

MONTANA STATE SENATE
JUDICIARY COMMITTEE
MINUTES OF THE MEETING

January 27, 1987

The fifteenth meeting of the Senate Judiciary Committee was called to order at 10:00 a.m. on January 27, 1987 by Chairman Joe Mazurek in Room 325 of the Capitol Building.

ROLL CALL: All members were present.

CONSIDERATION OF SB 152: Senator Mike Walker of Senate District #20 introduced SB 152, which amends the statutes relating to filing of a person that has 180 days after an alleged unlawful discriminatory practice has occurred to file a complaint with the Commission. He said the bill extends the filing period to six months if the parties attempt to resolve the dispute by settlement, arbitration or any other method. He said one of his constituents had a problem with the Human Rights Commission. The constituent's 180 days elapsed in her case and she would like to have the amount of days be extended. He handed out an amendment from the Human Rights Commission (see Exhibit 1).

PROPOSERS: Gertrude R. Lindgren, representing herself, explained her case, which she presented to the Human Rights Commission, to the committee. She gave the committee a copy of her hearing in front of the Human Rights Commission and their response (see Exhibit 2, 3, and 4).

Kathi Mitchell, Personnel/EEO Officer from Missoula, supported the bill (see Exhibit 5).

OPPOSERS: LeRoy Schram, Montana University System, said he understood Ms. Lindgren situation. He said over \$40,000 was spent on her case. He said the trouble with using these alternative procedures, like arbitration, is they are not binding in the Human Rights field. He said if the University, as the employer, goes into an arbitration which includes the Human Rights Division, the University system has to pay "back pay" and reinstate the employee. He said that is fine because the University System agreed in the contract, which is final and binding. He said the case law that has been built up on this subject says a contract isn't binding on the claimant, so the claimant can go back into the Human Rights Commission and they can find a new finding on the case. He said the amendments he presented would help cases like Ms. Lindgren's case because the grievance procedures would not end at the College President's Office (see Exhibit 6). He stated if you are going to encourage people to use these procedures then the procedures should be mandatory and mean something.

DISCUSSION ON SB 152: Senator Crippen asked if the Human Rights Commission

was involved in the drafting of the bill. Ann MacIntyre, Human Rights Commission, said they were not involved in the drafting. Senator Crippen asked what her reaction was to the bill. Ms. MacIntyre said it will make it more difficult for the Commission to know when the statute of limitations has run out. She stated there is a problem when someone is attempting to use the grievance procedure and the claimant does not understand he has to file with the Commission within a 180 days, regardless if he is trying to exhaust that procedure. She said an amendment that would allow claimants not to file with the Human Rights Commission until after the completion of the grievance procedure would be a good change. Senator Crippen inquired if Title 7 under the statute of limitation part allows a 180 days. Ms. MacIntyre responded that was correct and it even allows up to 300 days in certain cases. Senator Crippen thought the bill would cause some confusion because the federal act has a different statute of limitation set than what the bill has. Ms. MacIntyre answered it will cause some confusion.

Senator Mazurek inquired why the bill is effective on passage and retro-active. Senator Walker said he wants to take care of his constituent. Senator Mazurek asked how many cases will the bill open up if it passes. Ms. MacIntyre replied that it will be hard to tell because the Commission will have to go back through correspondence and see what was turned down. She said Ms. Lindgren's case would not become timely with this bill because the grievance procedure started October 29, 1984 and she filed with the Commission on February 6, 1985.

Senator Walker closed on SB 152 by saying the Schram amendments were fine.

CONSIDERATION ON SB 104: Senator Pinsonneault, Senate District #27, introduced SB 104, which amends the laws relating to arrest by private persons, particularly arrest of a suspected shoplifter by a merchant. He said the bill repeals Section 46-5-504 of the MCA. He said the concealment of merchandise shall not constitute proof of the commission of the offense of theft. He gave the committee a copy of the 46-5-504 (see Exhibit 7).

PROPOSERS: Frank Capps, Montana Food District Association, stated the problem is when a person will take an item from the shelf and walks out of the store, but they can see they are going to be stopped by a merchant, so all that person has to do is drop the item and that person is free to go because the merchant under today's law can not prosecute someone who is attempting to shoplift.

George Allen, Montana Retail Association, he said section 46-5-504 and 46-5-501 are conflicting each other and if 46-5-504 is repealed it will help the merchants.

Tom Dowling, Montana Retail Association, said he doesn't understand why

this statute, which is being appealed in this bill, was a statute to begin with. He stated the bill will help the merchants in civil law suit cases.

