

MINUTES OF THE JUDICIARY COMMITTEE
March 3, 1983

The meeting of the Judiciary Committee was called to order by Chairman Dave Brown in room 224A of the capitol building, Helena, Montana at 9:03 a.m. All members were present with the exception of Representative Eudaily, who was excused. Ms. Brenda Desmond, Staff Attorney for the Legislative Council, was also present.

SENATE BILL 114

SENATOR THOMAS stated that this was known as the suicide bill and it was introduced at the request of a number of people in the Helena area, who would like to have artifacts and notes returned to the family once the sheriff and investigating bodies did not need them any longer.

SARAH HEROLD, who lives in Helena, and is a guidance counselor at the middle school, offered a statement in support of this bill. See EXHIBIT A. She offered a letter from Louise Abel, who is a graphoanalyst in Helena. See EXHIBIT B.

PAT TRAFTON, the psychosocial director for the Hospice Program at St. Peter's Hospital, explained that Hospice is a program of care for people who are threatened with a life-threatening illness or shortened life expectancy. She said that they provide bereavement services to families that face death or once a death has occurred. She presented to the committee a chart, which showed the Cycle of Grief. See EXHIBIT C. She also gave the committee a copy of the pamphlet, "Grief Can Bring Growth". See EXHIBIT D. She testified that there are many conditions, that if met, help people to move through the process more rapidly and in a healthy manner; and she quoted from the book, "After Suicide", saying that once you begin to learn, you can begin to heal.

CARROLL JACOBS, who is a psychiatric social worker in private practice in Helena, gave an example of a person, where information was not given to him and he experienced emotional pain that was not necessary.

PHYLLIS BURKE, a Helena resident, stated that she works in Helena and has three teenage daughters; her husband and she were together until a few years ago, and he killed himself a year ago. She stated that this is a staggering thing; it

was about ten days before she even knew there was a note; it is a frantic feeling - he must have said something. She said that she was offered a copy, but she wanted the paper that he wrote this on; she was told that she could not have it; so she started a long, long trek to try and get it. She continued that they told her that there was a very poorly written law; that there was nothing they could do and the whole thing was devastating. She said she then started going door-to-door trying to find someone with influence and she became so desperate that she went to the county attorney; he told her he would see what he could do and to come back next week; she went back week after week with no results; she became so desperate that she considered breaking into the courthouse to obtain this note; and she finally obtained a court order to get it. She stated that she definitely feels that the law should be changed.

CHUCK O'REILLY, Sheriff of Lewis and Clark County, commented that in Lewis and Clark County, the sheriff is not also the coroner, and he said that he could not see any sense in holding onto personal property, suicide notes, etc., merely for the sake of holding on to them once it is no longer deemed to be evidence; and he commented, for the life of him, the reasoning escapes him and he felt that this law is a good law and he urged the committee to pass it.

JUSTINE BRECKENRIDGE, representing herself, testified that her son committed suicide one year and five months ago; they found her son on MacDonald Pass in a car; when the coroner called on her, he gave her the note to read (her name was on the envelope and the letter was written, "Dear Mom,") but said that she could not keep it; she told him that she had to keep it; it was the last communication with him; they told her no, she could not keep it, she could have a copy; she said she did not want a copy; she wanted her letter; she said she did not get her letter; she has a copy which means nothing to her and that the letter that he wrote is still not available to her.

There were no further proponents and no opponents.

SENATOR THOMAS passed out copies of testimony from JIM PALMER, who is a Hospice volunteer. See EXHIBIT E. He stated that there are plenty of safeguards in this legislation to protect criminal cases.

Judiciary Committee
March 3, 1983
Page Three

SENATOR THOMAS informed the committee, that if they concur in the bill, REPRESENTATIVE RON MILLER will carry it on the floor of the House.

REPRESENTATIVE KEYSER questioned SHERIFF O'REILLY, if there was not a little difference between the investigation between a suicide and a murder in which there was a note left and going through the total court process - that is not necessarily an investigation. He said that that evidence may have to be presented into court, there may be an appeal and he wondered if the word "investigation" would stop that before it goes through the total court process. SHERIFF O'REILLY replied that it does not - from the attorney general's conversation with them and in their opinion that this would remain evidence until the total court process is through. He felt the wording in the bill was sufficient.

REPRESENTATIVE RAMIREZ said that he had the same question, but he was concerned about the answer; he did not feel that "investigation" was really that clear; did it include any criminal prosecution and he did not know if "investigation" has ever been defined or explained. He thought in the ordinary sense of the word, it would not seem to include the court proceedings that would follow. SHERIFF O'REILLY responded that he did not feel that this would change the intent of the bill and they still would be able to release it. If they felt this should be changed, he would not have any problem with it.

SENATOR THOMAS explained that there was a great deal of concern about this in the Senate Judiciary Committee and the attorney general's office (Marc Racicot) did some research and they came up with this language. He said that the prosecutors and the people who deal with criminal law thought this was the best approach and they feel that there is not a problem with it.

CHAIRMAN BROWN noted that SENATOR TURNAGE talked to him about this bill and he said that this language was specifically drafted to handle that concern.

REPRESENTATIVE RAMIREZ said that if they assume that during the prosecution of a case, that it is considered a part of

Judiciary Committee
March 3, 1983
Page Four

the investigation, there is a conviction and then an appeal, after the conviction, would it be the common interpretation of the word "investigation" that this is still a part of the investigation. SENATOR THOMAS replied that he thought that the person who would make that determination is the judge; and as soon as it is classified as a criminal investigation, then the judge would assume jurisdiction over the case; at the conclusion of the case or the conclusion of the appeal process, he could release this information or he could keep it forever. He stated that what they tried to do with the legislation was to separate it into two categories (1) if there is no criminal conduct within the case, then this could be released (2) if there is criminal conduct, then the judge could keep the evidence during the appeal process.

SHERIFF O'REILLY noted that this is handled on page 2, line 17, where it says, "for the purpose of this section, investigating agency means any county coroner or county attorney, the state medical examiner, and any law enforcement agency of this state and any political subdivision of this state having jurisdiction of the death"; and also on line 5 where it says, "any suicide note considered to be evidence by the county attorney".

