

HOUSE COMMITTEE ON JUDICIARY FAMILY JUSTICE

March 15, 1991 Hearing Room 357 1:00 p.m. Tapes 59 - C2
MEMBERS PRESENT: Rep. Kelly Clark, Chair Rep. Judy Bauman Rep. Marie
Bell Rep. Jim Edmunson Rep. Kevin Mannix Rep. Tom Mason Rep. Del Parks
Rep. Ron Sunseri STAFF PRESENT: Holly Robinson, Committee Counsel
Jeff Steve, Committee Assistant MEASURES HEARD: HB 2709 - Guardians
and Conservators (PH/WS) HB 2708 - Appointment of Temporary Guardians
(PH) HB 2674 - Access of Adoption Records (PH) HB 2673 - Adoption
Decrees (PH) - These minutes contain materials which paraphrase and/or
summarize statements made during this session. Only text enclosed in
quotation marks report a speaker's exact words. For complete contents of
the proceedings, please refer to the tapes.

TAPE 46, SIDE A

000 CHAIR CLARK: Opens Family Justice Subcommittee at 2:24 p.m.

HB 2709 - GUARDIANS AND CONSERVATORS - PUBLIC HEARING

Witnesses:

Representative Gail Shibley, District 12 Meg Nightengale, Oregon
Advocacy Center Janna Starr, Association For Retarded Citizens 018
REPRESENTATIVE GAIL SHIBLEY, DISTRICT 12: Suggests putting an emergency
clause in HB 2709. 037 MEG NIGHTENGALE, OREGON ADVOCACY CENTER: EXHIBIT
A Reads from Exhibit A. We have limited HB 2709 to very specific
situations. There is virtually no fiscal impact.

120 REP. MANNIX: Referring to lines 18-19, page 3 of printed HB
2709, has there been a real House Committee on Judici March 15, 1991
Page 2

problem with having the visitor serve the notice? - 127 NIGHTENGALE: If
it was not merged with the interview it would not save time because the
visitor would have to come back.

132 REP. MANNIX: Do you have an alternative method for service? 134
NIGHTENGALE: There is a question whether substitute service is possible.
There seems to be some situations where a nursing home administrator
might be served because that is where the person resides. Using process
servers is another possibility. 144 CHAIR CLARK: Could you speak about
the 7 day notice requirement before the visit. Does not fully understand
guardianship proceedings. 154 NIGHTENGALE: The basic concept of
guardianship is that it does impose a burden upon one's constitutional
rights of liberty and privacy and use of their own property. The idea of
fair notice and an opportunity to be heard is important.

168 CHAIR CLARK: What is the definition of "incapacitated?" 172
ROBINSON: Definition of an "incapacitated person" is the person who
doesn't have the ability when receiving information to understand it or
the ability upon receiving it to communicate it back.

177 CHAIR CLARK: Does it or does it not exclude drug and alcohol
problems?

178 ROBINSON: Under the statute as it now stands it does not per se
include drug and alcohol.

180 NIGHTENGALE: The definition focuses on the mental processes one

engages in when they input information, need to absorb it and need to form a voluntary choice and express it back in a way that is understood. It does not focus on the quality of the decision that is actually made. 190 ROBINSON: When the use of visitors was introduced into guardianship proceedings the purpose of doing so was to insert what would be an independent third party to make a judgment about the incapacity of the individual and the quality of the alleged guardian. Because these tend to be nonadversarial courts visitors were used to go out and do an assessment. 201 REP. MANNIX: We have received testimony which suggests that we amend Section 1 to include disclosure to the court of bankruptcy proceedings involving the nominee or the appointed guardian or conservator not just felonies and misdemeanors. You can see the obvious reason for this. 207 NIGHTENGALE: Carol Kyle suggested that. See EXHIBIT C. It makes sense. 210 CHAIR CLARK: Rep. Mannix could you share what the "obvious" reason is? 213 REP. MANNIX: The obvious problem would be that the person who is taking care of someone else's property is in financial straits and may have "itchy fingers." House Committee on Judiciary March 15, 1991 - Page 3

224 JANA STARR, ASSOCIATION FOR RETARDED CITIZENS: EXHIBIT B Reads from Exhibit B.

279 CHAIR CLARK: If there were going to be opposition, where would the opposition come from?

282 STARR: Perhaps the fact that the process would be slowed down there might be opposition from individual parents or organizations.

