Supp. 60-1613 is hereby amended to read as follows: 60-1613. The court may order the person obligated to pay support or maintenance to make an assignment of a part of the person's periodic earnings or trust income to the person entitled to receive the support or maintenance payments. The assignment is binding on the employer, trustee or other payor of the earnings or income two weeks after service upon the payor of notice that the assignment has been made. The payor shall withhold from the earnings or trust income payable to the person obligated to support the amount specified in the assignment and shall transmit the payments to the district court trustee or the person specified in the order. The payor may ~~deduct from each payment a~~ *withhold from the earnings or trust income payable to the person obliged to pay support an additional* sum not exceeding ~~$2.00~~ *$2* as reimbursement for ~~costs~~ *expenses for each payment.* An employer shall not discharge or otherwise discipline an employee as a result of an assignment authorized by this section.

FAMILY LAW ADVISORY COMMITTEE COMMENT

The amendment to this statute would change, from void to voidable, the status of marriages contracted before a divorce judgment becomes final. The change more accurately reflects the limited nature of this prohibited marriage. Under present law, the prohibited void marriage can be challenged at any time, by any person. Consequently, if one of the parties marries some other person before the time for appeal expires, the marriage can never be recognized as valid, even though no appeal is taken and the judgment becomes final. However, according to the amendment, the prohibited marriage would be voidable only during the time the judgment is not final and once a final judgment is entered, the prohibited marriage would become valid and unchallengeable.

FAMILY LAW ADVISORY COMMITTEE COMMENT

This amendment would specify that the reimbursement for the expenses of the payor is to be paid by the person obligated to pay support and is not to be taken from the support payment. Some court trustees were uncertain about the meaning of the present statute.

"Costs" has been changed to "expenses" to avoid any confusion with costs in the domestic action.

Sec. 3. K.S.A. 1982 Supp. 60-1618 is hereby amended to read as follows: 60-1618. ~~When applicable, statutory references to maintenance shall be construed to include alimony granted prior to the effective date of this act~~ *For purposes of interpretation, the terms "alimony" and "maintenance" are synonymous.*

Sec. 4. K.S.A. 1982 Supp. 60-1610, 60-1613, 60-1618 and 60-1619 are hereby repealed.

Sec. 5. This act shall take effect and be in force from and after its publication in the statute book.

FAMILY LAW ADVISORY COMMITTEE COMMENT

The apparent intent of this statute is to clarify statutory language concerning alimony and maintenance. It provides that statutory references to maintenance shall be construed to include alimony granted prior to the effective date of the act. A technical argument could be advanced that the statute permits the re-opening of old cases concerning the award of alimony. While this does not appear to be a valid contention, it might be helpful to have the provisions clarified by clean-up amendments.

60-1619. Separate maintenance. When a person has a cause of action for divorce or has been deserted and the desertion has continued for 90 consecutive days, the person, without petitioning for divorce, may maintain in the district court an action against the person's spouse for separate maintenance. In an action for separate maintenance, the court shall make provisions for the support and education of the minor children and may award maintenance to either party, in the same manner as in an action for divorce.

History: L. 1982, ch. 152, § 18; Jan. 1, 1983.

FAMILY LAW ADVISORY COMMITTE COMMENT

The purpose or meaning of this statute is unclear. Other provisions of the code cover an action for separate maintenance and it would appear that this provision is unnecessary. It was reported that this statute was enacted to have a definition of separate maintenance included in the law. Instead, the Legislature has provided an additional grounds for a cause of action for separate maintenance upon desertion for a period of 90 consecutive days. However, the statute provides that the court ". . . shall make provisions for the support and education of the minor children and may award maintenance to either party" without inclusion of the power to divide property in an action for separate maintenance. Therefore, this statute should be the subject of repealer by the Legislature.

KANSAS PSYCHOLOGICAL ASSOCIATION

ATTACHMENT # 2

March 2, 1983

Mr. Chairman, members of the committee, I would first like to thank you for the opportunity to appear before you today and to offer testimony in regard to House Bill 2131. My name is William L. Albott and I am a certified Psychologist. I am here today representing the Kansas Psychological Association, its Board of Governors and its president, Dr. Larry Boll.

In the past several weeks a number of our members have, after studying the statutes regarding divorce and custody, raised a number of concerns that relate to specifically the issue of waiver of confidentiality. As we read K.S.A. Supp. 1982 60-1610(2)(C) it seems to us that a number of quite adverse outcomes are possible. This subsection states--"Waiver of privilege. All physician-patient and psychologist-client privileges except with respect to communications arising in counseling pursuant to K.S.A. 1982 Supp. 60-1608 and amendments thereto, shall be waived when the custody of a child is in dispute." Section 60-1608 in turn states in subsection (c)"Marriage Counseling. After the filing of the answer or other responsive pleading by the respondent, the court, on its own motion or upon motion of either of the parties, may require both parties to the action to seek marriage counseling if marriage counseling services are available within the judicial district of venue of the action. Neither party shall be required to submit to marriage counseling provided by any religious organization of any particular domination."

In essence the two statutes effectively create the situation where anyone who has ever received treatment (medical, psychiatric or psychological) prior to divorce shall waive their rights to confidentiality over this prior treatment, if while in the course of divorce there is dispute over the custody of a child. Further, as written, if the court orders this treatment during the course of the dispute over custody then there is no such waiver of confidentiality. It seems to us that the exact reverse of this is much more in keeping with the need to protect patients and clients rights.

Confidentiality between physician and patient and between psychologist and patient/client is not something which our professions take lightly, nor is it something which the consumer takes lightly. Psychotherapy is an activity that requires that the patient/client reveal his or her inner most private thoughts, feelings, wishes, fears, conflicts, etc. To reveal these very private aspects requires a very special sense of trust in the therapy process and in the integrity of the therapist. To reveal oneself in this way requires that we believe that this information will only be used to help us, never to expose us to potential risk or embarassment. Without this foundation of trust, the process of therapy becomes essentially just like any other social/interpersonal event and thus the patient/client will continue to exercise the same strong censorship over what is revealed that occurs normally in the course of talking and meeting

with others. It is our belief that any breach of the confidentiality implict and explicit in the relationship between therapist and the patient/client results in an increase risk to the patient/client that his or her problems will not receive the appropriate and necessary therapeutic attention.

As section 60-1610(2)(C) is now written it would seem necessary to develop a Miranda type statement to be read to all patients/clients informing them that should they ever become involved in a divorce wherein there could be a child custody dispute, then they should be aware that records of their treatment will possibly be used in the custody proceedings and that such a condition will automatically invalidate their rights to confidentiality with a physician or psychologist. It is our concern that such a statement would significantly impair the ability of the patient/client to trust this relationship and this would, we believe, diminish the effectiveness of treatment. In testimony before the House Committee on Public Health and Welfare, we presented testimony regarding section 60-1615(B) and our point today is in essence the same. We believe that because individuals are getting a divorce and are having a dispute about custody of a child or children does not de facto justify the abridging of what had been a confidential relationship.

We do believe that in such circumstances the court may well need information regarding the psychiatric and psychological factors playing roles in the parenting and the dispute over custody. We believe that in such cases the court could order a diagnostic evaluation and have the report of this evaluation sent to the court. Such a course would then deal with the immediate factors and would not expose all prior psychiatric/psychological treatment records. Such a course would preserve and protect the prior confidential relationships and would still facilitate the acquiring of relevant and pertinent psychiatric or psychological information.

We would then like to suggest that the following changes in 60-1610(2)(C) be made in the interest of protecting the rights of former and current patients and clients of physicians/psychiatrists and psychologists:

" (C) Waiver of privileges. All physician-patient and psychologist-client privileges shall hold for any and all treatment and evaluation except with respect to communications arising in counseling pursuant to K.S.A. 1982 Supp. 60-1608 and amendments thereto, or pursuant to K.S.A. 1982 Supp. 60-1617(a) and amendments thereto; or pursuant to K.S.A. Supp. 1982 60-1610(B) and amendments thereto."

We would also like to request that the committee consider the following additional needed change in these statutes so as to provide appropriate protection of a child's treatment records as noted in 60-1615. Specifically we would recommend the wording to

be:

"In preparing the report concerning a child, the investigator may consult with any person who may have information about the child and the potential custodial arrangement so long as the person does not or has not had a confidential relationship with the child. Upon order of the court, the investigator may refer the child to professional personnel for diagnosis. The investigator may consult with such court designated/appointed personnel and obtain information germane to the issue of custody from such medical, psychological, psychiatric or other expert person, without obtaining the consent of the parent or the child's custodian."

Again, thank you for the opportunity to appear before you. If I may respond to any questions I will be most willing to do so.

ATTACHMENT # 3

Mr. Chairman, members of the Committee, thank you for the opportunity to give testimony regarding House Bill 2131. I am Dr. Richard Maxfield. Although I am President-elect of the Kansas Psychological Association and a staff member of the Adult Outpatient Department of The Menninger Foundation, the views I express today are my own and are not necessarily representative of the two previously mentioned organizations, neither of which have taken official positions regarding the proposed amendments to Section 1610(3) of the Divorce and Maintenance Statute. I would like to note that in my official capacity as well as by virtue of being a divorced father, and psychotherapy patient, I most emphatically support the testimony of Drs. William Albott and Walter Menninger regarding the seriousness of the breach of confidentiality of psychiatric and psychological records contained in Sections 1610(C) and 1615(b). In the interest of time, I will not comment further on those sections in my testimony.

My fundamental objection to all of the proposed amendments to 1610(3) is that, though they appear at first blush to be important psychological variables, they are largely irrelevant for consideration by the Court in determining what custody arrangement is in the best interest of the child. For the sake of brevity I will restrict my comments to proposed amendment (B) (xii), similar points can be made regarding each of the proposed amendments, please see the attached for a brief note on each of those amendments. Proposed amendment (xii) reads as follows, "whether the child's emotional and psychological needs and development will be enhanced because of active contact with both parents". The phrasing of that section might well lead one to believe that there are numerous instances wherein not having active contact with both parents would be best for the child. The psychological-psychiatric literature is clear that the "child's emotional and psychological needs" will nearly always "be enhanced because of active contact

with both parents".

Wallerstein and Kelly in a 1980 book entitled "Surviving the Breakup: How Children and Parents Cope with Divorce," which was based on a landmark study of 60 divorcing families over a five year period, make the following statement in summing up their findings, "Taken as a whole our findings point to the desirability of the child's continuing relationship with both parents during the post-divorce years in an arrangement which enables each parent to be responsible for and genuinely concerned with the well-being of the children." Further on the authors note, "Put simply, the central hazard which divorce poses to the psychological health and development of children and adolescents is in the diminished or disrupted parenting which so often follows...(the divorce)." Elsewhere the authors note that the only exception to the above is if a parent is severely psychologically disturbed and physically, sexually or emotionally abusive toward the child.