Don Ingels, Montana Chamber of Commerce, supported the bill.

OPPONENTS: None

DISCUSSION ON SB 104: Senator Blaylock questioned what is meant by civil suit. Mr. Dowling replied that the shoplifter can sue the merchants for accusing them.

Senator Mazurek asked if people only put things down when they know that they are being followed in a store. He felt some people might pick up something accidentally. He thought maybe that is why that statute is on the books. Mr. Capps told several stories of following people around the store. He said shoplifters know that if they don't have the stolen item on them when arrested, then they can go free.

Senator Crippen said he has seen a number of times people who bring in their own containers into the store. He asked if the merchants would go through their private containers and accuse them of stealing. Mr. Capps said merchants usually question someone if they go out the door or they are attempting to go out th door. Senator Crippen stated some people do actually forget about some things which they might have put in their pockets, so are we going to prosecute them. Mr. Dowling said that situation has already happen.

Senator Halligan said no one should be able to touch or stop anyone until that person leaves the building.

Senator Blaylock asked how this bill will help the merchant if the arresting officer refuses to arrest a suspect of shoplifting because the item was not on the person when the officer arrived. Mr. Dowling responded that the statute has been uses as an instuction, nothing more.

Senator Mazurek inquired if the statute right now is forcing the jury to get into the suspected offender's mind. Mr. Dowling said the "mental" part of this statute is the main problem because we don't know people's real intent.

Senator Pinsoneault closed on SB 104.

CONSIDERATION ON SB 144: Senator Chet Blaylock of Billings opened the hearing on SB 144, which amends the provisions relating to sentencing of a defendant when mental disease or defect is an issue as to a state of mind which is an element of an offense. He stated if a defendant is found to be suffering from a mental disease or defect at the time of

commission of a crime, he must be committed to the Department of Institutions to be placed in an appropriate institution for custody, care, and treatment.

PROPOSERS: Curt Chisholm, Department of Institutions, stated that there are three dispositions available to the sentencing court when they are dealing with a defendant that could have some mental problem. He said the first disposition is to remand the custody of the defendant to the State Hospital on the basis that the defendant has been judged not guilty because of a mental disease. He said the second disposition is to remand the defendant to the State Hospital because the defendant lacks fitness to continue the trial. He said the third disposition is the defendant is found guilty, whether suffering from a mental defect or not, and is sentenced to the Department of Institutions to be placed in the State Hospital for a timed period. He explained the problem with this last disposition is many of these people that were judged under the third disposition don't need to be in the State Hospital. He said the standard on a mental health professional is very high, because to let a person out of the State Hospital the state mental health professional has to prove the person is cured. He commented that it is pretty tough to say someone is completely cured of a mental problem. He gave the committee an amendment which helped lower the standard (see Exhibit 8).

OPPOSERS: None

DISCUSSION ON SB 144: Senator Pinsoneault felt the Hospital was letting people leave the hospital because they need room and he felt it was unsafe for society. Mr. Chisholm replied that the people that are considered for release are people that have been screened very carefully by the Hospital's professionals and they feel some of these people were sent to the wrong place to begin with and need releasing or placed in another facility. He said the ultimate decision of where these people will go is still with the judges.

Senator Mazurek questioned if the county attorney is involved in the dispositions. Mr. Chisholm said the Hospital notifies the county attorney about a disposition, but they are not mandated to go.

Senator Halligan felt the amendment Mr. Chisholm presented should have an "and" in it instead of an "or" because a danger to himself and to others go hand in hand. Mr. Chisholm said the definition came from the criminal code. He felt some people might have a problem with one or the other, because some will not hurt themselves, but they could hurt others.

Senator Blaylock closed.

The committee adjourned the hearings to do some executive action.