HB 2709 - GUARDIANS AND CONSERVATORS - WORK SESSION

Witnesses:

Judge Lee Johnson, Circuit Court, District 4 Bob Joondeph, Oregon Advocacy Center

299 MOTION, REP. MANNIX: Moves to amend Section 1. On line 7, page 1 of printed HB 2709 insert a comma after "misdemeanor" and insert "or who has filed a petition for relief under bankruptcy laws". On line 7 after "The conviction" insert "or filing of a petition". On line 9 delete the word "conviction" and insert the word "matter". On lines 12 and 13 delete the phrase "of a felony or misdemeanor conviction" and insert the phrase "as required by subsection 1". Further, add an emergency clause to HB 2709. DISCUSSION ON THE MOTION 327 JUDGE LEE JOHNSON: HB 2709 is totally inconsistent with HB 2708. Concerned about the use of temporary guardians. One of the procedures that he uses is to use full time visitors. Whenever there is a petition for temporary guardianship and he does not feel that everything is right he appoints one of the visitors to investigate whether this is a legitimate petition or not. We should not try to make this interview of the person who is allegedly incapacitated into an adversary proceeding. That is a terrible mistake.

358 CHAIR CLARK: You are suggesting that the one week notice provision HB 270 9 does that? 362 JUDGE JOHNSON: Yes. The whole thrust of HB 2708 is that we appoint temporary guardianships for emergency situations. One of the ways that the court can be protected and people can be protected is by using a visitor and sending that visitor out and getting an independent look at the situation.

372 REP. MANNIX: Wouldn't we be able to take care of that under the temporary guardianship by making special provisions about what visitors might do? If we are going to deal with particular problems relating to temporary guardianships why don't we grant special authority for those

problems? 377 JUDGE JOHNSON: Has a hard time with the concept of "prepping" a person who is allegedly incapacitated prior to an interview and is inconsistent with the concept of temporary guardianship. -The whole concept behind visitors serving notice is based on humanitarian principles. To send a process server to somebody who is suffering from mental illness is not a gentle way to do it. Visitors are generally people who have some sensitivity to the situation.

These minutes contain materialr which paraphrase and/or summarize statements made during thir aeunion. Only text enclored in quotation markr report a speaker's exact words. For complete contents of the proceedingr, plcase refer to the tapes. _ House Committee on Judiciary March 15, 1991 - Page 4

TAPE 60, SIDE A

013 CHAIR CLARK: Summarizes Judge's statement. Would you feel the same way if the notice for the visit were less than 7 days or is it the idea of a notice at all?

019 JUDGE JOHNSON: No. Probably the most common temporary guardianship is somebody in a hospital who needs surgery. There are other temporary guardianship situations such as persons suffering from mental disorder.

030 CHAIR CLARK: What would it do if we excluded notice from temporary guardianships?

032 JUDGE JOHNSON: Still does not understand the need for the provision.

035 REP. MANNIX: Suggests amending HB 2709 to include the phrase "except as to a temporary guardianship proceeding". 038 JUDGE JOHNSON: Has no objection. 043 NIGHTENGALE: The concern about having the notice delivered by a visitor during an interview was that those individuals who suffer from mental retardation and other problems found that very frightening. Reports came back about having people caught off guard. There is the notion that if people perceive the procedures as fair that they had adequate notice and had adequate chance to prepare and have input that there is a greater ability for them to accept and cope with the outcome. 058 CHAIR CLARK: Is that lessened if the notice is brought by a process server? 060 NIGHTENGALE: His point is very good. Generally, the sort of people who serve as visitors do have far better sensitivity. Separating the interview is the biggest concern of ours. 064 CHAIR CLARK: Does it do violence to exclude temporary guardianships and the 7 day notice requirement? 066 NIGHTNGALE: That period could be shortened. In fact, with temporary guardianships the notice requirement could be simultaneous with the visit. She still believes that people have the right to know what is happening before they engage in a critical stage of a proceeding where liberty and property are at stake. 093 JUDGE JOHNSON: Where you have somebody that is mentally ill and who would meet the criteria for commitment if they had the means available for private treatment then it is a much better route for the person to have a guardian who is appointed who can make medical care decisions regarding commitment. 102 VOTE: No objection. Motion passes. 125 MOTION, REP. MANNIX: Moves to add an emergency clause. 128 VOTE: No objection. Motion passes.