REPRESENTATIVE JAN BROWN requested that CHARLES GRAVELY comment on this, as they were late and were not able to testify. CHARLES GRAVELY, representing the County Coroners' Association, said that he was also concerned about the same language that is being discussed. He said that an investigation is generally deemed to be complete when the case actually goes to trial; they have cases around the state that are still pending although there was a conviction many years before; and the evidence that is held for that state must continue to be held. He did feel that on page 2, line 7 and 13, where it says "investigation", it might need some changing. He contended that the language that was added in the Senate committee was put forth on page 2, line 17 through 21; that that did not have to do with the time period with which the agency could hold the evidence. He would request that the committee clarify that the evidence can be held through the prosecution and the appellate process.

REPRESENTATIVE BERGENE questioned MRS. BRECKENRIDGE saying that other than the law protecting the coroner from giving you that note, was there any criminal investigation over your son's death. MRS. BRECKENRIDGE said no, that it was a very clear fact from his letter that he was alive when he did it.

REPRESENTATIVE KEYSER questioned SARAH HEROLD about the new section that would make this retroactive and he wondered if there was a compelling reason to have that wide-open retroactive as this could go back forever and a day. He thought maybe that a reasonable approach would be 10 years. MS. HEROLD replied that she did not mean dredging up things from centuries back and if somebody from twenty years wanted these things, she thought they should have them.

REPRESENTATIVE KEYSER asked if she would have problems with a twenty-year time frame. MS. HEROLD responded that she felt that would be a reasonable amount of time.

REPRESENTATIVE RAMIREZ asked if there would be any problem with requiring that some demand be made. He said that the way this is written now, it is a duty for someone to go back and search all their records to find if they have any of these notes, etc. and return them. He wondered if there should be some provision where someone could make a demand of the agency to do this. He said that one of the problems is that there is no personal representative left in many of those cases. MS. HEROLD replied that if there was no family member that wanted them, that she would think that this was a moot point.

REPRESENTATIVE FARRIS wondered if the Lewis and Clark County Coroner was here today. MR. GRAVELY replied that he was not able to be here today and that he was representing him.

REPRESENTATIVE FARRIS asked how did he arrive at this policy and is this a common policy around the state. MR. GRAVELY answered that it is and he expanded on the reasons that the suicide note led to this bill. He stated that, in this particular case, there is now concern as to whether it was a suicide note and also a question of whether there was criminal activity involved; there is a bank now involved on a bond and they would like to inspect this note for the

Judiciary Committee
March 3, 1983
Page Six

purposes of examination to determine whether, in fact, the note was written by the individual, who it was alleged had written it. He said that it has implications also beyond the criminal; it can go into the civil realm and he thought that all of them in law enforcement must protect, also, on that end.

REPRESENTATIVE FARRIS wondered how long was such a thing like that to go on. MR. GRAVELY responded that he could not give a definite time - it would depend upon the processes, what court action is taken and how fast the court system operates; it could be several years. He felt that a reasonable alternative, in the meantime, would be an inspection and supplying a copy, until such time as the original note can be released. He continued that they have no great burning desire to keep the original but that it is necessary in some of these cases because of the civil and criminal aspects.

REPRESENTATIVE FARRIS stated that she does not see why the family cannot have the original and the coroner have copies; we have excellent copy machines nowadays. MR. GRAVELY replied that the copies are not usable for purposes of handwriting analysis. REPRESENTATIVE FARRIS exclaimed that this letter from Mrs. Able says that they are. MR. GRAVELY replied that he was in the county attorney's office in Helena for ten years and on one occasion used Mrs. Able as a witness because they were unable to get the expert that they felt had the necessary qualifications. He stated that he would challenge very seriously the qualifications of Mrs. Able as a handwriting expert. He said that the one they use says that they cannot make a proper analysis from a copy, because there is pressure, there is width of lines and many things that go into that analysis to determine if that writing was that of the deceased.

REPRESENTATIVE FARRIS said that she did not see why the government should interpose itself in the person of a sheriff or a coroner between the grieving family and the artifact. MR. GRAVELY answered that in many suicide notes that are written, blame is placed upon a spouse or upon a family member in that note as a reason for taking a life and what

happens in many of those cases, when the individual is asked what they would do with that note, many have indicated that they would destroy it and then in an investigation down the line, there may be some criminal activity involved.

REPRESENTATIVE BERGENE questioned if his policy will be when the process is completed, that the note will go back to the Breckenridge family. MR. GRAVELY replied that the coroner had informed him that they have no problem with that.

REPRESENTATIVE BERGENE wondered in the case of Mrs. Burke why she never saw the note. Mr. GRAVELY responded that she asked for the return of the note and he does not remember all the particulars, but he wanted to assure the committee that in Mrs. Burke's case, she would not be entitled to see it anyway, even under the law the way this bill is written, because she is a former spouse and she does not qualify. MRS. BURKE responded that Mr. Gravely was the county attorney, who told her to come back next week, next week and next week; she said that she never wanted to interfere with the trial; never wanted to get into these complicated things. She wondered how long it has been since you have read of a suicide that really seemed to be murder here in Montana; she said that she did not understand the law, but there should be some way you could work this out. She said that the bill started off for her a lot better than it is now - it said that they had to return anything that was not evidence within thirty days; if it is evidence, it has to be returned in ninety days, unless there is an ongoing court process. She explained that in the Senate they revised it; everybody worked on it to cover all these things and she found it really frustrating. She contended that her husband's behavior had been extremely bizarre; he had been told that he must get some help; she talked to him every day; he did not get any help and that is what happened. She stated that the note was addressed to her, and if that was not good enough for the courts, then it would belong to her kids. She implored to please pass this bill.

CHAIRMAN BROWN asked what were the qualifications for a county coroner. MR. GRAVELY replied that he must pay the filing fee, be a citizen of the county and run for the office.