The Group for the Advancement of Psychiatry in a 1981 monograph entitled "Divorce, Child Custody, and the Family" make the following statement "Even where 'objective' evidence of one parent's inappropriate behavior toward the child can be presented, it may be better for the child's development to allow an ongoing relationship in order to work through the ambivalence toward such a parent, unless there is a risk to the child's safety". Further on they state, "The child's need for 'having' parents is absolute; it does not depend on the parents' psychological or socio-economic circumstances. Even 'bad' relationships are often preferable to the prospect of unrelatedness".

In my reading of the literature on the effects of divorce on children there is clear and convincing evidence that the best interests of the child are served when the child continues to have a relationship with both parents. Hopefully, that relationship will be active and ongoing, with each parent being responsible for as much of the day to day care and responsibility for

the child as is possible. Such a relationship with both parents is likely to mitigate against some of the negative effects that divorce has on children. The only exceptions to the above are for parents who are physically, sexually or emotionally abusive toward their children or who are severely psychiatrically disturbed and allow their disturbance directly to come into play in their relationship with their children.

I have chosen only one of the many proposed amendments for brief discussion. Similar points of view could be expressed about the other proposed amendments. I would also like to respectfully remind the Committee that the Statute as now written [1610(3)] states, "Child custody criteria. The Court shall determine the custody in accordance with the best interests of the child. The Court shall consider all relevant factors, including but not limited to:" There then follows a listing of relevant criteria. Leaving the Statute as it is now written [except for Sections 1610(C) and 1615(b)] will allow flexibility on the part of Judges and will further allow for the expansion of psychological data on the effects of divorce which can enable the Courts to make the wisest possible decision for the child. Further, leaving the Statute as it is now written will not add erroneous information for the Courts to consider, thus decreasing the likelihood that the Court will be misinformed by misleading arguments.

Thank you for your patience in hearing my testimony. I would be happy to attempt to answer any questions the Committee might have.

Comments on Proposed Amendments Contained in 1610(3) of HB 2131

(A.) Often the issue of custody is used as a negotiating point in a divorce settlement; therefore, a parent may submit to a custody agreement as a compromise rather than because they believe it is best for the child--see for instance GAP[1] page 86.

(i) Fathers typically are the breadwinners, sacrificing more contact with their children in favor of family financial security. Following the divorce there is also a significant shift in the amount of time a parent spends with his/her child, typically fathers visit more frequently after the divorce is final. Wallerstein and Kelly state,[2] page 315, "by 18 months after the separation there is no correlation between the regularity or frequency of the visits by the parents and the pre-divorce relationship" (between parent and child).

(ii) Similar objection to (i). In addition, the stress of the period of separation may temporarily significantly affect the parents ability to "care" in an active way. After the initial period he/she may be more capable of devoting additional time. See for instance Wallerstein and Kelly,[2] page 48. From their study the typical amount of time it took a parent to "recover" from the divorce was 18 months.

(vii) This is a matter of convenience for the parents, even when there are substantial distances between the parents' homes these obstacles can be overcome for the benefit of the child with effort on the part of the parents. See for instance Luepnitz,[3] page 53.

(vii) Similar to (vii) above. Even when there is not equal visitation, joint custody fathers are more likely to continue to pay child support (56% of single custody mothers had to return to Court for payment versus 0% for joint custody mothers in the Luepnitz[3] study, page 69).

(xi) The mental health of the parent was addressed in testimony, presumably physical health problems should affect custody only if they are so severe as to eliminate care giving on a physical basis: e.g. paralysis if the child is so young as to need considerable physical handling and the parent is unable to make accommodations, e.g. a babysitter or "parent helper".

(x) This is a critical variable, but one that cannot be accurately assessed until after the divorce, perhaps several years after. See for instance the GAP, page 104 and Wallerstein and Kelly,[2] page 15. Note also that the rate of relitigation over a two year period was no higher for joint custody parents than single custody parents even when the joint custody was opposed by one or both the parents at the time of the divorce, Ilfeld, Ilfeld and Alexander, 1982.[4]

(xi) This is also a critical variable. However, in the heat of a custody battle it may be impossible to assess, similar to (x) above. Further, it is a skill which needs to be developed over time as the parent begins to adjust to the fact of the divorce which typically causes a disruption in all normal life routines and expectations.

(xii) Discussed in testimony.

1. Group for the Advancement of Psychiatry; Divorce, Child Custody, and the Family. GAP Report #106, San Francisco:Jossey-Bass, 1981.

2. Wallerstein, J. S. and Kelly, J. B. Surviving the Breakup: How Children and Parents Cope with Divorce. New York:Basic Books, 1980.

3. Luepnitz, D. A. Child Custody: A Study of Families After Divorce. Lexington: D.C. Heath and Co., 1982.

4. Ilfeld, F. W., Ilfeld, H. Z. and Alexander, J. R. Does Joint Custody Work? A First Look at Outcome Data of Relitigation. American Journal of Psychiatry, 1982, 139(1), 62-66.

ATTACHMENT # 4

Mr. Chairman, Members of the Committee, thank you for the opportunity to give testimony regarding those sections of House Bill 2131 that pertain to the "Waiver of Privileges" /Section 1610 (C) and 1615 (B)/. My name is Dr. Martin Leichtman. I am the Director of Psychology in the Children's Division of The Menninger Foundation and a member of the faculty of the Menninger School of Psychiatry. The views I will express are based on 15 years experience in the assessment and treatment of emotionally troubled children and their families as well as supervision of the work of psychologists, psychiatrists and social workers working with children and their families. Although the views I will express are almost universally shared by my colleagues in the Children's Division of The Menninger Foundation, they are my own and should not be taken as necessarily representative of those of The Menninger Foundation.

The substance of the sections of the law in question concern whether mental health records will be open in court cases in which child custody is an issue. The statute strips any shred of confidentiality or privacy from treatment processes under these circumstances. One can readily appreciate the motives that led to the enactment of this law--it is clearly an effort to protect the rights of children in custody cases in which parents may be suffering from emotional problems or in which the child's own mental health is an issue. However, in practice, 1) this law is unlikely to accomplish these ends in the long-run; 2) insofar as its provisions are widely known, it is likely to do serious harm to the very parents and children it is intended to protect; and 3) there are other, far better ways of accomplishing the goals underlying that law that do not have such harmful consequences.

Detrimental Consequences of the Waiver of Confidentiality

In order to understand the detrimental consequences of the waiver of confidentiality for children and their families, it is necessary to briefly consider the reasons people may seek treatment and the nature of the treatment process. Let me focus chiefly on problems between parents and children, since this is the material in which the law may be most interested. Few human experiences are more intense, more demanding, and at times more draining than raising children and all parents have mixed feelings toward their children. No human relationships call forth more love and sacrifice, but few relationships also call forth as much exhaustion, frustration, and anger as trying to deal with one's children. Even the most normal parents will hence have a mixture of attractive and unattractive, positive and negative feelings toward their children and themselves as parents. In cases where parents have emotional problems this mixture of feelings will be more extreme, though by no means necessarily abnormal. In cases where there is marital strife, particularly the kind that precedes a divorce, and especially the kind that precedes a divorce in which there will be a bitter custody dispute, it is likely that all problems parents experience within themselves and with their children will be exacerbated. To take myself as an example, the times I am in the midst of an argument with my wife are the very times I am most likely to experience conflicts with my children and the times at which they are most likely to act up. When

family strife is protracted and intense, as in the case of a divorce with a custody dispute, such problems are likely to be multiplied many times over. The process of psychotherapy with children and with parents requires openly acknowledging the problems being experienced; it involves recognizing and seeking to come to terms with ambivalent attitudes and negative and hostile feelings. Indeed, it is only as individuals recognize such conflicts and deal with them openly and honestly that they are likely to come to terms with them. If such problems are hidden or ignored, treatment is likely to accomplish little with regard to them.

If one puts these facts together, one can readily appreciate how detrimental a law waiving confidentiality can be for any kind of psychotherapy process insofar as parents are aware of that law. Ask yourself, what action you would take as an individual if you were a parent in the midst of a marital conflict that could lead to a divorce who felt that you or your child was troubled and could benefit from treatment and knew that anything you said in that process could be used as part of a court hearing that might determine whether you keep your child. Among the likely, and perfectly reasonable consequences of such a situation are:

1) If you truly loved your child, you might decide not to seek treatment out of fear that it would jeopardize keeping your child.

2) If you did seek treatment, you would have good reason to be very careful about what you said, to be neither candid nor honest about any problems with the child or anything else that might be interpreted to reflect mixed feelings, negative attitudes, or any other problem of which you were ashamed or which you wished to change. Rather, you would have a strong incentive to disguise, to hide, and even to lie about any feelings or actions that might be recorded and used against you in a court hearing.

3) If you wished your child to get treatment, there would be a strong incentive for giving direct or indirect messages to the child to say only good things about you, to not reveal problems, conflicts, bad feelings, or other difficulties that might reflect negatively on you as a parent. Moreover, instead of taking actions as a parent that, however necessary, might temporarily upset a child (e.g., providing discipline for an unruly or unmanageable youngster), you would have an incentive to take actions that might keep the child happy and saying good things about you rather than risk the youngster's temporary anger or dissatisfaction.

In short, insofar as parents are aware of sections of the law relating to confidentiality, the law will interfere with their seeking help for necessary problems and may well distort the treatment process if they or their children seek help. That is to say, it is a law that may well result in children living in troubled family situations for which parents fear to seek help and undertake change.

There are two additional negative consequences of this law. The first is the effect it will have on psychiatrists, psychologists, and other mental health professionals providing treatment. Insofar as no records are confidential, treaters will have to bear in mind that their records can easily be turned over to adversaries of their patients who wish to deprive them of custody of their children. Under such circumstances, treaters will often feel a responsibility to include nothing in treatment records of a sensitive nature, to write treatment records in which the most significant treatment issues are disguised or omitted. In effect, by removing the privacy and confidentiality that is essential to treatment, this law strongly encourages responsible professionals to produce treatment records that are a travesty.

The last negative consequence of the current sections of the law regarding confidentiality relates to the opportunities it opens for serious abuse of privacy and to harm to the individuals involved. Thus far, we have proceeded on the assumption that the law will be applied in the most sensitive and intelligent manner possible. At the same time, we must recognize that this is not always the case. I know of few legal issues likely to generate as much bitterness, hostility, and distress to the parties involved as disputes over one's adequacy as a parent or the custody of one's child. For sensitive, personal material--indeed, one's most private thoughts and feelings--to be introduced not merely into a public arena, but into an adversarial battle in which one's most valued relationship is at stake, is to expose parents to a potentially destructive human experience.