129 MOTION, REP. MANNIX: Moves to amend HB 2709 on page 2, lines 25-26 after the words "relevant information" insert the phrase "except as to temporary guardianship proceedings". 134 VOTE: No objection.

Motion passes. 135 MOTION, REP. MANNIX: Moves HB 2709 as amended to Full Committee with a "do pass" recommendation. DISCUSSION ON THE MOTION 140

REP. BAUMAN: Concerned about the language in Section 5(2) where it says "Notice shall not be served by the visitor." Even proponents of HB 2709 appear to be ambivalent about it. 156 BOB JOONDEPH, OREGON ADVOCACY CENTER: The question is not whether a nasty person or a nice person goes and serves the notice. The question is whether the person who acts in the roll of the examiner should serve the notice. The concern is that the examiner should have all their impressions and evaluations made after the person has prior notice. If the petitioner wants to select a process server and pay \$15 it can pick all sorts of people. The server is not necessarily going to be a sheriff. In short, the process server can be whoever the petitioner wants it to be.

172 REP. BAUMAN: Do you find that there are many cases where the examination report includes observations that were made at that time of service of notice? 174 JOONDEPH: Personally not aware of any.

176 REP. BAUMAN: That would seem to me to be your primary reason for the language in Section 5(2) on page 3. 183 JOONDEPH: The standard for granting or denying guardianship is a matter of capacity.

Circumstances that a person is found in at any time can effect the evaluation and can be included in the report. The idea behind preventing visitors from serving is to make it a fair process that a person will have an opportunity to put their best face on when they are going to be evaluated for their capacity. 192

REP. BAUMAN: If observations made at the time of service were not allowed to be the basis of conclusions in the examination report would that satisfy you, objections to the way things are currently done? 195 JOONDEPH: Technically that would address the problem. 206

MOTION, REP. EDMUNSON: Moves to delete Section 5. We have just approved an amendment that says that the visitor shall have no contact until at least 7 days after the person receives notice. Obviously the visitor cannot serve the notice or they would be having contact. 219

VOTE: No objection. Motion passes. House Committee on Judiciary March 15, 1991 Page 6

221 MOTION, REP. MANNIX: Restatement of Motion to Full Committee. 225 VOTE: C O Motion passes. Rep. Shibley to carry.

AYE: Bauman, Bell, Edmunson, Mannix, Mason, Clark NO: 0 EXCUSED: Parlcs, Sunseri HB 2708 TEMPORARY GUARDIANS - PUBLIC HEARING

Witnesses:

Representative Gail Shibley, District 12 Bob Joondeph, Oregon Advocacy Center Leslie Kay, Oregon Advocacy Center Penny Davis, Multnomah County Legal Aid David Nebel, Multnomah County Legal Aid Judge Lee Johnson, Circuit Court Judge, District 4 Larry Pound Karen Hightower, State Court Administrator 242

REPRESENTATIVE GAIL SHIBLEY, DISTRICT 12: HB 2708 creates new procedures for the appointment of temporary guardians.

265 BOB JOONDEPH, OREGON ADVOCACY CENTER: EXHIBIT D Gives an example of temporary guardianship where a person is in a hospital and is unconscious, does not have a guardian, there is no one to make a

decision for them and it is the medical opinion that they need a medical procedure. The hospital is unwilling to move on it without authorization because they do not want to take the risk of performing the procedure on the person. This is the type of situation where an emergency might be called for or there might be the need for an alternate decision maker who can approve the conducting of the medical procedure. 297 REP.