Judiciary Committee
March 3, 1983
Page Eight

There were no further questions and the hearing on this bill was closed.

SENATE BILL 79

SENATOR FULLER stated that in this bill they are trying to deal with the problem of selling food stamps and it was requested by the Department of Social and Rehabilitation Services.

PAT GODBOUT, Administrator of the Audit and Program Compliance Division of the SRS, stated that they felt that this bill would help a lot in the administration of the food stamp program. She testified that during 1982, there was approximately \$400,000.00 worth of food stamps received by ineligible individuals in Montana and a good part of that had been given to people who had committed fraud in obtaining these stamps. She stated that the Department of Revenue has a very limited staff and they felt that if they could prosecute people who buy and sell food stamps, that they are going to discourage people from obtaining the stamps through fraud. She contended that if they have no way of getting rid of the stamps once they go in the welfare office and get them, they will not go in there and get them. She said that there was a federal law that makes the buying and selling of food stamps a felony and, in minor cases, a misdemeanor; but there were only three investigators for the region and they never get to Montana.

There were no further proponents and no opponents.

SENATOR FULLER closed.

REPRESENTATIVE CURTISS wondered how they determined that there were \$400,000.00 worth of food stamps given to people who were ineligible. MS. GODBOUT replied that her division is responsible for auditing eligibility funds; her staff does investigations and they have found that people do receive food stamps that they are not entitled to. She said it is not always fraud, that sometimes people do not understand regulations and this would be 1.7 per cent, which would be \$400,000.00.

REPRESENTATIVE CURTISS asked if there was some percentage that has been established that would reflect the error made by county administrators rather than by fraud. MS. GODBOUT answered that she thought it was about 5.4 per cent of the food stamps.

REPRESENTATIVE BERGENE questioned how it happened, even though the eligibility rules are in place, that that kind of an error is made. MS. GODBOUT answered that, in the case of fraud, it is very complicated for a person defined as a transient. She said that the food stamp program is totally federally regulated and there is no latitude for the state whatsoever and federal regulations say that if the person is a transient and claim that they have no income, they have three days to make that decision. She explained that if they are transient, they may give their last address as Illinois, or Minnesota or someplace, and that there is no way to investigate that case in three days; and they have no choice but to give the stamps. She contended that it is very easy to commit fraud under the food stamp program.

REPRESENTATIVE BERGENE asked if, other than the cases of fraud, are there other errors made. MS. GODBOUT replied that there are errors made because information was forgotten, sometimes information is ignored, mistakes are made in computations, etc.

REPRESENTATIVE SPAETH wondered how they arrived at \$150.00. MS. GODBOUT responded that that was done by the attorneys and she thought it had something to do with common schemes.

REPRESENTATIVE SPAETH noted that the whole law seems to be written with the words, "he is not entitled to" or "entitled to receive" and he wondered why is that phrase used in the law. MS. GODBOUT replied that the law was based on federal law and that is where they got the wording.

REPRESENTATIVE ADDY commented that he is surprised that there is a need for this bill - that everything that was said about welfare fraud during the last campaign - and he wondered if the federal government is still not providing adequate enforcement personnel. MS. GODBOUT replied not in the state of Montana. She did say that most of the cost

Judiciary Committee
March 3, 1983
Page Ten

involved would be born by the federal government; they pay 75 per cent of the cost and they also get to keep 25 per cent of the cash value of the stamps that they recover. She also noted that there are no state dollars involved in the food stamp program. She indicated that the net impact to the state of Montana is very minimal.

REPRESENTATIVE ADDY declared that the whole impact of this bill is that state government will pick up the responsibility of enforcing a federal law. MS. GODBOUT replied that that is true; they already have that responsibility if we are going to have a food stamp program; but they believe that they will never be able to take care of the fraud problem without the help of this bill.

REPRESENTATIVE ADDY asked how many more people will this require on the staff of the SRS. MS. GODBOUT replied that this law will be enforced by the Department of Revenue. He wondered how many revenue agents. She said they do not believe that they are going to have to have any more staff, because they are going to investigate a case for fraud, and during that time they will find out that it is being sold, and right now, they just have to ignore that information. She said that most of that work is already done and they really believe that it is not going to impact their staff.

REPRESENTATIVE ADDY questioned what kind of impact will this have on county attorneys and prosecutors in the state. MS. GODBOUT replied that it would have some impact.

REPRESENTATIVE ADDY said that he did not find a fiscal note with this and wondered if it were her contention that there would be absolutely no expense to the state. MS. GODBOUT answered that they believe it will be very minimal. She explained that the cost is reimbursed by the federal government by 75 per cent, so there is a 25 per cent cost to the state; however, any payments that are recovered, the state will receive 25 per cent of the value of these stamps. She gave an example of a case in Helena where they recovered \$6,000.00 and that person is required to pay that back; the state gets to keep 25 per cent of that \$6,000.00; there was no state money involved in the first place; that money goes right into the general fund and the two together should reimburse the state.

Judiciary Committee
March 3, 1983
Page Eleven

REPRESENTATIVE ADDY said that she seems to be saying the state is reimbursed this money if they are successful in (1) prosecuting the case and (2) recovering restitution from the criminal and they are not reimbursed for the cost of the trial. MS. GODBOUT replied that that is true.

REPRESENTATIVE SPAETH commented that he was worried because they were transferring the investigating responsibility to the county attorney and he wondered if they would have a significant increase in the case load. MS. GODBOUT replied that she did not think there would be a lot of cases, and she said that it would be the intent to try and prosecute the big buyers and try to dry up the place to sell them. She contended that they believe that if they prosecute one, that they will not have to prosecute the rest of them because they would stop buying them.

REPRESENTATIVE SPAETH asked if this would allow us to relax our guard on letting the food stamps get out in the first place. MS. GODBOUT answered that as long as John LaFaver is the director of SRS, they will never relax their guard until it is less than 1 per cent.

REPRESENTATIVE CURTISS asked what percentage of the total amount of stamps issued is fraudently obtained. She replied that they believe it is about 1/4 million so that would be about 1 per cent.