ACTION ON SB 144: Curt Chisholm discussed his amendment. Senator

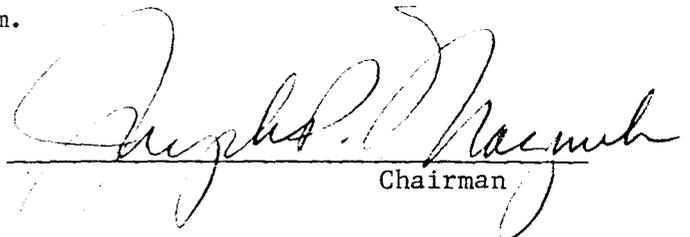
Halligan thought "and" should be in the amendment because it would make the mental professional of the State Hospital carefully review some patient's case. Mr. Chisholm explained that there are some people in the Hospital right now that should have never been put there, so the State Hospital is just housing these people. He echoed his statement about the court is the only entity that release these people from the Hospital. Senator Beck asked if a person did not belong at the State Hospital, but was "off balance", could the State Hospital transfer the person to the Warm Springs Hospital. Mr. Chisholm said he could not unless the court approved the matter, but he said this bill would help to move these people from one institution to another more smoothly. Senator Blaylock moved the Chisholm amendment with "or" in the amendment. Senator Brown suggested to put "either or" in the amendment. Senator Blaylock said he understood that many of these people that could be released are not completely cured and probably will never be. Senator Mazurek stressed that many of these people that could be released will not go free on the streets, but will be sent to prison. Mr. Chisholm agreed with Senator Mazurek. He said many of these people could be doing time in prison as well as they are doing at the Hospital. Senator Mazurek said the amendment does change the statute in the criminal code. Mr. Chisholm said he got the language from the criminal code. The motion carried.

Senator Blaylock moved the bill DO PASS AS AMENDED. The motion carried.

ACTION ON SB 104: Senator Halligan said the bill will give the merchants more power in dealing with shoplifters. Senator Pinsoneault stated that the passage of this bill will not allow concealment to cover the truth of a shoplifting situation. Senator Mazurek wanted more history on the statute 46-6-504.

ACTION ON SB 51: The committee talked of having a subcommittee for the SB 51. The main discussion dealt with a threshold percentage. The committee did not take action.

The committee adjourned at 12:00 p.m.


Chairman

DATE

Jan. 27th

COMMITTEE ON

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
John Dowling	Mont. Food Distrib. Assn	104	-	
Gertrude P. Lindgren	Self	152	✓	
Luenh Coops	Mont. Food Dist Assn	104	✓	
W.E. Stevens	Shifting Stores			
LeRoy H. Schram	MT Food Dist Assn			
George Allen	MT. Univ. System			
Don Thomas	MT. Retail & Comm.	104	✓	
Anne MacIntyre	Sen Bob Williams			
Don Sigels	Human Rights Commission	152		
JURT CHISHOLM	MT. Chamber of Commerce	104	✓	
	DEPT OF INSTITUTIONS	144	✓	

ROLL CALL

Judiciary

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date Jan 27 88

NAME	PRESENT	ABSENT	EXCUSED
<u>Senator Joe Mazurek, Chairman</u>	X		
<u>Senator Bruce Crippen, Vice Chairman</u>	X		
<u>Senator Tom Beck</u>	X		
<u>Senator Al Bishop</u>	X		
<u>Senator Chet Blaylock</u>	X		
<u>Senator Bob Brown</u>	X		
<u>Senator Jack Galt</u>	X		
<u>Senator Mike Halligan</u>	X		
<u>Senator Dick Pinsoneault</u>	X		
<u>Senator Bill Yellowtail</u>	X		

Each day attach to minutes.

Proposed amendments to SB 152

(Prepared for the sponsor by Legislative Council staff)

1. Page 2, line 11.

Following: line 10

Strike: "adopted"Insert: "initiated"

2. Page 3, line 9.

Following: line 8

Strike: "adopted"Insert: "initiated"

SENATE JUDICIARY

EXHIBIT NO. 2
DATE Jan. 27, 1987
BILL NO. SB 152

HEARING BEFORE THE HUMAN RIGHTS COMMISSION

STATE OF MONTANA

HEARING ORDER INFORMATION
NO. SAED 85-2711

FROM: GERTRUDE R. LINDGREN, CHARGING PARTY
TO: JAMES W. ZION, HEARING EXAMINER
C.C. WILLIAM A. SHIELDS, PRESIDENT,
COLLEGE OF GREAT FALLS, RESPONDENT

THE FOLLOWING INFORMATION IS SUBMITTED AS REQUESTED BY HEARING EXAMINER
IN HEARING ORDER OF AUGUST 7, 1986 PAGE 3 NUMBER 6 SECTION A WHICH ORDERED:
"A SHORT STATEMENT OF CONTENTIONS WHICH WILL BE THE SUBJECT OF TESTIMONY AT
AT HEARING AS TO WHY THE COMPLAINT SHOULD NOT BE DISMISSED FOR A FAILURE TO
FILE A COMPLAINT WITHIN 180 DAYS OF THE DATE OF THE ALLEGED DISCRIMINATORY ACT."