Better Procedures for Protecting Children's Rights

Even given these drawbacks, there would be reason to support the present law if in fact it was the best way of accomplishing the ends it is intended to serve or even a good way; that is to say, that it would help protect the rights of children in custody disputes. However, this is not the case for a number of reasons.

First, for reasons noted above, as it becomes more widely known, the law will undermine the treatment of children and parents who most need help and distort the treatment records it is intended to garner. Moreover, even if it succeeds temporarily in obtaining reasonably good records, these records are likely to be introduced into an adversarial situation in which their meaning will be misunderstood and the information potentially misused. This misuse is likely to arise as much because of the failings of mental health professionals as the actions of lawyers, although this need not change the consequences. Let me give you an example. For better or for worse, mental health professionals often talk in a language and use terms in a way that may be understood by other mental health professionals, but can be easily misinterpreted by others. In our own setting, for example, to indicate that an individual is "neurotic," far from suggesting that they are seriously disturbed, is meant to connote many strengths. As it is used, the term implies that, while the individual exhibits anxiety in particular symptoms, they have good reality testing, a well developed conscience, and an ability to adapt to the world around

them despite costs to themselves. Indeed, it is meant to indicate that the individual is able to live their life in a way that the emotional costs and suffering they have experienced in growing up is contained within him or her rather than chiefly inflicted on others. For reasons that probably do them more credit than psychologists or psychiatrists, lawyers are unlikely to interpret the word "neurotic" in these ways.

Second, and far more important, if there is a serious question about the fitness or competency of a parent to have custody of a child or if there are concerns that the parent's actions are detrimental to the child, there are far better means of addressing these questions than obtaining records of past treatment. In particular, one can require psychiatric and psychological evaluations of the parent, the parents, the child, and/or their interaction. Such evaluations are likely to be far superior to the use of past records for a number of reasons:

1) They involve no betrayal of confidence nor will they interfere with the treatment of parents and children who need help.

2) Such evaluations will be current. They will take place at precisely the time the court is concerned with making decisions rather than at some point in the past when the problems and life circumstances facing parents and children may have been quite different.

3) These evaluations can be focused. They can address directly the specific concerns of the court. Information can be obtained that bears directly on the issues of parental competence and child welfare rather than trying to glean such information from past records that have been written for other purposes and may omit relevant information.

4) Such evaluations will be more accurate. By knowing exactly what the current issues are and what questions they are being asked to answer, professionals can gather information bearing on the court's questions better, they can examine and organize data so that its bearing on those questions is clear, and, knowing their audience, they can write and speak simply and directly thereby minimizing any possibilities of misinterpretations.

Finally, and this is speaking simply as a clinician, the kind of evaluations that I have suggested is most useful in helping the court deal with issues that really trouble it in custody disputes. In my experience, custody issues are rarely a black and white ones in which the question is simply "Is the parent fit?" or "What is good for the child?" Usually, the court and all others involved with the family are in a gray area. One parent may have many problems yet still love their child; the other parent who may have as many problems; and the alternative of placing the child in

foster homes or some other setting poses yet another set of problems. Typically, what the court most needs help with is how to make practical decisions that are in the best interests of the child at a given time, and typically these decisions do not involve simply the question of is the parent fit, but rather how both parents can be more fit, how they can get help with the problems they experience with their children and how the bitter battles between the parents and the current custody dispute can be kept from being traumatic experiences for the child at that very time. In short, such evaluations can make a host of practical recommendations to the court, often opening a middle ground for resolving conflicts or addressing anxieties judges are likely to feel as they make decisions. For example, where there are doubts about the fitness of a parent yet the best decision is still for the child to remain with them, on the basis of these evaluations the court can also recommend that custody be granted on condition that treatment is sought and parent-child problems monitored in the course of the coming months.

To be sure, this approach is not without problems and uncertainties. Yet if we are truly concerned about protecting the rights of children in custody disputes, such an approach offers the hope of addressing these concerns effectively in contrast to the current provision for the waiver of confidentiality in treatment which will be ineffective and detrimental to the interests of parents and children.

ATTACHMENT # 5

Testimony for Committee on Judiciary - Kansas House of Representatives

By: W. Walter Menninger, M.D.
On Behalf of the Kansas Psychiatric Association

Re: House Bill No. 2131 - An act concerning domestic relations and child custody decisions stemming from divorce
Amendments to 60-1610, 60-1613, and 60-1618

Thank you for the opportunity to speak to you today. My remarks will be brief.

I appreciate that this Committee worked long and hard last year in preparing the present law, and understand the major thrust of these proposed changes is to spell out more specifically criteria to be considered by the court in determining custody of a child in a divorce action.

As you may be aware, there continues to be some difference of opinion about what action is truly in the best interests of the child in divorce; all too often it is a no win situation for such children. Often, the acrimony between the divorced parents effectively frustrates the best intentions of the law and the court to meet the needs of the child.

With regard to criteria for the decision, it has been determined from various studies that the key criteria are negative, not positive, i.e., it is harmful to place the child with a parent who abuses the child - physically, emotionally or sexually - or who is seriously disturbed emotionally.

It is perhaps that last point that is responsible for a section of the existing law which HB 2131 as now worded does not change, but which we suggest should be changed - K.S.A. 1982 Supp. 60-1610, Sect. 2(C).

That section, as it presently is worded, strips parties in a child custody determination of confidentiality in any voluntarily sought therapeutic relationship with a physician, psychiatrist, or psychologist, except where marriage counseling has been ordered by the court pursuant to K.S.A. 60-1608.

On its face, logic would dictate just the reverse - that confidentiality or privilege is sustained, not waived, for all physician-patient and psychologist-client relationships except those which are court ordered. Further, that for which privilege is waived should be limited to material which is relevant to the issue of the divorce and child custody. As it stands, the law compromises parties who at any time in their life have sought professional counseling or psychotherapy who later may become involved in a divorce action and child custody determination which may have no connection with the matters or problems prompting the earlier treatment.

The law with this sweeping denial of privilege goes far beyond what is necessary to assure the court access to information which is relevant to any child custody determination. Indeed, if there is any question about the presence of a serious emotional illness in one or both parents, the court may order an examination pursuant to K.S.A. 6010, Sect. 2(B), and K.S.A. 60-235.

Why, you may ask, did we mental health professionals not call this matter to your attention when the extensive hearings were held in the last legislative session. It was an oversight. We were so concerned with other aspects of the legislation, we failed to recognize the far-reaching implications of this particular section.

Therefore, as you are taking this opportunity to reconsider sections of that act, we hope you will also reconsider and modify this Section 2(C) so as to protect rather than waive the physician-patient and psychologist-client relationship privilege.

Thank you.

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JAYHAWK PLASTICS INC.

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Olathe, Kansas
66061

Suburban Kansas City

Phone 913-764-8181

ATTACHMENT # 6

March 2, 1983

TESTIMONY IN OPPOSITION TO HB 2131--Child Custody

Jack D. Paradise, Lifetime Kansas resident, Joint custodial parent since 1977, President, Jayhawk Plastics, Inc., President, Divorced Dads, Inc. (Kansas & Missouri) Extensive work both directly and indirectly with several state legislatures on the subject of child custody after divorce.

My primary opposition to HB 2131 lies with the fact that the current child custody law was only passed in 1982 and just went into effect January 1, 1983. I believe it is premature to attempt to change the existing law before it has had an opportunity to show its merits. The existing law, which was the subject of considerable testimony by both proponents and opponents in 1982, places a preference for joint custody above sole custody in divorce cases.

The addition to and modification of existing criteria and factors in determining custody will, in my opinion, dilute the effectiveness of the existing statute and create more litigation than already exists in domestic actions:

1. The addition of two factors that relate to the amount of parental involvement with a child, make it difficult if not impossible for a parent who now has visitation rights, to modify their case to joint custody.
2. The proximity of parental residences is already taken into account by judges in determining custody. Making it one of the statutory factors in determining custody, however, also opens up the possibility that a hostile parent seeking custody, will move right next door to the other parent in order to satisfy the statute. For a parent who now wants to take advantage of the joint custody availability, it creates the presumption that they must go to considerable expense in changing their residence, before they ever go to court.
3. The ability of parents to communicate and be supportive of one another is least evident when they are involved in the "emotional heat of battle" that occurs in adversary custody proceedings. Is this factor designed to be a new good reason for courts to deny joint custody?
4. On the face, the proposed factor dealing with a child's emotional and psychological well being appear to be well intentioned. However, this adds the extra expense of one or more professional witnesses, to an already too expensive situation where custody is contested. It also might be abused as another reason why joint custody won't work.

In short, none of these additional factors, would enhance or aid the courts in determining the best interest of the child. Present law and the wisdom of our judiciary should be left alone to do their job, before we make wide sweeping changes in the existing statute.

LOUISIANA HOUSE OF REPRESENTATIVES

MANUEL A. FERNANDEZ
District 104

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CHALMETTE, LA 70044

COMMITTEES
Civil Law & Procedure
Natural Resources
Retirement

Prison System Study Commission
Legislative Oversight Committee

January 5, 1983

Chairperson, Senate Judiciary Committee
Capitol Building
Jefferson City, MO 65101

Dear Senator Schneider:

I have recently had the opportunity to be an author of Louisiana's joint custody law (Act #371, 1982). Louisiana's joint custody law establishes a rebuttal presumption that joint custody is in the best interest of the child and it is to preferred above sole custody.

Prior to this enactment, which takes affect on January 1, 1983, our law provided for joint custody only with consent of both parents. The experience in Louisiana indicates the elective joint custody did not in fact present a viable option to sole custody. The election of joint custody was often tempered or distorted by the proposition that a spouse would be the "winner" in a "winner take all" situation. Parents actions were often motivated by self interest rather than the welfare of the child.

In this context, the Legislature of Louisiana determined that the public policy of this state should reflect the view that joint custody is preferred and preferential. The disolution of the marital bond between the spouses should not have the affect of determining parental rights.

I sincerely believe that this decision was well founded and will open the door for parents to join together and share in the raising of their child.

Please support Senate Bill 94 sponsored by Senators Wiggins and McCarthy as it would serve to promote the true spirit of joint custody which has proven to be in the best interest of all concerned parties.

Sincerely yours,

Rep. Manuel A. Fernandez

MAF:lr

marriage and divorce today

The Professional Newsletter for Family Therapy Practitioners

Volume 7, Number 31 An Atcom Editorial Staff Publication March 8, 1982

JOINT CUSTODY IMPACT: HAPPIER, BETTER-ADJUSTED CHILDREN

Children of divorce appear to be happier and better-adjusted when parents share custody than when one parent has exclusive custody, according to a major study reported in the American Journal of Psychiatry (January 1982), a publication of the American Psychiatric Association. The authors—Frederic W. Ilfeld, Jr., M.D., Holly Zingale Ilfeld, M.A. and John R. Alexander, J.D., of Sacramento and Los Angeles argue that joint custody should be the preference in divorce settlements. Until now those who have supported joint custody have generally been able to base their support only on personal insights and/or small numbers of clients seen in therapy. However, empirical data on the effects of joint custody are critical at this juncture as more states consider the joint custody option following the California model. (Section 4600 of the California Civil Code since 1980 has recognized that joint custody is in the best interests of a minor.) The new law defines joint custody as "an order awarding custody of the minor child or children to both parents, and providing that physical custody shall be shared by the parents in such a way as to assure the child or children of frequent and continuing contact with both parents."