REPRESENTATIVE CURTISS stated that if 5 per cent is from errors when they are issued, then could it not be presumed that the problem could be corrected in the issuance. MS. GODBOUT answered that they need to remember (1) if they did not commit fraud to get food stamps (they could be eligible for those food stamps) they could still sell them; and (2) the other person commits fraud to obtain them and then sells them. She maintained that without some way to prosecute them, they are not going to eliminate the problem.

REPRESENTATIVE CURTISS questioned the common scheme and asked what percentage is involved. MS. GODBOUT stated

that she did not know - because they have never been able to do anything about them, they have never been able to investigate.

REPRESENTATIVE CURTISS asked if this is an infraction of federal law, is it not possible to call for a federal investigation. MS. GODBOUT replied that the Department of Agriculture has investigators; they are assigned to each region and they simply do not have enough staff to come into Montana. She said they also need a federal prosecutor, a federal court and Montana is truly outside of that.

REPRESENTATIVE RAMIREZ said he looked up common scheme and it seem that it might be difficult to prove a common scheme and that is the only time that this is considered a felony whereas anything else, no matter how much involved, even a \$1,000.00 of food stamps sold in one transaction, that would only be a misdemeanor. He wondered if that problem was addressed at all. MS. GODBOUT replied that that she could not address this, but she could ask her attorneys and she felt that if there were some way to enhance the penalties of the bill, they would certainly want to do that.

REPRESENTATIVE JENSEN asked if these people would be assigned to a public defender. He said he was assuming that these people had insufficient income and could not afford their own attorneys. MR. CHARLES GRAVELY answered that if they qualified for indigent status, they would be entitled to a public defender.

REPRESENTATIVE JENSEN asked how many of these prosecutions do you anticipate and if the counties are interested at all in the expense incurred. MS. GODBOUT answered that it would be their intent to prosecute a buyer; the buyer is not going to be eligible for a public defender; it would be their hope that the prosecution of one buyer in a large community would be sufficient to stop what are normally law-abiding citizens from doing what they are doing.

REPRESENTATIVE JENSEN wondered if that would not be selective enforcement. MS. GODBOUT replied that you work on the most important issue in front of you and once you worked on a buyer basis you could turn around and work on a seller basis, whichever seemed to be the most productive use of your investigative staff.

Judiciary Committee
March 3, 1983
Page Thirteen

REPRESENTATIVE DAVE BROWN stated that he philosophically was opposed to this bill, because basically the administration wants to cut the federal government and yet they want to enforce laws like this and they are forcing the state to enforce federal law.

REPRESENTATIVE DAILY questioned how much money does the food stamp program bring into Montana. MS. GODBOUT answered about \$23 to \$25 million. REPRESENTATIVE DAILY said that if we can't spend a few bucks to defend \$25 million, there is something wrong with us.

There were no further questions and the hearing on this bill was closed.

SENATE BILL 129

SENATOR FULLER said that this bill was brought to him by Sheriff O'Reilly, that they did some amending in the Senate and got it in the form they wanted. The is an act to increase from 60 days to 90 days the time in which a return must be made to a writ of execution issued by the county treasurer.

CHUCK O'REILLY, Sheriff of Lewis and Clark County, said that they have had a problem in the length of time that it takes them to track down the property can often times exceed the amount of time they need in order to file the return. He says that they have to go back to the treasurer, reissue and start the process all over again.

There were no further proponents and no opponents. There were no questions and the hearing on this bill was closed.

SENATOR FULLER informed the committee that Representative Brown will carry the bill on the floor.

EXECUTIVE SESSION

HOUSE BILL 129

REPRESENTATIVE DAILY moved that the bill BE CONCURRED IN. The motion was seconded by REPRESENTATIVE JAN BROWN. The motion carried unanimously.

Judiciary Committee
March 3, 1983
Page Fourteen

SENATE BILL 79

REPRESENTATIVE KEYSER moved that the bill BE CONCURRED IN. The motion was seconded by REPRESENTATIVE IVERSON.

REPRESENTATIVE SPAETH stated that he really thinks the bill is probably good, but he has some problems with the wording "is not entitled to". He was wondering if they had more precise wording in the federal statute.

A vote was taken on the motion and all voted aye with the exception of REPRESENTATIVE SPAETH and REPRESENTATIVE DAVE BROWN.

SENATE BILL 114

REPRESENTATIVE KEYSER moved that this bill BE CONCURRED IN. The motion was seconded by REPRESENTATIVE JAN BROWN.

REPRESENTATIVE KEYSER said that he had some problems and regardless of what they say, investigation means investigation. He explained that in all the cases he has seen there is a great deal of difference between investigation and a finalization of a court action. He emphasized if there is no court action, then everything should be returned. He stated he had another problem with an unlimited amount of time in going back on all this. He felt a reasonable time would be twenty years.

REPRESENTATIVE FARRIS said that she thought that instead of eliminating the number of years, they could go back and make it be triggered by a request from the family; then if there is anybody from thirty years ago, they could trigger it by request.

REPRESENTATIVE BERGENE stated that she was concerned about the concern of Mrs. Burke as she is an ex-spouse, but even though the letter is addressed to her, she is not able to get it. REPRESENTATIVE FARRIS replied that she said that she got it, but she felt that if the note is addressed to somebody, it should be returned to the person it is addressed to no matter what the relationship is even a social worker or a psychiatrist.

Judiciary Committee
March 3, 1983
Page Fifteen

REPRESENTATIVE BERGENE stated that she would not want to see anybody else going through all that procedure.

REPRESENTATIVE KEYSER said that he would like to see language in the bill that said "final court action in case there is an investigation". He said he did not have the language drawn up but the staff could draw it up. He made this a motion. The motion was seconded by REPRESENTATIVE BERGENE. The motion carried unanimously.

REPRESENTATIVE KEYSER said he would withdraw the twenty years, but he would like to have some mechanism such as that it could only be triggered when there was a request by the family.