CONTENTIONS:

I. THERE ARE FACTS, MATTERS AND CIRCUMSTANCES UNDER WHICH THE FILING SHOULD
BE DEEMED TO BE TIMELY: THESE ARE THE FOLLOWING:

A. THE COLLEGE OF GREAT FALLS DID NOT FINISH ITS PROCEDURE FOR STUDENT
APPEAL IN ACADEMIC MATTERS (STUDENT RIGHTS AND RESPONSIBILITIES HANDBOOK -
COLLEGE OF GREAT FALLS) UNTIL I RECEIVED DR. WILLIAM SHIELD'S, PRESIDENT OF
COLLEGE OF GREAT FALLS, LETTER ON OCTOBER 29, 1984 INFORMING ME THAT HE WAS
UPHOLDING HIS FACULTY MEMBERS AND THE STUDENT-FACULTY COMMITTEE IN THEIR
DECISION PROCESS. I WAS TOLD BY DEAN OF STUDENT AFFAIRS SIKORA THAT THE GRADE
COULD BE CHANGED TO AN "A" AT ANY STAGE IN THE COLLEGE PROCESS. IT WOULD
THEREFORE BE ILLOGICAL FOR ME TO START PROCEEDINGS WITH THE HUMAN RIGHTS
COMMISSION BEFORE THE PROCESS WAS COMPLETED. MY CONTENTION IS THAT NEITHER
THE FACULTY OR STUDENTS GOT INTO THE MERITS OF THE ACADEMIC WORK, SO COULD
NOT MAKE AN ACCURATE OR FAIR DECISION. DR. SHIELD'S HAD ALL RELATED MATERIALS
FOR ALMOST FOUR MONTHS, SO HAD TIME TO REVIEW IT, AND IN HIS LETTER (10-29-84)
STATED THAT WHAT HE REVIEWED WAS, THAT THE COLLEGE PROCESS IN THE HANDBOOK
WAS FOLLOWED AS PRESCRIBED, THE COMMITTEE FINDINGS, AND THE TRANSCRIPT OF THE
COMMITTEE WITH MY CORRECTIONS TO THAT TRANSCRIPT OF THE COMMITTEE HEARING,
BUT THAT HE JUST MENTIONS THE RESEARCH IN HIS MEMORANDUM TO SISTER LAWRENCE
CROWLEY REGARDING THE MATTER (10/26/84) STATING HE "HAD ACCESS TO MS. LINDGREN'S
RESEARCH MATERIALS" AND THAT HE "PURSUED" THEM. THIS LEAVES A QUESTION IN MY MIND

AS THE WHETHER OR NOT DR. SHIELD'S CONSIDERED THE ACADEMIC MERITS OF THE WORK THOROUGHLY ENOUGH? DID HE LOOK AT THE REST OF THE EXAMINATION TEST TO DETERMINE THAT THERE ARE CORRECT ANSWERS TO QUESTIONS TO WHICH DR. RENZ GAVE NO CREDIT; AND OTHER ANSWERS WHICH CAN BE PROVEN 100% CORRECT BY REFERENCE TO THE TEXTBOOK FOR WHICH HE SUBTRACTED CREDIT. I EXPECT TO PROVE BY EXHIBITS THAT THERE ARE ENOUGH CORRECT ANSWERS IN THE EXAMINATION PAPER TO WARRANT AN "A" EVEN IF A REASONABLE AMOUNT IS SUBTRACTED FOR WHAT HE DID NOT LIKE IN THE SYNOPSIS. I ALSO WANT CONSIDERATION GIVEN TO MY EXPLANATIONS OF MY SYNOPSIS. I EXPLAINED TO THE FACULTY AND STUDENTS THAT ALL NECESSARY REQUIREMENTS OF A SYNOPSIS ARE PRESENT IN THE ESSAY QUESTION, AND WOULD BE RECOGNIZED BY ANYONE QUALIFIED TO GRADE RESEARCH. I EXPECTED THE MERITS OF THE STUDY OF THE 10 YEAR UPDATE ON IMPORTANT RESEARCH AFFECTING EVERY MONTANA SCHOOL CHILD TO BE GRADED AS IT HAD BEEN AT THE GRADUATE LEVEL (GRADED "A"), AND THAT WHEN IT WAS NOT THAT EACH PERSON INVOLVED IN THE REVIEW OF THE GRADE CONSIDER ALL MATERIALS BEFORE MAKING A DECISION IN THE CASE. THEY DID NOT. THE CREDABILITY OF THE GRADING OF AN ACCREDITED COLLEGE OTHERWISE STANDS AT ISSUE. FOR THESE REASONS THE MAY 12, 1984 DATE I RECEIVED THE GRADE SHOULD NOT BE THE DATE WHEN 180 DAY FILING DAY BEGAN. IT SHOULD BE OCTOBER 29, 1984 WHEN THE COLLEGE OF GREAT FALLS CONCLUDED THEIR GRADE PROTEST PROCEDURE. THE GRADE COULD HAVE CHANGED AT ANY STAGE OF THE PROCESS. THIS WAS A NECESSARY APPEAL PROCESS. IT IS A GENERAL AXIOM OF ALL LAW THAT TIME FOR APPEAL BE ALLOWED.