The group reviewed 414 consecutive custody cases in a Santa Monica (CA) court over a two-year period, noting which parents went back to court to resolve custody problems. They found that parents who were initially granted exclusive custody were back in court twice as frequently as were parents granted joint custody. "We assume that relitigation of custody means that parents are in conflict with one another and that parental conflict strong enough to bring them back to court has adverse effects on the children," says Ilfeld. "In short, post-divorce parental conflict implies trouble for the children."

Of the data collected from the 414 cases, 276 were exclusive and 138 were joint custody decisions. Although the new law favoring joint custody was in force for the last nine months of the study, it did not appear to cause an increase in the number of pre-1980 exclusive custody cases seeking a change to joint custody.

BOYS IN JOINT CUSTODY STUDY DEMONSTRATE BETTER EMOTIONAL ADJUSTMENT

Joint custody as the preferred option is supported by data in an unpublished doctoral dissertation by Everett Pojman of the California Graduate Institute of Los Angeles. The study demonstrate superior emotional adjustment of boys in joint custody over boys in exclusive custody. He compared four groups of 20 boys each, ranging in age from five through 13, living in joint and exclusive custody arrangements and in intact families with happy and with unhappy marriages. Boys of joint custody were significantly better emotionally adjusted than boys of exclusive custody and of the unhappily married group on the security scale of the Louisville Behavior Checklist (parent's rating) and the Inferred Self-Concept Scale (teacher's rating.) Joint custody boys had higher personal adjustment scores on the Test of Personality but the difference between the two groups fell just short of statistical significance.

Contact: Everett Pojman, California Graduate Institute, 1100 Glendon Ave., Los Angeles, CA, 90024.

What happened to the custody group at presumably highest risk for later conflict—a subsample of 18 in which joint custody was awarded without the consent of both parents? The authors found that only 6 (33%) of the 18 cases have been on the court calendar for later adversary proceedings. This percentage of relitigation is virtually the same as that for the total exclusive custody sample (32%), thereby suggesting that uncontested joint custody is not more disruptive in terms of parental conflict than exclusive custody. Furthermore, of the six relitigations, two were settled out of court by agreement of the parties involved.

Iris Jean Hicks
Attorney at Law

January 21, 1983

Chairperson, Senate Judiciary Committee
Capitol Building
Jefferson City, Mo.
65101

RE:SB 94 (JOINT CUSTODY)

Dear Senator Schneider;

The purpose of this letter is to strongly urge your support for Senate Bill 94, (Joint Custody). During the last four years, I have lived as a joint custody mother and I have worked as an attorney with divorcing families. My personal and professional experiences have demonstrated to me the necessity for the law which has been proposed.

Parents and professionals need guidelines and policies approved by the State that encourage and support the basic concept that both parents should have a continuing role in their children's lives after divorce. Divorce is not the end of a family but rather the restructuring of that family. Parents and professionals will be less tempted to make the children pawns in divorce if it is clear that the families mutual intersts are being respected by a joint custody decree. Each families individual schedules and needs can be better structured through a joint custody order. The Judge's discretion to individualize his decrees can best occur through your proposed joint custody statute because there is a presumption of co-parenting from the beginning.

As a mother who has shared joint custody for four years, I can tell you the complications of joint custody in terms of logistics are minor compared with the distress and uncertainiity to my children of the thought of losing contact with one of their parents. Our whole divorced family strongly endorses joint custody based on our own experience. Your proposed law would benefit many families whom would respect the policies detailed in the law if it was offered to them.

Sincerely,

Iris Hicks

Iris Hicks

3510 Park Boulevard · San Diego, California · 92103 · (619) 295-4600

COMMISSION ON HUMAN RIGHTS

ARCHDIOCESE OF ST. LOUIS

4532 LINDELL BLVD. • ST. LOUIS, MO. • 367-6950

Testimony on behalf of SB94/HB546 submitted by Ms. Mary Wright, staff to the Archdiocesan Commission on Human Rights

At its January 31, 1983 meeting, the Commission on Human Rights, Archdiocese of St. Louis - a group of 30 people appointed by Archbishop John L. May to address questions of justice - unanimously endorsed SB94/HB546, presumptive joint custody. This endorsement came after careful study and discussion of the three proposed joint custody bills before the 1983 Missouri legislature.

The fact that there are three joint custody proposals shows that there is a need for change and that there is a recognized need for joint custody. The Commission vote centered on the fact that SB94/HB546 is the only proposed legislation which in recognizing these needs encourages and facilitates - yet does not mandate - the awarding of joint custody.

It is time for Missouri to recognize and to deal effectively with the post divorce family. Far too many children are being denied a relationship with both parents, and too many parents are denied the parenting role, due to the unwritten presumption for sole custody which is so ingrained in our social and legal system.

With a rebuttable presumptive joint custody bill, Missouri will acknowledge the research which documents the damaging effects of sole custody on the psychological and emotional development of children and make joint custody a viable option for families. And of equal importance we will protect those children for whom sole custody will remain the better option.

The divorced family is still a family, and as such, it is a family the Church wants to continue to minister to. Joint custody recognizes that both parents should be involved in the major decisions of a child's life and gives both a parental role. Without joint custody, one parent acts as a parent, the other is nothing more than a visitor.

SB94/HB546 addresses the post divorce family structure. It encourages parental responsibility and cooperation and provides necessary guidelines for the awarding of custody. Therefore, the Catholic Commission on Human Rights requests your support and asks you to vote in favor of SB94/HB546.

Ann D'Andrea, Ph.D.
REGISTERED PSYCHOLOGICAL ASSISTANT
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Testimony to be presented to the Assembly Judiciary Committee at the interim hearings of October 14, 1981 in San Diego, California.

Having recently completed a study of joint-custody and visitation fathers, I wish to present to the Committee for its consideration several results which not only support but also expand upon past research, and which bear directly upon the issues to be addressed at these hearings.

It has been claimed that the joint-custody status is of benefit to the father, not to the child; that joint custody is a father's issue, not a child's issue.

Among the most important findings of my study of forty-six divorced fathers, twenty-four of whom were joint-custody fathers, was that the joint-custody status offers fathers the impetus to be more involved in their children's lives and to remain active participants in their children's upbringing. While visitation fathers reported fewer visits at present than immediately after separation/divorce, joint-custody fathers, as a group, reported the same or more visits. Further, joint-custody

fathers perceived themselves as having greater knowledge of and more influence on their children than did visitation fathers.

Most important, however, was the finding that the perception of some degree of shared physical custody was positively related to the degree of involvement with the child. That is, the perception that the child lived in his home as well as that of his ex-wife contributed to a father's increased involvement with his child and to his continued presence in his child's life.

In view of the fact that we have learned from past research that a visitation father removes himself from his child's life and sees his child with less and less frequency after divorce (Heatherington, Cox & Cox, 1978), and that children of divorce are left with feelings of abandonment and experience serious depression at the loss of their fathers even years after the divorce (Wallerstein & Kelly, 1980), it would seem essential to give serious consideration to any alternative custody arrangement which would facilitate on-going paternal involvement. Creating a climate which would allow a father to continue to contribute to his child's development and to remain present in his child's life after divorce would not merely benefit the father, but the child as well.

January 24, 1983

In re: Joint Custody legislation.

Dear Missouri Legislators:

Child custody allocation is a process with such severe, long-lasting effects on children and society that it can no longer be left to the individual discretion of overloaded lower-court judges. One out of two marriages will end in divorce in the 1980's and over half of America's children will suffer the trauma of divorce or parent separation during their childhood. Most of these children will live solely with one biological parent--usually the mother--if present policy is allowed to continue.

National concern is currently focused on the economic plight of single-parent, female-headed households. Over half of the families below the poverty level are in this category. This is being perceived as a women's problem, but a recent study by the Department of Human Services in Maine reveals frightening statistics about the impact on single-parent children.

According to the Maine study, of all children aged 8 days to 17 years who died between 1976 and 1980, there were seven times more deaths among children who were recipients of some form of welfare. (Two-parent or male-headed families almost never qualified for public assistance benefits during those years so it must be assumed that most of these children were in single-parent, female-headed households or in foster care.)

Child psychologists, family counselors and juvenile authorities have long advocated greater father contact for children's emotional well-being. This new evidence of physical jeopardy associated with the poverty associated with father-separation demands immediate action to preserve the children's family relationship with both parents. For the truth is, THERE ARE NO SINGLE-PARENT CHILDREN. There are children who are deprived of a father's care and protection by death, abandonment and court order. The sorrow and suffering caused by abandonment or death cannot be remedied, but the agony of forced separation by government-sanctioned legal process must be stopped.

Judges contend that they have not been given a clear direction by the legislators to preserve the family relationship of children and parents in divorce actions, so they rely on their own personal judgement, which usually results in sole custody to the mother. Public policy must be clearly defined in the statutes so that children will not be denied voluntary access to either parent unless there is cause under child protection statute to intervene for their safety. Adequate statutory remedies exist under present law for those instances where a parent might neglect or abuse a child, or where a child might be adversely affected by contact with a parent.

As a body, you have the power to give Missouri children the guarantee that they will never be forcefully separated from a parent whom they love unless their safety is seriously threatened. Are you willing to put this policy in effect for them? Who will step out and protect our children from the forces of apathy?

Emma Holm

Emma Holm
Minnesota Grandmother for
Joint Custody

Ann Learned Fitch
1455 Lakeside Drive
Topeka, Kansas 66604

ATTACHMENT # 7

March 3, 1983

Representative Robert Frey
House Judiciary Committee
State Capitol Building
Topeka, Kansas 66612

Dear Representative Frey,

Because of lingering influenza complications, I am unable to testify before your committee in regard to House Bill 2131. Hopefully you will find my letter relevant, as I was in intensive psychotherapy during lengthy divorce negotiations in Shawnee County. Custody arrangements for my four children (ages 11-17) were my utmost consideration.

As I read K.S.A. Supp. 1982 60-6010(2)(C), which refers to "waiver of privileges," I am disturbed by the possibility of unfairness and damaging consequences in determination of child custody. This subsection says:

> "All physician-patient and psychologist-client privileges, except with respect to communications arising in counseling pursuant to K.S.A. 60-1608 and amendments thereto, shall be waived when the custody of a child is in dispute."