CHAIRMAN BROWN wondered how this would work if he had a good buddy from high school who committed suicide and he wanted that note. REPRESENTATIVE KEYSER said that now there is definition in there - spouse, children, grand-children, or parent.

REPRESENTATIVE RAMIREZ felt that they had a real problem with this retroactive aspect; when you try to patch up the past, you run into the problem that you do not have a personal representative any longer; these estates are closed out; yet you have heirs. He said that if you turn this over to the public administrator, there is no simple way for that public administrator to turn it over to the heirs; he has to go through a procedure himself; it seems we are creating an enormous administrative problem; the public administrator must take charge of the estate if there are no heirs. Whenever he gets something, he is going to have to initiate a procedure, get letters of administration, then determine who the heirs are, but he stated that there is no real short procedure for him to return these.

REPRESENTATIVE IVERSON said that he must have missed something as he is not sure how they got involved in a public administrator at all. He said that if it belongs to a family member and they ask for it and there is no objection, why don't they just give it to them. REPRESENTATIVE RAMIREZ replied that that is what they intend, but that is not what the bill says.

Judiciary Committee
March 3, 1983
Page Sixteen

CHAIRMAN DAVE BROWN said that the Senate will do what they can to keep this bill alive and so will he so they should resolve it.

REPRESENTATIVE JENSEN indicated that maybe someone should be given the authority to make that decision; all they have to do is come in and ask.

REPRESENTATIVE KEYSER said if we do not make this retroactive at all and just correct a situation that has existed, are we really going to hurt a lot of people. REPRESENTATIVE FARRIS replied that Mrs. Breckenridge could not get her son's letter if we do not make it retroactive.

CHAIRMAN BROWN said that the chair would try to work out some amendments that could take care of these problems. He suggested in terms of the retroactive aspect, we need to add an amendments that states "by request". REPRESENTATIVE RAMIREZ said that he thought that should be in the current on page 1; in other words, you do not want to put the burden on the county attorney or the police department to run around and return these. He contended that they are really going to have some problems patching up this retroactive and make it workable and maybe it would be better to forget that and make it immediately effective.

CHAIRMAN BROWN said that he thought if they put the personal request in that section, that would take care of the problem. REPRESENTATIVE RAMIREZ said that there are two places where "by request" should go - one on the prospective part of this bill and the other on the retroactive.

REPRESENTATIVE KEYSER questioned the language on page 3, line 5 down through line 8 and he felt that this could basically be stricken, because that does away with the personal representative and the public administrator and not make any reference to that type of thing.

REPRESENTATIVE FARRIS commented that she would like something in there in the case of a suicide note that it should be delivered to the person it is addressed to.

Judiciary Committee
March 3, 1983
Page Seventeen

REPRESENTATIVE HANNAH said if there are four people fighting over it, let's set it down on the steps of the courthouse; he did not feel that it was the state's responsibility to decide who gets it.

CHAIRMAN BROWN suggested the personal representative or the person to whom it is addressed.

REPRESENTATIVE SPAETH indicated that the bill has to be looked at with greater depth; we talk about family but the only two people that can receive the note is the personal representative or the public administrator, so he felt that this has to be overhauled. He thought that instead of stating to whom the note is addressed, he knows of some family situations where they do not want to have the note, because that person is also very dear to them and he would suggest that if a request is made to a person who has the note to notify all the interested parties that he may determine may be interested, including close family and the person to whom the note is addressed, and that they come in to him and figure out how to give it out.


REPRESENTATIVE SPAETH moved to amend the bill on page 2, line 11, between "note" and "during" insert the word, "held" and also on page 3, line 17. REPRESENTATIVE JENSEN seconded the motion. The motion carried unanimously.

REPRESENTATIVE JENSEN said he does not know why we have coroners - he is still trying to figure that out and noted that they eliminated county coroners in Utah.

REPRESENTATIVE DAVE BROWN said that if anyone had any other ideas on the amendments to see him.

The meeting adjourned at 10:40 a.m.


DAVE BROWN, CHAIRMAN


Alice Omang, Secretary

STANDING COMMITTEE REPORT

March 3,

19 83

MR. **SPEAKER:**

We, your committee on **JUDICIARY**

having had under consideration **SENATE** Bill No. **129**

third reading copy (blue)
color

A BILL FOR AN ACT ENTITLED: "AN ACT TO INCREASE FROM 60
DAYS TO 90 DAYS THE TIME IN WHICH A RETURN MUST BE MADE TO A
WRIT OF EXECUTION ISSUED BY THE COUNTY TREASURER; AMENDING
SECTION 25-13-404, MCA."

Respectfully report as follows: That **SENATE** Bill No. **129**

~~BE CONCURRED IN~~

BE CONCURRED IN

STANDING COMMITTEE REPORT

March 3,

1983

MR. **SPEAKER:**

We, your committee on **JUDICIARY**

having had under consideration **SENATE** Bill No. **79**

third reading copy (blue)
color

**A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THE
UNAUTHORIZED ACQUISITION OR TRANSFER OF FOOD STAMPS AS
A CRIME AND PROVIDING PENALTIES THEREFOR: AND PROVIDING AN
EFFECTIVE DATE OF JULY 1, 1983."**

Respectfully report as follows: That **SENATE** Bill No. **79**

~~BE PASSED~~

BE CONCURRED IN

VISITOR'S REGISTER

HOUSE JUDICIARY COMMITTEE

BILL Senate Bill 114

DATE March 3, 1983

SPONSOR Senator Thomas

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

WITNESS STATEMENT

Name Justin Breckwidge Committee On _____
Address 1013 Leake Date _____
Representing self Support ☒
Bill No. 2 Senate Bill 114 Oppose _____
Amend _____

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1.

2.

3.

4.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

WITNESS STATEMENT

Name Phyllis Burke Committee On _____
Address 1615 E. State Date _____
Representing Self Support ✓
Bill No. 114 Oppose _____
Amend _____

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1.

2.

3.