B. ALSO TO BE CONSIDERED IS THAT FEDERAL LAW TAKES PRECEDENCE OVER STATE LAW. I WISH TO CITE AS AN EXAMPLE OF THE NECESSITY OF TIME FOR APPEAL FROM FEDERAL RULES OF CIVIL PROCEDURE; U S CODE 1982 EDITION TITLE 29 LABOR 297108 P 113 NON COMPLIANCE WITH OBLIGATIONS INVOLVED IN LABOR DISPUTES OR FAILURE TO SETTLE BY NEGOTIATION OR ARBITRATION AS PREVENTING INJUNCTION RELIEF. NO RESTRAINING ORDER OR INJUNCTION RELIEF SHALL BE GRANTED TO ANY COMPLAINANT WHO HAS FAILED TO COMPLY WITH ANY OBLIGATION IMPOSED BY LAW WHICH IS INVOLVED IN THE LABOR DISPUTE IN QUESTION OR WHO HAS FAILED TO MAKE EVERY REASONABLE EFFORT TO SETTLE SUCH DISPUTE EITHER BY NEGOTIATION OR WITH THE AID OF ANY AVAILABLE GOVERNMENTAL MACHINERY OF MEDIATION OR VOLUNTARY ARBITRATION.

C. THE FACT THAT WE HAVE AN APPEALS BUREAU OF MONTANA IN THE DEPARTMENT OF LABOR AND INDUSTRY SPEAKS TO LEGAL AND LEGISLATIVE RECOGNITION OF THE LEGAL RIGHTS OF CITIZENS TO APPEAL, AND THERE ARE FEW RESTRAINTS ON APPEALS. I KNOW THAT THERE ARE MONTANA LEGISLATORS WHO AT THIS TIME ARE RESEARCHING THE 180 DAY FILING RESTRAINT SECTION OF THE HUMAN RIGHTS COMMISSION LAW. LEGISLATIVE CHANGE MAY BE PROPOSED.

DATE 1-27-87BILL NO. S.B. 152

2. THE FOLLOWING INFORMATION IS SUBMITTED AS REQUESTED BY HEARING EXAMINER IN HEARING ORDER OF AUGUST 7, 1986 PAGE 3 SECTION B WHICH ORDERED:

" A SHORT STATEMENT OF CONTENTIONS WHICH WILL BE THE SUBJECT OF TESTIMONY AT HEARING AS TO WHY THE FAILURE TO AWARD HER A GRADE OF "A" IN A SOCIAL RESEARCH METHODS CLASS CONSTITUTES AGE AND SEX DISCRIMINATION AND THAT BUT FOR HER AGE AND SEX SUCH A GRADE WOULD HAVE BEEN GIVEN."

2. IN THE FOREGOING CONTENTION AS I EXPLAINED THE REASON FOR DELAY IN FILING, I ALSO GAVE THE MAIN CONTENTION IN THE WHOLE APPEAL NAMELY THAT THIS IS NOT AN ORDINARY GRADE PROTEST, THIS INVOLVES RARE AND VALUABLE RESEARCH, AND IT IS OFFERED IN SUPPORT OF THIS CONTENTION ALSO. THIS WAS A 10 YEAR UPDATE IN RESEARCH -- A FIRST FROM A MASTER'S DEGREE PROFESSIONAL PAPER FOR BOTH THE COLLEGE OF GREAT FALLS AND MONTANA STATE UNIVERSITY. THAT IN ITSELF SAYS "A". THE COLLEGE OF GREAT FALLS SHOULD BE NOTHING BUT PROUD OF IT. THIS IS I CONTENT A GRADE ATROCITY. IT IS FOR THIS REASON PRIMARILY THAT I AN EXPERIENCED TEACHER AND POST-GRADUATE STUDENT WITH AN MA IN EDUCATION-EMPHASIS COUNSELING HAVE APPEALED THIS TYPE OF GRADING WHICH ADVERSELY REFLECTS ON THE PROFESSOR WHO DID SUCH GRADING AND THE COLLEGE WHICH ACQUIESCED TO IT. BY NO MEANS DOES IT REFLECT ON THOSE OTHER PROFESSORS OR ADMINISTRATORS, MANY OF WHOM I KNOW WHO HAD NOTHING TO DO WITH IT. I HAVE ALWAYS BEEN AN AMBASSADOR FOR THE COLLEGE. I CONSIDER IT A GREAT ASSET TO THE COMMUNITY. IT IS FOR THIS REASON I AM NOT SUING.