At the time of our divorce, I was fully aware that my children's best interests would be served in their father's custody. When my psychotherapy ended (it was two years later), I hoped to ask the Court for a modification of custody order. But only when, and if, my children requested to live with me in Topeka. They did not ask, as their friends and school activities tied them to Memphis, Tennessee.

However, had I completed psychotherapy prior to or during the divorce proceedings, I feel there could well have been a distinct bias against awarding custody to me because of the waiver of physician-client privileges, as the law now reads.

Even a trained investigator might have reasoned:

1. The wife has had a long history of mental illness, attested by medical records. Supposedly, she is now well.
2. The husband is capable, willing and has a history of stability.
3. Therefore, the risks are fewer and the children's best interests seem better served by paternal custody.

It takes courage to seek help from mental health professionals and even more courage to complete treatment. Perhaps I am biased, but I feel strongly that a person who completes psychotherapy knows himself, his strengths and limitations better than the average untreated person. That a person has never sought psychological help does not necessarily make him more fit for child custody. Please do not penalize those of us who have profited from psychological counselling, as divorce alone is too traumatic.

To lay open medical records can be inhumane and unnecessarily damaging to parents, and perhaps to their children. My children were aware of my problems and fortunately received counselling from a caring psychiatric social worker.

As an alternative to "waiver of privileges" would it possible for the court to accept letters of diagnostic evaluation from physicians? Such letters would detail conditions treated and progress to date, thereby protecting physician-client relationships, yet supply pertinent information as to fitness of custody. I believe that our competent physicians can be relied upon by the court to offer the summarized, pertinent truth. This method would eliminate additional unnecessary anxiety (and possible humiliation) for some persons involved in divorce action, which stress-wise ranks second only to death of a spouse.

Writing this letter has been, in a way, a "waiver of privileges." My willful exposure can be worthwhile if you better understand the vulnerability and stress of parents in divorce proceedings. Most of us prefer to retain our privacy, particularly during especially stressful periods that effect disruptions in our lives.

Sincerely yours,

Ann Learned Fitch

STATE OF KANSAS

LEROY F. FRY
REPRESENTATIVE, 105TH DISTRICT
ELLSWORTH, McPHERSON, RICE COUNTIES
LITTLE RIVER, KANSAS 67457
(316) 897-6330

TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
MEMBER: ASSESSMENT AND TAXATION
ENERGY AND NATURAL RESOURCES
LOCAL GOVERNMENT

ATTACHMENT # 8

March 2, 1983

PRESENTATION TO: HOUSE JUDICIARY COMMITTEE

BY: LeRoy F. Fry

RE: HOUSE BILL 2352

Should states have the right to veto or ban the disposing or storage of high-level radioactive waste within the state boundary? Because the technology necessary to adequately protect the public from the potential long-term damages of high-level radioactive waste has not been demonstrated, each state should have the right to protect its citizens from the effect of these materials.

The highly toxic constituents of fission waste products persist for hundreds of thousands of years. There is no present proof that any system devised by man will adequately contain these materials over the necessary time span. HB 2352 is a message to the feds, and timely, to say the least. If Kansas is put on record for a site selection, this bill will give the state a first opportunity notice of disapproval. At least ten states are known to have laws prohibiting, regulating, or somehow governing the disposal and transportation of nuclear waste.

The laws of each state are briefly summarized on a handout that I have before you.

shall recognize the Member calling up such resolution and a Member opposed to such resolution for 2 hours of debate in the House, to be equally divided and controlled by such Members. When such time has expired, the previous question shall be considered as ordered on the resolution without intervening motion. No amendment to any such resolution shall be in order, nor shall it be in order to move to reconsider the vote by which such resolution is agreed to or disagreed to.

(f) COMPUTATION OF DAYS.—For purposes of this section—

(1) continuity of session of Congress is broken only by an adjournment sine die; and

(2) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of the 90-day period referred to in subsection (c) and the 45-day period referred to in subsection (d) and (e).

(g) INFORMATION PROVIDED TO CONGRESS.—In considering any notice of disapproval submitted to the Congress under section 116 or 118, the Congress may obtain any comments of the Commission with respect to such notice of disapproval. The provision of such comments by the Commission shall not be construed as binding the Commission with respect to any licensing or authorization action concerning the repository involved.

PARTICIPATION OF STATES

SEC. 116. (a) NOTIFICATION OF STATES AND AFFECTED TRIBES.—The Secretary shall identify the States with one or more potentially acceptable sites for a repository within 90 days after the date of enactment of this Act. Within 90 days of such identification, the Secretary shall notify the Governor, the State legislature, and the tribal council of any affected Indian tribe in any State of the potentially acceptable sites within such State. For the purposes of this title, the term "potentially acceptable site" means any site at which, after geologic studies and field mapping but before detailed geologic data gathering, the Department undertakes preliminary drilling and geophysical testing for the definition of site location.

(b) STATE PARTICIPATION IN REPOSITORY SITING DECISIONS.—(1) Unless otherwise provided by State law, the Governor or legislature of each State shall have authority to submit a notice of disapproval to the Congress under paragraph (2). In any case in which State law provides for submission of any such notice of disapproval by any other person or entity, any reference in this subtitle to the Governor or legislature of such State shall be considered to refer instead to such other person or entity.

(2) Upon the submission by the President to the Congress of a recommendation of a site for a repository, the Governor or legislature of the State in which such site is located may disapprove the site designation and submit to the Congress a notice of disapproval. Such Governor or legislature may submit such a notice of disapproval to the Congress not later than the 60 days after the date that the President recommends such site to the Congress under section 114. A notice of disapproval shall be considered to be submitted to the Congress on the date of the transmittal of such notice of disapproval to the Speaker of the House and the President pro tempore of the Senate. Such notice of disapproval shall be accompanied by a statement of reasons explaining why such Governor or legislature disapproved the recommended repository site involved.

(3) The authority of the Governor or legislature of each State under this subsection shall not be applicable with respect to any site located on a reservation.

(b) FINANCIAL ASSISTANCE.—(1)(A) The Secretary shall make grants to each State notified under subsection (a) for the purpose of participating in activities required by sections 116 and 117 or authorized by written agreement entered into pursuant to subsection 117(c). Any salary or travel expense that would ordinarily be incurred by such State, or by any political subdivision of such State, may not be considered eligible for funding under this paragraph.

(B) The Secretary shall make grants to each State in which a candidate site for a repository is approved under section 112(c). Such grants may be made to each such State only for purposes of enabling such State—

(i) to review activities taken under this subtitle with respect to such site for purposes of determining any potential economic, social, public health and safety, and environmental impacts of such repository on the State and its residents;

(ii) to develop a request for impact assistance under paragraph (2);

(iii) to engage in any monitoring, testing, or evaluation activities with respect to site characterization programs with regard to such site;

(iv) to provide information to its residents regarding any activities of such State, the Secretary, or the Commission with respect to such site; and

(v) to request information from, and make comments and recommendations to, the Secretary regarding any activities taken under this subtitle with respect to such site.

(C) Any salary or travel expense that would ordinarily be incurred by such State, or by any political subdivision of such State, may not be considered eligible for funding under this paragraph.

(2)(A) The Secretary shall provide financial and technical assistance to any State requesting such assistance in which there is a site with respect to which the Commission has authorized construction of a repository. Such assistance shall be designed to mitigate the impact on such State of the development of such repository. Such assistance to such State shall commence within 6 months following the granting by the Commission of a construction authorization for such repository and following the initiation of construction activities at such site.

(B) Any State desiring assistance under this paragraph shall prepare and submit to the Secretary a report on any economic, social, public health and safety, and environmental impacts that are likely as a result of the development of a repository at a site in such State. Such report shall be submitted to the Secretary following the completion of site characterization activities at such site and before the recommendation of such site to the President by the Secretary for application for a construction authorization for a repository. As soon as practicable following the granting of a construction authorization for such repository, the Secretary shall seek to enter into a binding agreement with the State involved setting forth the amount of assistance to be provided to such State under this paragraph and the procedures to be followed in providing such assistance.

(3) The Secretary shall also grant to each State and unit of general local government in which a site for a repository is approved under section 112(c) an amount each fiscal year equal to the amount such State and unit of general local government, respectively, would receive were they authorized to tax site characterization activities at such site, and the development and operation of such repository, as such State and unit of general local government tax the other real property and industrial activities occurring within such State and unit of general local government. Such grants shall continue until such time as all such activities, development, and operation are terminated at such site.

(4)(A) A State may not receive any grant under paragraph (1) after the expiration of the 1-year period following—

(i) the date on which the Secretary notifies the Governor and legislature of the State involved of the termination of site characterization activities at the candidate site involved in such State;

(ii) the date on which the site in such State is disapproved under section 115; or

(iii) the date on which the Commission disapproves an application for a construction authorization for a repository at such site;

whichever occurs first, unless there is another candidate site in the State approved under section 112(c) with respect to which the actions described in clauses (i), (ii), and (iii) have not been taken.

(B) A State may not receive any further assistance under paragraph (2) with respect to a site if repository construction activities at such site are terminated by the Secretary or if such activities are permanently enjoined by any court.

(C) At the end of the 2-year period beginning on the effective date of any license to receive and possess for a repository in a State, no Federal funds shall be made available to such State under paragraph (1) or (2), except for—

(i) such funds as may be necessary to support State activities related to any other repository located in, or proposed to be located in, such State, and for which a license to receive and possess has not been in effect for more than 1 year; and

(ii) such funds as may be necessary to support State activities pursuant to agreements or contracts for impact assistance entered into, under paragraph (2), by such State with the Secretary during such 2-year period.

(5) Financial assistance authorized in this subsection shall be made out of amounts held in the Nuclear Waste Fund established in section 302.

(d) ADDITIONAL NOTIFICATION AND CONSULTATION.—Whenever the Secretary is required under any provision of this Act to notify or consult with the governing body of an affected Indian tribe where a site is located, the Secretary shall also notify or consult with, as the case may be, the Governor of the State in which such reservation is located.

CONSULTATION WITH STATES AND AFFECTED INDIAN TRIBES

SEC. 117. (a) PROVISION OF INFORMATION.—(1) The Secretary, the Commission, and other agencies involved in the construction, operation, or regulation of any aspect of a repository in a State shall provide to the Governor and legislature of such State, and to the governing body of any affected Indian tribe, timely and complete information regarding determinations or plans made with respect to the site characterization siting, development, design, licensing, construction, operation, regulation, or decommissioning of such repository.

(2) Upon written request for such information by the Governor or legislature of such State, or by the governing body of any affected Indian tribe, as the case may be, the Secretary shall provide a written response to such request within 30 days of the receipt of such request. Such response shall provide the information requested or, in the

At least 10 states are known to have laws prohibiting, regulating, or somehow governing the disposal and transportation of nuclear waste. The laws of each state are briefly summarized.