MASON: What about the converse of that where a person is in the hospital and procedures are about to be performed? 302 JOONDEPH: Normally, before a procedure would be arranged a consent would be finalized.

310 REP. MASON: There might be a situation where a person is in the hospital and they are incapacitated and some procedure is about to be performed on them that does not require consent. Would it be permissible for somebody to establish temporary guardianship to stop the procedure?

315 JOONDEPH: Yes. HB 2708 is designed to deal with emergency situations. The present statute that governs this area ORS 126.133 does not define what an "emergency" is. It does not limit the length of a temporary guardianship. It doesn't specifically allow for notice of the proceeding to the affected person, the right to a hearing, the right to counsel, or the right to appeal a decision made at the temporary guardianship proceeding. It allows for ex parte appointment of temporary guardians for indefinite periods time without any procedural rights. It creates a great deal of flexibility and responsiveness to an emergency situation, however it does also allow for House Committee on Judicia~ March 15, 1991Page 7

an abuse of the procedure. In fact, it was such an abuse of the procedure that resulted in a law suit entitled Grant v. Johnson See EXHIBIT E in which Oregon Advocacy Center's client Virginia Grant raised the constitutionality of the present temporary guardianship act. In this situation, Ms. Grant was in the Providence Hospital for a medical procedure. Her husband and mother petitioned the probate court for a temporary guardianship. The petition was supported by affidavit by the husband and the mother and a hand written note from a physician indicating that Ms. Grant was suffering from some mental problem that affected her ability to control her life. Based upon that information without notice to Ms. Grant a temporary guardianship order was issued which allowed Ms. Grant to be held incommunicado in a mental ward of Providence Hospital for two weeks on express orders of the temporary guardian. She did not have access to the telephone, to visitors or use of the mail. During the time that she was held, her husband took all the money out of her bank accounts, left the family home and filed for divorce. A sympathetic worker in the Hospital allowed her to call Oregon Advocacy Center and as a result of our intervention the temporary guardianship was dissolved. She subsequently filed suit asking that the statute be declared unconstitutional. Judge Helen Frye did hold it unconstitutional. See EXHIBIT E She made that declaration because, "The statute did not provide a meaningful opportunity for an alleged incapacitated person to present his or her case to a judicial officer in an exigent manner. -HB 2708 is designed specifically to deal with procedural problems that arise in the temporary guardianship area. It specifically allows for the ex parte appointment of guardians when an emergency is shown, but it provides procedural protections for persons to avoid abuses that might occur when procedures are left open as they have been in the past.

TAPE 59, SIDE B

024 JOONDEPH: HB 2708 will allow for the final order appointing the temporary guardianship to be appealable. It would allow for appointed

counsel when psychiatric placement is proposed. It defines emergency and personal service so those standards are clear. 030 CHAIR CLARK: Assumes that there will be a fiscal impact on the indigent defense system. 034 LESLIE KAY, OREGON ADVOCACY CENTER: Points out that persons are being committed to psychiatric hospitals through temporary guardianship process without teeing afforded counsel or notice. 041 JOONDEPH: HB 2708 would require an emergency clause.

052 PENNY DAVIS, MULTNOMAH COUNTY LEGAL AID: EXHIBIT F Reads from Exhibit F.

088 DAVID NEBEL, MULTNOMAH COUNTY LEGAL AID: Does not see any fiscal impact other than for appointed counsel.

093 REP. BAUMAN: What is the world doing now that there is no temporary guardianship system?

096 DAVIS: There are general equity powers of the court. Assumes that some of the judges are granting temporary guardianships. House Conunittee on Judiciary March 15, 1991 - Page 8