I WAS INSULTED IN DR. RENZ'S SOCIAL RESEARCH METHODS CLASS BEFORE THE CLASS, WHEN HE MADE AN INSULTING REMARK ABOUT MY AGE. (I WAS 67 . THE COLLEGE HAS QUITE A PROPORTION OF MATURE STUDENTS IN COMPARISON TO OTHER COLLEGES. SO HIS ATTITUDE REFLECTED IN HIS OVERT REMARK IS A DISSERVICE TO THE COLLEGE.) WHAT AFFECTED ME THE MOST WAS THE SHOCKED REACTION OF THE REST OF THE CLASS--ALL YOUNG UNDERGRADUATES. THEY LOOKED AS IF THEY WANTED TO SAY SOMETHING, BUT DID NOT KNOW WHAT TO SAY. DR. RENZ WOULD NOT HAVE EVEN KNOWN MY AGE HAD IT NOT BEEN IN MY VITA IN MY PROFESSIONAL PAPER. I CONSIDERED IT UNPRINCIPLED. HE ALSO MADE VULGAR REMARKS ABOUT WOMEN AND CHILDBIRTH, AND AN UNCALLED-FOR SEX SLUR REMARK ABOUT A YOUNG MALE STUDENT WHO WAS ABSENT WHICH WERE ADPERSION INNUENDO IN CONTENT. HE EXPRESSED STRONG FEELING ON THE WORLD BEING OVER POPULATED. SOME OTHER PEOPLE THINK SO TOO. I GAVE A STATISTIC ON THIS IN CLASS ONE DAY THAT HE MAY NOT HAVE LIKED. IT WAS MENTIONED IN THE TRANSCRIPT I BELIEVE; IT IS; "70% OF THE WORLD'S POPULATION LIVES ON 1% OF THE LAND. 4/5TH OF THE EARTH IS HABITABLE. THEY SHOULD SPREAD OUT." I AM A TEACHER . IF THIS CAUSED A RESENTMENT IN HIM WHICH RESULTED IN BIAS TOWARD ME, REFLECTED IN THE GRADE, I KNOW IT IS UNETHICAL FOR A TEACHER TO PENALIZE ANY STUDENT FOR HAVING OPINIONS DIFFERENT THAN HISOWN. ONE DAY HE CALLED OUT, "WAR";