Kentucky

A Kentucky resolution establishes a Special Advisory Committee on Nuclear Waste Disposal for the Legislative Research Commission.[1] The Committee is to assume an oversight role for all matters pertaining to nuclear waste disposal in the state. A total of $20,000 is appropriated for the operation of the Committee.

Louisiana

Louisiana has two nuclear waste disposal laws. One prohibits the disposal of radioactive waste in the state's salt domes and provides penalties for violation.[2] The law also prohibits testing designed to determine the suitability of the state's geologic structures for radioactive waste disposal unless the appropriate local government or the legislature is notified first. Results of any studies conducted to determine the feasibility of using geologic structures for radioactive waste disposal are to be made available to the legislature.

The other Louisiana law prohibits the transportation of high level radioactive waste into the state for storage or disposal and provides penalties for violation.[3]

Maryland

Maryland law prohibits the establishment within the state of any facility for long term storage of nuclear waste. The law does not prohibit temporary storage of used nuclear fuel pending shipment out of the state. The temporary storage is not to exceed two years.[4]

Michigan

Michigan law prohibits the storage or disposal of radioactive waste within the state.[5] This law does not apply to facilities at educational institutions, spent fuel storage pools at nuclear power plants, mill tailings from uranium mining within the state, medical uses of radioactive material, temporary storage of low level waste for not more than six months, and the storage of waste which was being stored before January 1, 1970.

Michigan has four other laws that prohibit Michigan from consenting to federal government acquisition of any land or building for storing, depositing, or dumping radioactive material.[6] The laws amend different statutes relating to the state's jurisdiction over certain lands and buildings.

Minnesota

Minnesota law prohibits construction or operation of a radioactive waste management facility within the state unless it is authorized by the legislature.[7] The law prohibits the transportation of radioactive waste into the state for burial or permanent storage without the legislature's authorization. But, radioactive waste may be transported into the state for temporary storage (for up to 12 months) pending transportation out of the state. Penalties for violation are provided.

Montana

Montana law prohibits disposal within the state of large quantities of radioactive material produced in other states. Penalties for violation are provided.[8]

Oregon

Oregon law bans the establishment or operation of radioactive waste disposal facilities within the state.[9]

South Dakota

South Dakota law prohibits containment, disposal, or deposit of high level nuclear waste, radioactive substances, and radioactively contaminated materials and prohibits the processing of high level nuclear waste within the state without approval by the legislature.[10]

Texas

Texas law prohibits the issuing of permits by the Texas Water Quality Board for the discharge of radiological or high level radioactive waste into any water within the state.[11]

Vermont

Vermont law prohibits the construction or establishment of facilities for deposit, storage, reprocessing, or disposal of spent nuclear fuel elements or high level radioactive waste materials in the state unless approved by the legislature. Procedure for legislative approval is provided.[12]

Notes

1. 1978 Ky. Acts, ch. 419 (HR 70).
2. West's La. Stat. Ann., sec. 50:1071.
3. Same as Note 2, sec. 50:1072.
4. 1978 Md. Laws, ch. 125 (HB 428).

5. 1978 Mich. Legis. Serv., P.A. 113 (SB 144).

6. Same as Note 5, P.A. 110 (SB 688), P.A. 111 (SB 689), P.A. 112 (SB 690), and P.A. 114 (SB 153).

7. Minn. Stat. Ann., secs. 116c.71 through 116c.74.

8. Mont. Rev. Codes Ann., secs. 69-5817 through 69-5821.

9. 1977 Or. Laws, ch. 796 (SB 272).

10. S.D. Codified Laws Ann., secs. 34-21-2 through 34-21-4.

11. 1977 Tex. Gen. Laws, ch. 644 (sec. 9) (HB 1560).

12. Vt. Stat. Ann., title 10, secs. 6501 through 6504.

TESTIMONY OF STEVI STEPHENS TONGANOXIE, KANSAS
BEFORE THE HOUSE JUDICIARY COMMITTEE
RE: HB 2352 MARCH 2, 1983

ATTACHMENT # 9

I WOULD LIKE TO TAKE THIS OPPORTUNITY TO CLARIFY A FEW BASIC CONCEPTS OF THE ISSUE BEFORE US BY DEFINING TERMS CONTAINED WITHIN THE BILL. TRANSURANIC MATERIALS ARE THOSE WHICH ARE HEAVIER THAN URANIUM, SUCH AS PLUTONIUM AND THORIUM (WHICH ARE PRODUCED IN GREAT QUANTITIES IN NUCLEAR REACTORS.) SPENT NUCLEAR FUEL IS USED-UP FUEL RODS FROM A NUCLEAR REACTOR WHICH NO LONGER FISSION EFFICIENTLY (THEY CONTAIN SIGNIFICANT QUANTITES OF URANIUM-235 AND PLUTONIUM-239[1] BOTH OF WHICH CAN POTENTIALLY BE REPROCESSED FOR FURTHER USE AS FUEL OR IN WEAPONS PRODUCTION.) HIGH-LEVEL RADIOACTIVE MATERIALS INCLUDE THE WASTE STREAMS THAT RESULT FROM THE REPROCESSING OF SPENT NUCLEAR FULE (REPROCESSING IS NOT DONE AT PRESENT ON A COMMERCIAL BASIS DUE TO ITS ASSOCIATION WITH WEAPONS PRODUCTION.) FOR THE SAKE OF BRIEVITY, HOWEVER; I WILL REFER TO ALL OF THE ABOVE AS HIGH-LEVEL MATERIALS. THE NEBULOUS DEFINITION OF LOW-LEVEL RADIOACTIVE MATERIALS IS NON-HIGH-LEVEL.

ALSO, IN DISCUSSING RADIOACTIVE WASTE, WE ARE ULTIMATELY ADDRESSING THE EFFECTS OF RADIATION. THERE IS LITTLE CONTROVERSY OVER THE CONSEQUENCES OF RADIATION EXPOSURE: GENETIC DEFFECTS, CANCER, LUKEMIA, AND DEATH. THE ARGUMENT LIES OVER THE AMOUNT WHICH WILL INDUCE THESE RESULTS. THERE WILL BE RADIOACTIVY RELEASED DURING WASTE DISPOSAL, THE QUESTION IS WHETHER THE TYPE AND INTENSITY WILL BE DETRIMENTAL TO LIFE AND THE ENVIRONMENT.[2]

THERE IS CONCERN OVER PASSING A BILL WHICH SOME FEEL THE FEDERAL GOVERNMENT COULD ULTIMATELY PRE-EMPT. THE 1982 NUCLEAR WASTE POLICY ACT HAS A SPECIFIC PROVISION WHICH GRANTS INDIVIDUAL STATES THE RIGHT TO OBJECT TO PUTTING A REPOSITORY FOR HIGH-LEVEL WASTE WITHIN ITS BOUNDARIES. THIS VETO MUST BE OVER-RIDDEN BY

BOTH HOUSES OF CONGRESS. THERE ARE MANY INSTANCES OF STATES STANDING UP FOR THEIR RIGHTS AND DEVELOPING STATUTES WHICH THEY ENFORCE. THERE ARE PRESENTLY THREE CASES NOW PENDING BEFORE THE SUPREME COURT INVOLVING STATES' AND INDIVIDUALS' RIGHTS TO REGULATE CERTAIN ASPECTS OF NUCLEAR INFLUENCE IN THEIR DAILY LIVES.[3]

SINCE 1976, 182 COMMUNITY BANS AND ORDINANCES HAVE BEEN ENACTED AND ARE INTACT REGULATING TRANSPORTATION OF RADIOACTIVE MATERIALS THROUGH POPULATED AREAS. THERE ARE AT LEAST 10 STATES[4] WHICH HAVE BANS ON WASTE BURIAL SIMILAR TO THOSE PROPOSED IN HB 2352.

INDIVIDUAL AND STATES RIGHTS ARE BECOMING NOT ONLY MORE OF AND ISSUE, BUT MORE RELEVANT IN LIGHT OF THE INCIDENTS OF WASTE MISMANAGEMENT APPEARING AROUND THE COUNTRY. THE ENVIRONMENTAL PROTECTION AGENCY IS NOW ALLOWING US TO WITNESS THE FEDERAL GOVERNMENT'S BLATANT LACK OF CONCERN. AREAS LIKE LOVE CANAL AND TIMES BEACH ARE THE HORRORS WE WILL ALL CONTINUE TO FACE UNLESS WE ARE WILLING TO INSIST THAT WE HAVE STATE AND PERSONAL RIGHTS, TO INSURE PROTECTION OF OUR HEALTH AND WELFARE WHICH INCLUDES DECISIONS RELATING TO HIGH-LEVEL RADIOACTIVE WASTE DISPOSAL.[5]

I WOULD LIKE TO ELABORATE ON THE SITUATION FACING KANSAS BY PRESENTING THE FOLLOWING CHRONOLOGY. JIM HARVEY AND FRED BIERLY OF CALIFORNIA'S SOUTHWEST NUCLEAR COMPANY PROPOSED A LOW-LEVEL STORAGE FACILITLY IN THE CAREY SALT MINE IN LYONS, KANSAS IN MAY OF 1978. THIS PROPOSAL INCLUDED REQUESTS FOR LICENSING UNLIMITED QUANTITIES OF BY-PRODUCT MATERIAL, SOURCE MATERIAL, AND AN "AVERAGE" QUANTITY OF SPECIAL NUCLEAR MATERIAL TO BE STORED IN THE TUNNEL FACILITY. THESE ARE TERMS RELEVANT TO MY TESTIMONY AND I WOULD LIKE TO BRIEFLY DEFINE THEM FOR YOU. <u>BY-PRODUCT MATERIAL</u> IS MATERIAL YIELDED IN OR MADE RADIOACTIVE BY EXPOSURE TO THE PROCESS OF PRODUCING OR UTILIZING SPECIAL NUCLEAR MATERIAL. <u>SPECIAL</u>

NUCLEAR MATERIAL IS PLUTONIUM AND ENRICHED URANIUM-233 and -235, AND ANY OTHER MATERIAL ENRICHED BY THEM BUT DOES NOT INCLUDE SOURCE MATERIAL. SOURCE MATERIAL IS URANIUM AND THORIUM AND ORES CONTAINING THEM. THESE ARE ABSOLUTELY HIGH-LEVEL (OR MORE PRECISELY NON-LOW-LEVEL) MATERIALS.