104 JUDGE LEE JOHNSON, CIRCUIT COURT JUDGE: EXHIBIT G Offers amendments to bill. See Exhibit G. HB 2708 is a total rewrite of the statutes applicable to temporary guardianship. It is an overkill. HB 2708 requires a finding of emergency and incapacity based on a clear and convincing evidence. Right now the court is not at a stage where it can make a finding of clear and convincing evidence. This is in the nature of a temporary hearing. The main thing is that the judge has to be satisfied that there is an emergency and there is a need to act. Does not think that you can have a full trial in that situation. It is not the appropriate time to do it. -Secondly, HB 2708 requires court appointed counsel. Does not find that there are very many instances where there is a need for counsel where tfiere is an adversary proceeding going on. Does think that in the face of Measure 5 that adding this cost is just)fied. -Has problems with the concept that we have to have a hearing. HB 2708 mandates a hearing even though no one requests a hearing. The important thing is that you want to give notice to the person that they have a right to a hearing, but 999G of the time people do not request a hearing and does not think that the court needs to hold a hearing. -Summarizes proposed Amendments. See Exhibit G.

215 REP. EDMUNSON: In the hypothetical of a bad faith temporary guardianship, what are the remedies available to the court?

230 JUDGE JOHNSON: We have a conservator statute separate from a guardianship statute. Guardians basically don't have any authority over transferring property. The court has contempt powers. The person would have a private right of action.

248 REP. EDMUNSON: Is there any criminal sanction that can be laid?

251 JUDGE JOHNSON: Yes. Depending on the circumstances the action could be considered theft and embezzlement.

256 LARRY POUND, PRIVATE ATTORNEY: Objects to HB 2708 and 2709. -The definition of "emergency" is not accurate. The definition in Section 7(3) of the bill limits "emergency" to "a life threatening matter." Many of the cases are not life threatening. His main concern is that HB 2708 limits the opportunity to get a temporary guardianship. Presently, he does not know how he can get a judge to sign a temporary guardianship

order if he or she new that a full scale hearing would have to be scheduled within 5 days. The dockets are crowded now. 346 KAREN HIGHTOWER, STATE COURT ADMINISTRATOR'S OFFICE: EXHIBIT H Reads from Exhibit H. Suggests referring HB 2708 to Ways and Means if the Committee decides that the indigent defense fund should pay these costs. HB 2674 - ACCESS TO ADOPTION RECORDS - PUBLIC HEARING

Witnesses:

Ginni Snodgrass, (ALARM) Connie Dawson JoAnn Janisse Joan Adderbury, Oregon Adoptive Rights _

~ House Committee on Judidary March 15, 1991Page 9

Barry Price Thomas Mattlock Linda Wollman, Planned Adoption Jodie Burnham Stephanie Weiner Gary Nashif Gary Conkling, Holt International Children's Services Janet Ellis, Northwest Adoptive Families Ann Masterson Lebwole Robert Castagna, Oregon Catholic Conference TAPE 60, SIDE B

015 GINNI SNODGRASS, ADOPTION REFORM ADVOCATE (ALARM - AAC): EXHIBITS I(1) THROUGH I(4) Speaking on behalf of the Oregon Coalition of Adoption reform Support Groups made up of The american Adoption Congress, The Attachment Disorder Parent Network, the Alarm Network, Adoptive Parents For Open Records, Adoption Triangle Ministries, Families Ties, The GS Foundation, The Muster Foundation, Oregon Adoptive Rights Association and Southern Oregon Adoptive Rights. All groups agree on the right to access to records. -Reads from Exhibit I(1). 082REP. MASON: Wants her to address the issue of integrity of the family that adopts the child. Views the adoptive family just as important as the natural family. Wants to preserve the integrity of the adoptive family and not interfere with the bonds that are formed. 098 SNODGRASS: Numerous studies over the years indicate that adoptees are disproportionately represented. On the average 33% of young people in mental institutions are adopted. Adoptees represent 2% of the population. That is 16 times the norm. Adoption is different. It is not the same as if the child was born into the family. Current secret adoption practices encourages a family to be built on lies and secrets and taboos. There is no situation in sociology and psychology which demands and requires that the family and the relationship be built on secrets and lies. It proves to be unhealthy. 113 REP. MASON: What is the lie? 115SNODGRASS: The lie is going around pretending that you were born to these people; pretending that your roots are not what they appear. 118REP. MASON: If an adopted child says, "I'm adopted and that is just as good as being born to my current parents," is that a lie? 121 SNODGRASS: The legal status remains the same, but there is a difference. Is not saying that being adopted into a family and being born into a family is any better or worse. It is just different. 124 REP. MASON: If you do not place the adoptive child in the same position as the natural child are you not treating the adopted child separately? House CommitiAe on Judiciar)7 March 15, 1991 - Page 10