4.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

Exhibit A
SB 114
3-3-83

I am Mrs. Sarah Herold and I live here in Helena. I am a guidance counselor at a middle school (grades 7 and 8). Because of my position of working with the mental health of youngsters, I became interested in the Hospice Program. Hospice is an organization connected with St. Peter's Hospital to assist families with dying, death, and grief.

At one of the training sessions, I met a person who had undergone extensive, heart wrenching grief because the family was unable to have personal effects of the deceased who had committed suicide. I decided to look into the law and if this is so, something must be done.

I got a copy of the law (44-3-402) and all it talked about is returning items that were not to be used for evidence. Nothing was said about other items used in an investigation of the death. The law was truly unclear.

When Senator Bill Thomas arrived at our school to register his son, I told him of the situation and asked for his help. He said he would request the Legislative Council to draft a bill and they would get in touch with me.

A lawyer for the Legislative Council contacted me and said he had been assigned to draft a bill and exactly what was I looking for? I explained the situation and his response was, "Well, why couldn't they sue and get things back?" My reply was that a grieving family had enough emotional trauma and expense to handle without having to go to court to get something that I felt was already theirs. We discussed other points such as why didn't the officials return the items now? That question wasn't answered then.

In a few days, he called to tell me what had been written. The wording has changed from the original draft. The amendments or changes proposed by the Attorney General's Office and supported by the Sheriff's Office are agreeable. Others will speak to the legal aspects of the bill.

I do wish to draw your attention to the section of the bill which deals with returning items to families that have been held over the years and are still in the hands of the County Coroner. A law is not retro-active unless so stated. In the hearing held in the Senate, the County Coroner talked about (quote) "people from 1889 coming to the office to claim their property" *although I hope the Coroner was* so I guess you *exaggerating* can see this has been a problem for a long time.

At the previous hearing, the County Coroner ^{also} said there were no people in Montana who could examine suicide notes or other documents and they had to be sent out of state which took many months. At this time, I wish to submit to you a letter written by Louise M. Abel, a very well known Graphoanalyst who resides right here in Helena. There is no need to send anything even out of the city let alone out of the state.

The purpose of amending or changing this law is to clarify and simplify.... to balance between the needs of a family and the needs of the law enforcement. I pray that you can see the need for the clarity of this code.

Thank you.

Pass out letters.



Louise M. Abel

CONSULTING CERTIFIED GRAPHOANALYST

Personality Profiles • Lectures • Conventions • Counseling • Qualified Document Examiner

PHONE 406/442-0289
2019 EAST 6th AVENUE
HELENA, MONTANA 59601

Exhibit B
SB114
3-3-83

March 2, 1983

Representative Marjorie Hart, Chairman
House Judiciary Committee
Montana State Legislature

Dear Chairman Hart,

I am Louise M. Abel, a practicing, certified Graphoanalyst for the last twenty-two years. I have my master's degree in Graphoanalysis and am qualified to do Questioned Document work.

Through the years I have appeared before five Helena judges in civil and criminal cases, have associated with many Helena lawyers, represented Montana institutions, and have even been on a case in opposition to Charles Gravely.

I have twenty-nine colleagues throughout the state. Of the eight Certified Graphoanalysts in Helena, three of us are Document Examiners.

In addition to the above information, it may be of interest to you and the committee that although it is desirable to have the original document, most of us do our examinations and determinations with copies.

Respectfully submitted,

Louise M. Abel

Louise M. Abel

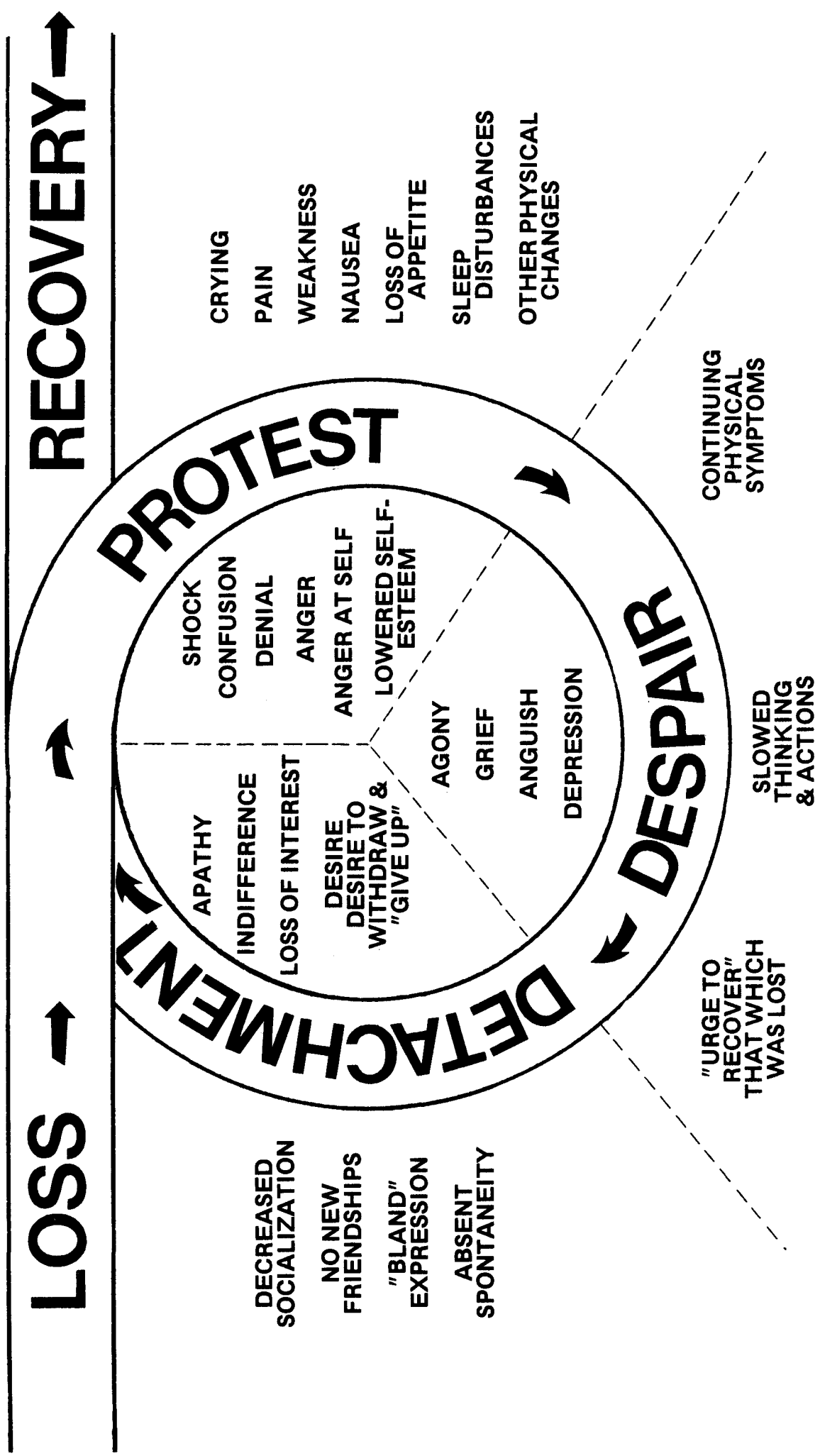
cc: Farris, Brand, Brown, Connelly, Darko, Dozier, Driscoll,
Fabrega, Hansen, Jensen, Jones, Menahan, Seifert, Solberg,
Swift, Winslow