THE APPLICATION WAS REJECTED. AMONG MANY OF THE STATE OF KANSAS' CONCERNS WERE REFERENCES TO HIGH-LEVEL MATERIALS, PLUS IT WAS NOT APPLIED FOR BY A KANSAS COMPANY. IN NOVEMBER OF 1978 THE KANSAS CORPORATION OF RICKANO WAS FORMED BY THE SAME TWO MEN AND A SECOND APPLICATION WAS SUBMITTED UNDER THE NAME RICKANO. IT ELABORATED ON THE FIRST REQUEST WITH AN ENCLOSED LETTER FROM JAMES HARVEY STATING, "PLEASE NOTE THAT THERE IS NO REQUEST FOR POSSESSION OF ANY SPECIAL NUCLEAR MATERIAL, AND ALL REFERENCES TO SPECIAL NUCLEAR MATERIAL IN DOCUMENTATION SENT TO YOU BEFORE BY US SHOULD BE DISREGARDED." IT WOULD BE DIFFICULT TO IMAGINE THAT THE FIRST APPLICATIONS REQUEST FOR SPECIAL NUCLEAR MATERIAL WAS MERELY AN OVER-SIGHT, AS THESE TWO MEN HAVE BEEN IN THE NUCLEAR WASTE BUSINESS FOR TWENTY-FIVE YEARS.

THEIR SECOND APPLICATION REQUESTS (THE ADDITIONAL WORD) ANY BY-PRODUCT MATERIAL AND SOURCE MATERIAL IN UNLIMITED QUANTITIES. ON PAGES 61 AND 62 ARE DESCRIPTIONS OF HOW THE FACILITY WILL HANDLE SPECIAL NUCLEAR MATERIAL. AGAIN THESE ARE REFERENCES TO HIGH-LEVEL SUBSTANCES. IN A LETTER FROM THE NUCLEAR MATERIAL SAFETY AND SAFEGUARDS OFFICE IN FEBRUARY OF 1979, IT STATES THAT THE REQUESTED AMOUNTS OF SPECIAL NUCLEAR MATERIAL WHICH ARE PROVIDED FOR UNDER THE AGREEMENT STATE REGULATIONS[6] WOULD BE LIMITS APPLICABLE TO WASTES STORED ABOVE GROUND. IF IT IS TO BE A RETRIEVABLE STORAGE FACILITY THIS LIMIT WOULD BE FOR ABOVE AND BELOW GROUND AMOUNTS INCLUSIVE. IT FURTHER STATES "THAT PLANS AND PROCEEDURES FOR SEALING TUNNELS MAY HAVE TO BE CONSIDERED IN

DETERMINING WHEN SPECIAL NUCLEAR MATERIAL IS FINALLY DISPOSED OF AND NO LONGER IN THE LICENSEE'S POSSESSION" MOST IMPORTANTLY, "IN THE LYONS MINE, THE LINIT COULD BE REACHED BEFORE THE MINE WAS 01% FILLED AND THEREFORE A NRC LICENSE TO POSSESS SPECIAL NUCLEAR MATERIAL WOULD BE REQUIRED." THIS MEANS THAT IN THE LYONS SITE'S PROPOSED FIFTY YEAR OPERATION, THE LIMITS OF THESE MATERIALS COULD BE REACHED IN THE FIRST SIX MONTHS OF OPERATION, AT WHICH TIME THE RICKANO CORPORATION COULD APPLY TO THE NRC FOR FURTHER LICENSING OF THESE HIGH-LEVEL WASTES.

FURTHER LETTERS FROM THE NRC IN MAY OF 1979 CITE,"THE APPLICANT HAS BEEN REFERRING TO THE PROPOSED OPERATIONS AS 'STORAGE' RATHER THAN DISPOSAL, SINCE DISPOSAL WOULD REQUIRE THAT THE FACILITY BE OWNED BY THE STATE OR THE FEDERAL GOVERNMENT. THE STATE OF KANSAS IS PROHIBITED FROM OWNING SUCH LAND. IF IT WERE CHANGED TO A DISPOSAL FACILITY THE NRC WOULD NOT HAVE A LICENSING ROLE UNLESS SPECIAL NUCLEAR MATERIAL LIMITS WERE EXCEEDED FOR MATERIAL IN POSSESSION." ONLY "STORED" NOT "DISPOSED" MATERIALS ARE CONSIDERED TO BE IN POSSESSION.

IN APRIL OF 1979 THE KANSAS LEGISLATURE PASSED SENATE BILL 170. ALONG WITH ESTABLISHING SOME FINANCIAL CRITERIA FOR OPERATING A WASTE SITE IT PROVIDED THAT THE STATE COULD ACCEPT LAND AS A GIFT, SUBJECT TO APPROVAL AND ACCEPTANCE BY THE LEGISLATURE. IT AMMENDS THE KANSAS HAZARDOUS WAST ACT, BUT YET IN ITS DEFINITIONS IT DOES NOT MENTION RADIOACTIVE WASTE. IT REFERS TO PERMITS ISSUED UNDER KSA 48-1607 FOR LICENCEES OPERATING HAZARDOUS WASTE AREAS WHICH STATES: "THE BOARD (I.E. THE SECRETARY OF THE DEPARTMENT OF HEALT AND ENVIRONMENT) SHALL PROVIDE BY RULES OR REGULATIONS FOR GENERAL OR SPECIFIC LICENSING OF BY-PRODUCT, SOURCE, AND SPECIAL NUCLEAR MATERIALS..." I FAIL TO UNDERSTAND WHY A HAZARDOUS WASTE LICENSE NEEDS TO BE ISSUED WITH HIGH-LEVEL

RADIOACTIVE PROVISIONS IF IT IS OUT OF THE STATE'S JURISTICTION. THE RICKANO PROPOSAL IS APPLIED FOR UNDER THE LICENSING PROVISIONS OF KSA 48-1607.

IN 1980 THE RICKANO CORPORATION PURCHASED THE CAREY MINE FOR $350,000.00 EVEN THOUGH THERE HAD BEEN NO INDICATION THAT THEIR PROPOSAL HAD BEEN ACCEPTED. THEY PROCEEDED TO SPEND $1 MILLION TO REPAIR THE MAIN SHAFT OF THE MINE, WHICH CURIOUSLY MOST LOW-LEVEL PACKING CRATES CANNOT FIT DOWN.

THE FEDERAL GOVERNMENT HAS ENCOURAGED STATES TO SIGN LOW-LEVEL WASTE COMPACTS. KANSAS ACTED TO PROMOTE A COMPACT WITH OTHER MIDWESTERN STATES. WITH THE THIRD STATE HAVING JUST RECENTLY SIGNED, THE COMPACT WILL BE SENT TO WASHINGTON FOR RATIFICATION. IT SHOULD BE RECOGNIZED THAT THERE IS NO LANGUAGE WITHIN OUR COMPACT PROHIBITING ANY OTHER STATES FROM JOINING. THE RICKANO PROPOSAL FOR A WASTE FACILITY IS THE ONLY APPLICATION PENDING IN THE UNITED STATES.

MY CONCERN LIES WITH THE IMMINANCE OF THE CONSIDERATION OF THE RICKANO LOW-LEVEL PROPOSAL WITH HIGH-LEVEL REQUESTS, COUPLED WITH THE DEVASTATINGLY BLEAK HISTORY OF THE RICKANO EXECUTIVES. THERE HAVE BEEN ONLY SIX COMMERCIAL LOW-LEVEL RADIOACTIVE DUMP SITES IN THE UNITED STATES. THEY HAVE PLAYED A MAJOR ROLE IN DEVELOPING AND OPERATING FIVE OF THEM. FIVE HAVE BEEN CLOSED DUE TO ENVIRONMENTAL POLLUTION; FOUR WERE THEIRS. I HAVE ENCLOSED A BRIEF HISTORY IN MY FOOTNOTES TO WHICH I HOPE YOU WILL REFER.[7] ITS PERTINENCE TO THIS BILL LIES WITH FACT THAT <u>PLUTONIUM</u> HAS BEEN FOUND MIGRATING OFF SITE INTO SOIL, WELLS, AND STREAMS. THERE IS NO WAY THIS CAN BE CONSTRUED AS LOW-LEVEL WASTE. IT IS OBVIOUS THAT THEY HAVE NOT ONLY MAINTAINED UNNACCEPTABLE OPERATIONS BUT THAT THESE LOW-LEVEL DUMPS HAVE HIGH-LEVEL WASTE IN THEM.

I BELIEVE THE STATE OF KANSAS SHOULD PROTECT ITS INTERESTS AND THE HEALTH AND SAFETY OF ITS CITIZENS BY NOT ALLOWING THE METHODS WHICH HAVE BEEN THE EXCLUSIVE RECORD OF THE RADIOACTIVE WASTE INDUSTRY TO BE ALLOWED WITHIN ITS BOUNDARIES. I FEEL THAT THE RESTRICTION TO BAN HIGH-LEVEL WASTE FROM STORAGE OR DISPOSAL IN KANSAS WILL SHOW YOUR CONSTITUENTS THAT YOU SUPPORT THAT CONCERN. IT WILL GIVE KANSAS FURTHER LEVERAGE TO ENFORCE SAFE LOW-LEVEL WASTE OPERATIONS. MOST IMPORTANTLY IT WILL CONTINUE THE MESSAGE TO THE NUCLEAR WASTE INDUSTRY AND THE FEDERAL GOVERNMENT THAT WE WILL ACCEPT NO LESS THAN SAFE CONDITIONS, AND THAT OUR DEFINITON OF JUSTICE IS NOT JUST AS LONG AS SOMEONE'S MAKING MONEY.

I WOULD LIKE TO POINT OUT THAT WITH THE SUPPORT OF THIS COMMITTEE AND THE LARGE CONTINGENCY OF SUPPORTERS OF THIS BILL THAT ONE THIRD OF THE HOUSE WOULD BE REPRESENTED. I URGE YOUR SUPPORT OF HB 2352 AS A NECESSITY FOR THE WELFARE OF ALL KANSANS.

-FOOTNOTES-

1) THE HALF-LIFE OF URANIUM-235 IS 710,000,000 YEARS.
THE HALF-LIFE OF PLUTONIUM-239 IS 25,000 YEARS.
ONE MILLIONITH OF A GRAM OF PLUTONIUM CAN CAUSE LUNG CANCER (THERE ARE 448 GRAMS IN ONE POUND). IT TAKES ONLY SIXTEEN POUNDS TO MAKE AN ATOMIC BOMB.

A HALF-LIFE IS THE PERIOD OF TIME IT TAKES AN ELEMENT TO LOOSE HALF OF ITS MASS. IF THE HALF LIFE OF A SUBSTANCE IS ONE DAY, THEN IN ONE DAY HALF OF THE SUBSTANCE WILL DECAY. IN THE NEXT DAY HALF OF WHAT IS LEFT WILL DECAY. IN THE NEXT DAY HALF OF THAT, ETC. IT DOES NOT REDUCE THE RADIOACTIVITY PER WEIGHT OF THE MATERIAL.