131 SNODGRASS: Not changing their legal status of adoption or the legal effects of adoption and the effects of adoption. That child legally is the same. We are talking about adopted children when they are adults. We are not talking about children. HB 2673 deals with open adoption of children. HB 2674 deals with access to information when the adoptee becomes an adult.

144 REP. MASON: The potential for relationship with the birth mother could continue on then after adoption?

147 SNODGRASS: The relationship that is potentially available from HB 2674 is that the adoptive parents may at any time access information.

157 CONNIE DAWSON, REPRESENTING SELF: EXHIBIT J Teaches counselor education at Portland State University. Is concerned about how health professionals lack information to adequately treat the adoptive child. The adoptive parents need information to properly raise the child which includes information on physiology and sociology concerning the child.

184 REP. EDMUNSON: Are your comments the same concerning adoption at birth and for adoptions at infancy? 190 DAWSON: Gives an example of adopted child who is in medical treatment right now for behavior problems who could have been helped earlier if information on the child's background had been available. 202 REP. EDMUNSON: Is it clinically improbable or unlikely that a clinician could identify those behaviors objectively and treat them even though you don't have a subjective history? 206 DAWSON: It is much more difficult.

213 REP. MANNIX: Isn't that a burden that a lot of people in the adoptive process must bare? 218 DAWSON: Precisely. Most people do have access to that information if they need it. They always know where their parents are. 221 JO-ANN JANISSE, ADOPTIVE MOTHER: Has an adoptive daughter that is 26 years old. When she was 13 she had an identity crisis. When discipline was used the daughter would say, "You are not my father and mother." She had a desperate need to know who here biological parents were. She found out eventually and they relate much better with the daughter now. Supports open access to information concerning birth parents. 245 JOAN ADDERBURY, OREGON ADOPTIVE RIGHTS: The purpose of Oregon Adoptive Rights is to be supportive of those going through the adoptive process. Supports access to adoption records. She herself was birth mother and was forced into anonymity. Does not believe that is right or healthy. The adoptee's right to know about heritage supersedes the birth parent's rights on anonymity. Wants to have the opportunity to carry out relationships without the state entering in to dictate how that will be done or not done. 317 REP. MANNIX: Directs question to all. Concerning the social contract that exists with people who have already adopted children under current law. There are a lot of people that could be

House Committee on Judiciary March 15, 1991 - Page 11

concerned that the contract that they entered into which includes anonymity may be thwarted if this legislation passes. 339 SNODGRASS: In what other situation does a parent have legal power over whom their children associate with once they become an adult? Secondly, the adoptive contract was written over the adoptee when they were either a minor or an infant unable to sign their name to that contract. This is the only situation when a person who turns 18 has no voice in the matter to break that contract. 382 CHAIR CLARK: Recess for 5 minutes.

387 CHAIR CLARK: Reconvenes meeting at 4:24 p.m. 410 SNODGRASS: Would like to amend HB 2674. Delete on page 2, line 35 through page 3, line 6.

TAPE 61, SIDE A

026 BARRY PRICE: 46 years old and just learned that he was adopted. It is difficult to find words to convey the frustration that he felt since

learning of his adoption 2 years ago. His adoptive parents provided a loving and stable home. Asks why he feels the need to search for his birth mother. What would anyone's reaction be if they learned that the genetic link with their assumed family did not exist? That their ethnic background is unknown? That the family medical history is blank? The search for the birth parents is a haunting experience. Understands the need to seal the records of the minor child to prevent the possible interference of a birth parent to protect the child from the stigma of illegitimacy and to allow the birth mother the opportunity to start a new life. Once a child reaches adulthood believes that the adoptee should be allowed access to the records that will allow him to search for birth records. Also, mindful of the fact that the adoptee needs to be mindful of the birth parent's right to privacy, but not secrecy and to make contact in a non-threatening manner. Present laws do not recognize the adoptee's right to make the search.