Scientific Handwriting Analysis



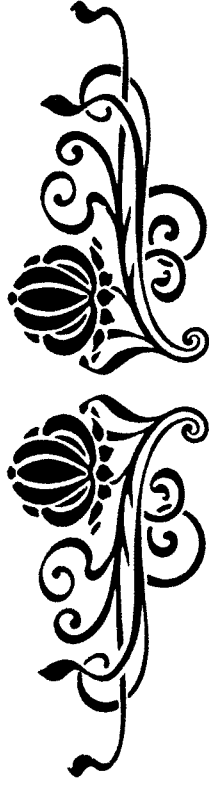
Exhibit C
SB114
3-3-83

CYCLE OF GRIEF



The death of a loved one is a painful experience, not because we fear what has happened or is happening to the loved one, but because of the loneliness that we ourselves are suffering. Our loved one is gone and there is only the aching void where he was. The emptiness and change that have come to our lives are a bitter potion indeed. The experience is the more distressing because the ache is deep where no palliative can reach it.

Wm. F. Rogers



This pamphlet was prepared by:
Hospice of St. Peter's Community Hospital
2475 Broadway
Helena, MT 59601
(442-2480)

Further information about the grief process, and Hospice Bereavement Support Services is available from the hospital.

Suggested reading:
Caine, Lynn, **Widow**, Bantam Books, 1975.
Grollman, Earl, **Concerning a Death: A Practical Guide for Living**, Beacon Press, Boston, 1974.
Westberg, Grant, **Good Grief**, Fortress Press, Philadelphia, 1962.

HOSPICE OF ST. PETER'S

The Hospice of St. Peter's coordinates a program of care for patients with a life threatening illness and a shortened life expectancy. This program is sponsored by St. Peter's Community Hospital, assisted by the generous support of many individuals and organizations in the Helena area. Hospice does not duplicate any of the services already available in this community. The role of Hospice is to bring together into a care team the various community resources necessary to meet the needs of the patient and the family.

THE SPECIAL QUALITIES OF HOSPICE CARE

Hospice care is part of the total health care system. However, there are qualities which make it a very special kind of care. Hospice care:

- Focuses on helping patients and families make the most of remaining life
- Emphasizes symptom control and care of patient rather than cure of the disease
- Follows the patient both at home or in an inpatient setting
- Encourages the family to participate in the care of the patient
- Uses volunteers as part of the care team
- Allows patients to continue making decisions about their own lives
- Continues support to the family after the death of the patient
- Is available 24-hours-a-day every day

THE BEREAVEMENT PROGRAM

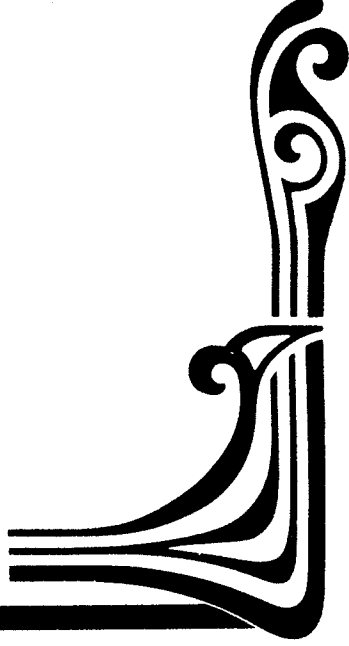
The Hospice Bereavement Program is for anyone in the community who is grieving the loss of a loved one. The goal of the program is to help people move through the grieving process. Hospice families receive continued support from their volunteer and from the staff. Bereavement Team volunteers are also available for additional support. Support groups and informational sessions are provided regularly to give people the opportunity to share with others in the same circumstances. Information about the grieving process is available upon request.

Hospice of St. Peter's Community Hospital



2475 Broadway · Helena, MT 59601

Grief Can Bring Growth



SB114
3-3-83

What Can I Do To Help?

Grief can be a time of growth. Here are suggestions for the family and friends of a bereaved person.

Know your own views about grief. It is important for you to clarify your own attitudes toward grief and to understand the grieving process. The process entails hard work, and it takes people many months and even years to work through it. Each person will go through the process in his or her own unique way.

Get in touch and be with the Bereaved. Ask when you can visit and offer to help in specific ways. Avoid the general statements: *Call when you need me* and *Is there anything I can do to help?* Often your silent presence speaks louder. Your personal involvement and concern may be the most meaningful gift you can give at this time. Attending the funeral or memorial service is an important way of sharing your sense of loss with the Bereaved.