SINCE I AM THE AUTHOR OF AN INTERNATIONALLY-KNOWN PLAN FOR PERMANENT WORLD PEACE, I JUST QUOTE THE TITLE OF AN ANTI-WAR PLAY IN RESPONSE, "WAR IS --'IDIOT'S DELIGHT. THAT IS ALL I SAID. I WOULD LIKE TO EMPHASIZE THAT I WAS NOT ALWAYS DISAGREEING WITH DR. RENZ. I DID MOST OF THE RECITING, CAROL HOLSTEIN, A TEL COM STUDENT, ALSO FREQUENTLY RECITING, BUT THE REST OF THE CLASS RARELY RECITED. I NOT ONLY READ, BUT OUTLINED THE ENTIRE TEXT, BECAUSE I TOOK IT AS A REVIEW, THEREFORE THE REASON A GRADUATE STUDENT-POST GRADUATE-WAS IN AN UNDERGRADUATE COURSE. DR. RENZ NEVER FOLLOWED THE ASSIGNED TEXT OR HIS SYLLABUS. I OBJECTED TO HIS TEACHING METHODS. I WOULD LIKE TO ASK HIM IF HE EVER TOOK TEACHING METHODS. SOME PROFESSORS HAVE NOT. HE CERTAINLY DID NOT EMPLOY ANY GROUP PROCESS TO GET RESPONSE OUT OF HIS STUDENTS. HE WAS INTERESTING TO LISTEN TO WHEN HE WAS TALKING ABOUT HIS BRAIN RESEARCH; I MENTION THIS IN THE DIARY EXTRACTS. SO SOMETIMES WHEN HE TALKED ABOUT OTHER THAN THE ASSIGNMENTS, I ENJOYED IT. I WOULD NOT CALL THIS A "CLASH OF PERSONALITY", BUT RATHER SOME UNWARRANTED RESENTMENT WHICH SHOWED UP IN HIS BEING VINDICTIVE IN HIS GRADING. THE QUALITY RESEARCH ON THE COUNSELING SITUATION IN 1974 (DONE AT MSU) AND THE UPDATE DONE AT THE COLLEGE OF GREAT FALLS (1984) SAMPLED THE 46 LARGEST HIGH SCHOOLS IN MONTANA. DR. HAROLD ANDERSON, HEAD OF THE GRADUATE DEPARTMENT AND MY ADVISOR CALLED IT "QUALITY WORK". IT HAS MONETARY VALUE, IT COULD GET ME A POSITION IN ONE OF THE FIELDS OF MY INTERESTS. IT IS IN A WAY AN INSULT TO THE RESPONDENTS TO MY QUESTIONNAIRES, THE PRINCIPALS OF THE 46 LARGEST HIGH SCHOOLS. I HAD A HIGH RETURN OF QUESTIONNAIRES--40 OUT OF 46 IN 1974, 45 OUT OF THE 46 IN 1984. ANYONE WHO KNOWS RESEARCH KNOWS THE WORK THAT WENT INTO IT. FOUR MONTHS OF HARD WORK ON IT, TAKEN AT THE SAME TIME AS I TOOK THE GRADUATE COURSE, CRIMINAL JUSTICE SYSTEM, ALSO A RESEARCH COURSE AND FOR WHICH I RECEIVED AN "A"- INSTRUCTOR, PROFESSOR PAY WALTERS. I DON'T ALWAYS OBJECT WHEN I DON'T GET AN "A". AN EXAMPLE IS GETTING A "B" IN A COURSE (GRADUATE) TAKEN FROM PROFESSOR JESS FARRIS ENTITLED "COUNSELING THE CHEMICALLY DEPENDENT"; MOST EVERY OTHER STUDENT WORKED AS A CHEMICAL DEPENDENCY COUNSELOR. THEY KNEW THE PRACTICAL APPLICATION OF WHAT WAS TAKEN MUCH BETTER THAN I WHO WAS NEW TO THE SUBJECT. I HAVE BEEN AN HONOR ROLL STUDENT ALL MY LIFE. I AM A FORMER SOCIAL WORKER, TEACHER, COUNSELOR. I AM THE MOTHER OF SIX GROWN CHILDREN AND HAVE BEEN UNUSUALLY ACTIVE IN VOLUNTEER COMMUNITY SERVICE AND YOUTH WORK IN THE CITY AND STATE. TO SUMMARIZE I CAN GET INTO THE NEAR-PERFECT EXAMINATION PAPER POINT BY POINT AND PROVE IT TO BE AN "A". I HAVE QUESTIONS TO ASK THOSE WHO FAILED TO GET INTO THE MERITS OF THE WORK. I HAVE ALREADY TAKEN STEPS TO GET ACTION FROM THE RESEARCH FINDINGS. WE NEED THE SCHOOL AND HOME WORKING CLOSER WITH MOUNTING PROBLEMS FOR CHILDREN AND YOUTH. THIS WAS WHAT MY RESEARCH IS

ALL ABOUT. I WILL NOT HAVE IT DISCREDITED. I AM WILLING TO OVERLOOK THE LACK OF RECOGNITION OF ITS VALUE BY SOME PROFESSORS WHO SHOULD BE MORE COGNIZANT OF MODERN TRENDS IN EDUCATION AND APPLIED RESEARCH, EVEN OF THE UNPROVOKED REMARKS, BUT I WILL NOT TOLERATE ANYTHING BUT ACCURATE, FAIR, IMPARTIAL GRADING. THIS REFLECTS ON ALL STUDENTS. THEY ARE IN A VULNERABLE POSITION TO FIGHT BACK. ACADEMIC FREEDOM FOR STUDENTS IS AS IMPORTANT AS ACADEMIC FREEDOM FOR PROFESSORS. THE COLLEGE HEARING WAS A PRETENSE WHEN THEY DID NOT GET INTO THE MERITS OF THE WORK. THERE IS LACK OF DUE PROCESS WHEN ONE SIDE ONLY IS CONSIDERED.