058 THOMAS MATTLOCK: Goes on record as favoring HB 2674. 064 LINDA WOLLMAN, PLAN ADOPTION: Urges rejection of the both HB 2673 and HB 2674. The Oregon Counsel of Adoption Agencies is in opposition to both bills as worded. Although the counsel supports the philosophy of having information available to the adoptee, the birth mother and adoptive parents the Counsel urges rejection of both HB 2673 and HB 2674. -Two concerns: 1) Understands that if these bills become law an adoptee when they turn 18 will have access to these records. Also, other people will have access to these records. This access is too broad. Suggests limiting access to adoptee and genetic siblings, but no further. 2) Concerned about retroactive aspect of HB 2674. 098 JODIE BURNHAM, ADOPTEE AND BIRTH MOTHER: Supports HB 2674. 1) Being an adoptee is a struggle all your life and trying to find out about your identity is very difficult. Has found information over the years that conflicts. Wonders who to believe. Believes having greater access to information will make the life of the adoptee easier. House Committee on Judiciary, March 15, 1991 - Page 12

128 STEPHANIE WEINER: EXHIBIT K When you close the records that closure affects not only the adoptee, but also all the progeny of the adoptee. Also, in terms of privacy there is no right in constitutional law that is impenetrable. There is no absolute right that is not subject to be waived if there is a compelling government interest to do so. The right to privacy is also subject to that kind of waiver. There is a compelling interest for the government to do so in terms of the psychological health of the adoptee as well as any kind of genetic information that is not available to them. Every day we hear of more disorders that are linked genetically. If adoptees do not have the right to access the information concerning genetics there is a great deal that is important to them that is missing. -The sealed records provisions that we have in the United States is very unique in the course of history. See Exhibit K.

189 REP. MASON: In your written testimony See Exhibit K you quote another author who states, "Creating a fiction that the adopted child was actually reborn with the adoption proceeding n Finds that very attractive fiction. This is a very useful fiction.

206 WEINER: You are looking at the issue from the standpoint of an adoptive parent. You must also ask whether that same fiction is an attractive fiction to the adoptee. They are also a part of that fiction.

211 REP. MASON: Thinkcs when a person attacks another on the basis that that person is adopted is outrageous and thinks that the proponents of

HB 267 4 are playing into that.

226 WEINER: It is an offensive action. Asks question to Mason. If you were black how would you avoid being black? You have to face reality. If you continue the fiction and feed that fiction it doesn't necessarily make it go away.

239 REP. MASON: Some have concern that HB 2674 denigrates the new family structure. Wants to make that new family structure as impenetrable as possible. 243 WEINER: How can you legislate that? That is something that is best left to the parents. 246 REP. SUNSERI: There is a group that is not represented and that is the people who are adoptees who have lived their lives and are saying, "my life was happy until I found out I was adopted." Knows of a number of people like that. 254 WEINER: That assumes that they have not developed any physiological problems that might be heritable. If they develop an illness how are they to know about how to treat it. Again you are working into the problem. 266 REP. MASON: You said that by restricting this information you deny this knowledge throughout the next generation. That is not true. The information washes out over a period of time. 270 WEINER: Only if you assume that genes split in that very nice and neat fashion. 278 GARY NASHIF, ADOPTIVE FATHER: Adopted his son when he was born. He is 17 years old now. He had a phone call last night from the child's birth mother. She got the phone

- House Committee on Judiciary March 15, 1991Page 13

number from a person she had hired to look for her son. Responded that it was only the son's place to make contact. He told his son that when he reaches 18 he can contact his birth mother. If he chooses not to, then everyone else should stay out. He has known that he was adopted since he was very young. Does not want his child's life to be disrupted.