2) THE FOUR TYPES OF RADIATION ARE:
ALPHA AND BETA ARE PARTICLES WHICH CAN BE INHALED FROM THE ATMOSPHERE OR INGESTED THROUGH THE FOOD CHAIN. THEY ARE HEAVY PARTICLES THAT CAN GENERALLY BE STOPPED FROM PENETRATING THE SKIN THROUGH VERY LIMITED SHIELDING.
GAMMA AND X-RAYS ARE LIGHTER, EXTREMELY PENETRATING AND REQUIRE EXTENSIVE SHIELDING.
BECAUSE ALPHA AND BETA PARTICLES ARE HEAVIER THEY ARE SLOWED DOWN RAPIDLY IN TISSUES BY RESISTANCE. CONSEQUENTLY THEY DEPOSIT GREATER RADIATION PER VOLUME OF TISSUE, PRODUCING MORE DAMAGE. BECAUSE GAMMA AND X-RAYS ARE LIGHTER THEY PENETRATE GREATER TISSUE VOLUME, WITH LESS INDIVIDUAL CELL EXPOSURE. IN ALL CASES THE RESULT IS INTENSE IRRADIATION TO THE CELLS OF VULNERABLE INTERNAL TISSUES. IT IS IMPORTANT TO NOTE THAT MOST RADIATION STANDARDS ARE SET BY GAMMA RAY EXPOSURE.

IT IS IMPERATIVE THAT WE RECOGNIZE THAT OUR CONCEPTS OF LOW-LEVEL WASTES ARE PROBABLY INACCURATE. THE AMOUNT OF TIME A SUBSTANCE REMAINS RADIOACTIVE IS NOT NECESSARILY DETERMINED

FROM HIGH OR LOW LEVEL DEFINITIONS. FOR INSTANCE URANIUM MILL TAILINGS ARE THE REMAINS FROM EXTRACTING YELLOWCAKE (USED FOR ENRICHING FOR REACTOR FUEL) FROM ORE. FOUR POUNDS OF YELLOW-CAKE ARE EXTRACTED FROM 2,000 POUNDS OF ORE. THESE LEFT OVER TAILINGS WHICH ARE IN PILES THROUGHOUT THE UNITED STATES (ONE OF WHICH IS 100 FEET HIGH COVERING 265 ACRES) RETAIN 85% OF THEIR RADIOACTIVITY FOR 4½ BILLION YEARS. YET TAILINGS ARE CLASSIFIED AS LOW-LEVEL WASTE!

SINCE OUR SENSES ARE UNABLE TO DETECT RADIATION IT IS ALMOST IMPOSSIBLE TO PROVE EXPOSURE CONSEQUENCES EXCEPT IN CONTROLLED SITUATIONS. THE TWENTY YEAR CANCER LATENCY PERIOD ADDS FURTHER TO THE BURDEN OF PROOF.

3) CALIFORNIA HAS BANNED NUCLEAR PLANT CONSTRUCTION UNTIL A SOLUTION TO THE WASTE DISPOSAL PROBLEM IS FOUND. IT HAS ALSO BEEN BANNED IN CONNETICUT, MAINE, MARYLAND, MONTANA, OREGON, AND WISCONSIN. TWENTY-THREE OTHER STATES HAVE LAWS LIMITING FURTHER DEVELOPMENT.

THE OKLAHOMA TRIAL OF KAREN SILKWOOD AWARDED MONETARY COM-PENSATION FOR DAMAGES. EIGHTEEN OTHER STATES HAVE JOINED THE CASE ARGUING THAT STATES MUST HAVE SOME CONTROL OVER RADIOACTIVE MATERIALS.

THE THIRD IS THE CASE TO KEEP THREE MILE ISLAND'S UNIT 1 FROM RE-STARTING.

ANOTHER CASE IN NEW JERSEY HAS ORDERED A UTILITY TO PAY FOR THERMAL POLLUTION DAMAGES.

4) KENTUCKY: ESTABLISHED SPECIAL COMMITTE TO ASSUME OVERSITE ROLE FOR ALL MATERS PERTAINING TO NUCLEAR WASTE DISPOSAL.

LOUISIANNA: PROHIBITS DISPOSAL OF RADIOACTIVE WAST IN THEIR SALT DOMES, AND HIGH-LEVEL TRANSPORTATION INTO THE STATE FOR STORAGE OR DISPOSAL.

MARYLAND: PROHIBITS LONG TERM STORAGE OF NUCLEAR WASTE.

MICHIGAN: PROHIBITS STORAGE OR DISPOSAL OF RADIOACTIVE WASTE.

MINNESOTA: PROHIBITS RADIOACTIVE WASTE FACILITY UNLESS AUTHORIZED BY THE LEGISLATURE.

MONTANA: PROHIBITS DISPOSAL OF RADIOACTIVE MATERIAL FROM OTHER STATES.

OREGON: BANS RADIOACTIVE WASTE FACILITY.

SOUTH DAKOTA: PROHIBITS ALL NUCLEAR WASTE.

TEXAS: PROHIBITS NUCLEAR WASTE.

VERMONT: PROHIBITS HIGH-LEVEL WASTE UNLESS APPROVED BY LEGISLATURE.

5) THERE ARE MASS CAMPAIGNS THROUGH OUT ALL STATES TO REPEAL THE PRICE-ANDERSON ACT OF 1957 WHICH VIRTUALLY EXEMPTS THE NUCLEAR INDUSTRY FROM LIABILITY FROM ACCIDENTS. IT FURTHER PROHIBITS US AS HOME AND BUSINESS OWNERS TO PROTECT OUR PROPERTY AGAINST ANY NUCLEAR-RELATED DAMAGES. ALL HOMEOWNER INSURANCE POLICIES HAVE AN EXCLUSION CLAUSE AFFECTING ALL ASPECTS OF THE NUCLEAR INDUSTRY FROM ACCIDENTS RELATED TO TRANSPORTAION, POWER PLANTS, FALLOUT FROM BOMB TESTS, AND MINING, ETC.

IN ACTUALITY THE INDUSTRY'S LIABILITY IS LIMITED TO $560 MILLION. (A 1974 STUDY SHOWED $14 BILLION WOULD BE REQUIRED IN THE EVENT OF A MAJOR ACCIDENT). $160 MILLION IS SUPPOSE TO BE IN PRIVATE INSURANCE POOLS, BUT WHAT SMALL AMOUNTS THAT HAVE BEEN PUT IN HAVE BEEN REBATED. $375 MILLION IS SUPPOSE TO COME FROM EACH OPERATING NUCLEAR REACTOR PAYING IN $5 MILLION EACH PER REACTOR ACCIDENT UP TO TWO A YEAR. A THIRD WOULD HAVE NO COVERAGE. THE UTILITIES ARE NOT REQUIRED TO HAVE THIS AVAILABLE IN A FUND. $25 MILLION COMES FROM THE FEDERAL GOVERNMENT, WHICH OUR TAXES PROVIDE. SINCE THREE MILE ISLAND THE NUCLEAR INSURANCE POOLS HAVE INCREASED UTILITY PROPERTY INSURANCE FROM $300 MILLION TO $1 BILLION PER ACCIDENT....WHILE STILL CLAIMING THEY CANNOT

MAKE MORE LIABILITY INSURANCE AVAILABLE FOR THE PUBLICS PROTECTION.

6) AN AGRREMENT STATE HAS SIGNED WITH THE FEDERAL GOVERNMENT TO HANDLE SMALL AMOUNT OF HIGH-LEVEL RADIOACTIVE MATERIALS. THE STANDARDS ARE: 350 GRAMS OF URANIUM-235, 200 GRAMS OF URANIUM-233, OR 200 GRAMS OF PLUTONIUM.

7) OPERATORS OF THESE FACILITIES DO NOT HAVE LONG TERM RESPONSIBILITIES FOR PROTECTION OF THE PUBLIC. THEY MAKE THEIR OWN SITE SELECTIONS AND MONITOR THEIR OWN ACTIVITIES. THE STATES OF MISSOURI, TEXAS AND LOUISIANNA HAVE DONE EXTENSIVE REVIEWS OF RICKANO'S PAST OPERATIONS. THEY HAVE PROPOSED SITES IN EACH OF THESE STATES AND HAVE BEEN DENIED LICENSES (THREE PLACES IN TEXAS) AS FAILING TO MEET EXPECTED QUALIFICATIONS FOR RUNNING SUCH AN OPERATION.

ILLINOIS' ATTORNEY GENERAL HAS FILED SUIT TO RECOVER $97 MILLION FOR CLEAN UP OF THEIR SHEFFIELD SITE. RADIOACTIVE WASTE SEEPING INTO GROUNDWATER CLOSED IT IN APRIL OF 1978 AND THE STATE IS STUCK WITH THE CLEAN-UP.

KENTUCKY PAID THEM $1.27 MILLION TO SHUT DOWN THEIR MAXEY FLATS OPERATION. THE STATE WAS FORCED TO ASSUME THE $100,000.00 PER YEAR PERPETUAL MAINTENANCE COSTS. THEY BLATANTLY DISREGARDED DENIAL OF PERMISSION TO DISPOSE OF RADIOACTIVE MATERIALS THEY WERE UNLICENSED FOR. TRITIUM, COBALT, STRONTIUM, CESSIUM, AND PLUTONIUM HAVE SEEPED OUT OF THE TRENCHES. THE COMPANY CLAIMED THERE WOULD BE NO MIGRATION OF RADIOACTIVE MATERIALS.

IN MAY OF 1977 THEY WERE FORCED TO PAY A $10,000.00 FINE AT THEIR BEATTY, NEVADA SITE, AND PLEAD NO CONTEST TO TWO FELONY CHARGES FILED BY THE JUSTICE DEPARTMENT IN U.S. DISTRICT COURT IN NEVADA. IN WELL DOCUMENTED EVIDENCE THERE WERE GROSSLY

REPEATED INSTANCES OF ROUTINELY OPENING CONTAMINATED CONTAINERS AND SELLING OR GIVING AWAY THE CONTENTS, ALONG WITH THE CRATING MATERIALS FOR CONSTRUCTION PURPOSES. A SUBSEQUENT SURVEY FOUND CONTAMINATION IN MANY HOMES, BUSINESSES, AND IN "RECYCLED" TANKS WHICH RADIOACTIVE WASTE WAS SHIPPED IN) USED FOR DRINKING WATER STORAGE. THIS DUMP WAS CLOSED REPEATEDLY AND THEN FINALLY FOR GOOD IN 1979.

THEIR CERTIFICATE WAS REVOKED IN THE STATE OF WASHINGTON OVER THEIR RICHLAND SITE. THEY HAVE BEEN REPEATEDLY CITED IN CALIFORNIA FOR VIOLATIONS.