Listen a lot and say little on early visits with the Bereaved. We have a tendency to talk too much, especially when we are feeling uncomfortable. Listening, rather than talking, allows the Bereaved the opportunity to express and work through his feelings. Be alert to physical symptoms of distress which are sometimes a delayed reaction to the loss. Also, watch for signs of neurotic guilt.

Allow and encourage expression of emotion. Recognize that you may be uncomfortable with some emotional expression, especially anger, guilt, and tears. In order to move through the grieving process, it is important for the Bereaved to get in touch with and release his or her emotions. Feeling angry both at the loss and at the person who has died is normal, healthy, and appropriate for

people who have experienced a death. Our response should be to accept these feelings and not judge them as either right or wrong. Expression of emotion may be particularly difficult for men in our society.

Don't assume that a quiet child is not sorrowing.

Don't shut children out of grief. Comfort the children in the family and include them whenever possible. Don't assume that a quiet child is not sorrowing. If possible, be someone to whom a child can confide feelings and shed tears. Children should not be shielded from grief, nor should they be expected to grieve in the same way as adults.

Avoid cliches and easy answers. *He had a good life. He is out of pain. You have an angel in Heaven. Aren't you lucky that...* and *It's God's will* are not likely to help. A simple, *I'm sorry* is better. Likewise, spiritual sayings can even provoke anger unless the mourner shares the faith that is implied. In general, **do not attempt to minimize the loss.**

Do not attempt to tell the Bereaved how he feels. You can ask (without probing), but you cannot **know**, except as he tells you. Everyone, bereaved or not, resents an attempt to describe his feelings. To say, for example, *You must feel relieved now that he is out of pain* is presumptuous. Even to say, *I know just how you feel* is questionable. **Learn** from the mourner, do not **instruct** him.

Allow talk about the deceased. You may want to divert the Bereaved from talk about the lost person because you fear it would be upsetting. It is important to permit the Bereaved to talk freely about the one who has died. That person is still very much a part of their lives.

Discourage bereaved persons from making major decisions and changes in their lives during the initial grief period. People are not always able to make good and balanced decisions at this time. Changes which can wait should be put off.

Allow the Mourner to work through grief at his own pace. Don't take it upon yourself to remove clothing, belongings, or hide pictures. Sometimes it is a comfort to the Bereaved to have reminders of their loved one. As time passes and separation from the loved one occurs, many of these details will be taken care of naturally.

Your silent presence speaks loudest.

Eventually, help to draw the Bereaved into outside activity. People may not take the initiative to go out on their own. An important part of grief work is to re-establish old relationships and to initiate new ones. When the mourner returns to social activity, treat him as you would anyone else. Avoid pity - it destroys self-respect. Acknowledge the person's loss and the fact that his life has changed, but don't dwell on it.

The most important thing you can do for a bereaved person is to be and stay in touch. Remember that helping is giving of yourself. Bereaved people need those they love to walk with them through the valley of their grief. Each person's journey is different. The grieving process is hard work which takes time. The presence of warm and caring relationships can make that journey somewhat more bearable.

Each person's journey is different.

Exhibit E
SB114
3-3-83

TESTIMONY IN SUPPORT OF SENATE BILL 114 - By Jim Palmer

My name is Jim Palmer. I am a Hospice volunteer. I am not, however, a spokesman for Hospice.

In examining this Bill I request that this committee focus primarily on its spirit rather than its letter - and if additional amendments are considered come back to the original intent that prompted this legislative action.

The Bill talks about suicide notes, personal property, evidence, investigations, etc. But it's really about codifying human compassion.

There isn't a member of this committee who hasn't experienced the emotional reactions associated with one of those profound human feelings of love, hate, sorrow, guilt, and rage. And you know how totally overwhelming such responses can be.

Try to imagine then, what it must be like to be immersed in all of them simultaneously. In fact that is the situation in which many family survivors of suicide find themselves. They are caught in a whirlpool of misery.

There is nothing as powerful as the trauma of death itself to destabilize folks and challenge every human resource they possess. Even the most comfortable of deaths frequently leaves residual feelings of guilt, anger, and sorrow for the survivors. In cases of suicide these same responses are intensified.

There is a stigma on these families. The spontaneous outpourings of support and comfort normally made available to other survivors is frequently lacking. It's more than being ignored. They are literally shunned in some cases.

These people are in a very vulnerable position. It's not all that unusual for survivors of suicide to become victims. That is why certain things that may seem like small matters to others (such as possession of the original suicide note) are extremely important to them.

Often these notes are very personal and are addressed to a family member. It's the last attempt at personal communications that the person made before leaving this life. The survivors want the note that was touched and handled and had contact with the loved one. A facsimile, depersonalized by the Xerox machine provides no satisfaction.

It must be understood that the need of these people to have such items is entirely different from the needs you or I might have when we make routine requests to an agency. It's not like us asking the Bureau of Vital Statistics for an original birth certificate.

They are experiencing such extreme emotional turmoil that the frustrations resulting from arbitrary refusals, based upon no better reason than "policy" constitutes something very close to harassment, in my opinion.

I haven't heard any testimony yet presented that convinces me that both parties' needs - those of the authorities, and those of the family survivors of suicide - can't be accommodated. The intent of this bill was to require a particular action by appropriate officials when family survivors of suicide request certain personal property of the deceased, and no criminal investigations are in process or contemplated.

I feel that the option of refusing requests in such circumstances should be removed. The only justification for a negative response should be a clear cut legal grounds of rules of evidence when investigations are in fact in order. Vague speculations about the remote possibilities of an investigation ten or twenty years down the line should not be allowed to suffice.

Under no circumstances should arbitrary denials based upon nothing more substantive than personal whim or caprice be allowed.

Thank you for your indulgence.

Jim Palmer
3/3/83

VISITOR'S REGISTER

HOUSE JUDICIARY

COMMITTEE

BILL Senate Bill 79

DATE March 3, 1983

SPONSOR Fuller.

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITOR'S REGISTER

HOUSE _____ JUDICIARY

COMMITTEE

BILL Senate Bill 129

DATE March 3, 1983

SPONSOR Senator Fuller

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.