328 GARY CONKLING, HOLT INTERNATIONAL CHILDREN'S SERVICES: EXHIBIT L

355 JANET ELLIS, NORTHWEST ADOPTIVE FAMILIES ASSOCIATION: EXHIBIT M To have as much information at the time of adoption is great. Does have a problem if a birth mother does not want to be known and the adoptee should force that upon her. Suggests an intermediary. 401 ANNE MASTERSON LEBWOLE, ADOPTIVE PARENT: Adopted a child who was born to a woman addicted to many drugs. At that time, she had a case worker. She has extensive medical information on the child and extensive educational background information on the birth mother and father. Is concerned about other people having access to this information.

TAPE 62, SIDE A

025 ROBERT J. CASTAGNA, OREGON CATHOLIC CONFERENCE: EXHIBIT N Asks that the principles of confidentiality, mutuality, and true voluntariness in the interests of the child be kept upper most as the Committee looks at this public policy decision. HB 2674 does not protect the confidentiality and does not respect the mutuality of the parties. Offers copy of a Colorado statute. See EXHIBIT N . The statute creates a confidential intermediary. Suggests this for Oregon. As written, the Oregon Catholic Conference cannot support HB 2674.

HB 2673 - ADOPTION DECREES - PUBLIC HEARING

Witnesses:

Ruth Johnson

061 ROBINSON: Summarizes HB 2673. Allows for open adoption and rights of inheritance. Under current Oregon law there are some open adoption agreements written though they are not recognized by statute. There is question as to the enforceability of these decrees. 077 RUTH JOHNSON, ADOPTIVE PARENT: EXHIBIT O Would prefer to have known about the history of her daughter. The child's emotional level went up and down. Later the parents found out that the mother had been violently raped and had used drugs repeatedly. This knowledge could have been used early on. 140 REP. MANNIX: Curious about the disease. What kind of disease was it? 143 JOHNSON: Celiac. 144 REP. MANNIX: How old were the children when they were adopted? 145 JOHNSON: The daughter was three weeks and the son was ten weeks old.

House Committee on Judiciary March 15, 1991 - Page 14

166 CHAIR CLARK: Adjourns meeting at 5:07 p.m.

Submitted by: Assistant David Harrell, Office Manager
Reviewed by: J. Kennedy Steve,

EXHIBIT LOG:

A Testimony on HB 2709 - Meg Nightengale - 7 pages B Testimony on HB 2709 - Janna Starr - 2 pages C Testimony on HB 2709 - Carol Kyle - 4 pages D Testimony on HB 2708 - Robert Joondeph - 5 pages E Written Material on HB 2708 - Robert Joondeph - 17 pages F Testimony on HB 2708 - Penny Davis - 2 pages G Amendment to HB 2708 - Judge Lee Johnson - 2 pages H Testimony on HB 2708 - Karen Hightower - 1 page I(1) Written Material on HB 2708 - Ginni Snodgrass - 14 pages I(2) Written Material on HB 2708 - Ginni Snodgrass - 12 pages I(3) Written Material on HB 2708 - Ginni Snodgrass - 9 pages I(4) Written Material on HB 2708 - Ginni Snodgrass - 20 pages J Written Material on HB 2674 - Connie Dawson - 84 pages K Written Material on HB 2674 - Stephanie Weiner - 7 pages L Testimony on HB 2674 - Gary Conkiling - 1 page M Testimony on HB 2674 - Janet M. Ellis - 4 pages N Written Material on HB 2674 - Robert J. Castagna - 5 pages O Testimony (Letters) on HB 2674 - Rep. Kelly Clark - 15 pages P Testimony on HB 2674 - John Goldberg - 2 pages Q Testimony on HB 2674 - William Linden - 3 pages R Testimony on HB 2674 - Laurence H. Spiegel - 2 pages S Testimony on HB 2674 - Patrik Kendellen - 3 pages T Testimony on HB 2674 - Peter Fowler - 1 page U Testimony on HB 2673 - Sandra McLaughlin - 2 pages V Testimony on HB 2674 - Sandra McLaughlin - 2 pages W Testimony on HB 2674 - Monica Mayberry - 1 page X Testimony on HB 2674 - Corinne Spiegel - 1 page