I HAVE REPORTED TO THE HUMAN RIGHTS COMMISSION THAT IN THE BACKGROUND IS AN ONGOING INVESTIGATION OF CRIMINAL SUBVERSIVE ACTIVITIES REQUIRING EXPERTISE IN INVESTIGATIVE METHODS. I DO NOT THINK THERE IS A RELATIONSHIP IN THIS GRADE SITUATION BUT THERE COULD BE. I EXPECT IT TO BE DEALT WITH SEPARATELY. THIS HEARING ORDER DEFINES WHAT WILL BE CONSIDERED, BUT SHOULD ANYTHING SURFACE IT WILL BE REPORTED TO PROPER AUTHORITIES.

I ASK THAT IMPARTIAL, QUALIFIED EDUCATORS RE-GRADE THIS WORK. THERE WILL BE NO END TO THE APPEALS UNTIL I HAVE MY LEGAL AND HUMAN RIGHTS PROTECTED BY THE LAW.

C. DOCUMENTS

THE FOLLOWING IS SUBMITTED AS REQUESTED BY HEARING EXAMINER:

"A LIST OF ALL DOCUMENTS, PAPERS AND OTHER TANGIBLE EVIDENCE WHICH CHARGING PARTY INTENDS TO OFFER AT HEARING, WITH A SHORT DESCRIPTION OF THE ITEM. COPIES OF ALL SUCH EVIDENCE SHALL BE GIVEN TO THE RESPONDENT THROUGH ITS PRESIDENT NO LATER THAN TEN DAYS PRIOR TO HEARING."

NOTE: I INQUIRED OF THE HUMAN RIGHTS COMMISSION OFFICE WHETHER I HAD TO SUBMIT COPIES OF THEIR CORRESPONDENCE WITH ME, AND OF THE FORMS THEY SENT ME TO FILL OUT. I WAS TOLD I DID NOT HAVE TO DO THIS, AS THEY WERE ALREADY IN THE RECORD. I ALSO ASKED IF I HAD TO FURNISH A COPY OF MY ORIGINAL RESEARCH MSU PROFESSIONAL PAPER AS I HAD ONE COPY ONLY; I WAS TOLD I DID NOT HAVE TO. I HAVE ASKED THE GREAT FALLS PUBLIC LIBRARY TO SECURE A COPY ON LOAN FROM THE MSU LIBRARY.

LIST OF DOCUMENTS ETC.

1. PROFESSIONAL PAPER - SCHOOL FAMILY COUNSELING IN THE HOME --RESEARCH DONE AT MONTANA STATE UNIVERSITY 1974 GRADED "A" --REQUIREMENT FOR MASTER'S DEGREE EDUCATION-EMPHASIS COUNSELING
2. RESEARCH PROJECT DONE AT COLLEGE OF GREAT FALLS 1984 - 10 YEAR UPDATE OF SAME RESEARCH DONE IN 1974 AT MSU. DONE SOCIAL RESEARCH METHODS CLASS SPRING SEMESTER 1984, INSTRUCTOR DR. PAUL RENZ
3. THE FINAL EXAMINATION PAPER - IT WAS DIVIDED INTO TWO SECTIONS (SHORT ANSWER AND ESSAY) THAT WAS EQUALLY WEIGHTED IN SCORING VALUE. THE POINT COUNT FOR EACH QUESTION APPEARS IN BRACKETS AFTER THE NUMBER. IN MY SCORING CHOICE THIS EXAM COUNTED 25% (HAD TO BE THIS PERCENTAGE FOR ALL STUDENTS) THE RESEARCH PROJECT 75%. THERE WERE OTHER PERCENTAGE CHOICES. I FILLED THE CHOICE FORM IN LATE, JUST TO INDICATE WHAT PERCENTAGE WEIGHT I WOULD GIVE THE OTHER CHOICES I.E. ATTENDANCE 10%, PROFESSOR EVALUATION 10%, MY OWN EVALUATION 10% ETC. I DID NOT SELECT EVALUATION OF OTHER STUDENTS AS I DID NOT KNOW ^{THAT} THEY KNEW ME. I INDICATED AT THE BOTTOM THAT I WANTED THE RESEARCH TO COUNT 75%, EXAM 25%. I ALSO DISTINCTLY TOLD DR. RENZ THAT I WANTED THIS CHOICE, AND HE SAID THAT IS WHAT YOU WOULD WANT. DR. PENZ

TESTIFIED THAT THE EXAM PAPER WAS ALL "A" BUT WAS NOT SYNOPSIS. I TESTIFIED THAT ALL REQUIREMENTS FOR A SYNOPSIS WERE CONTAINED IN THE ESSAY QUESTION WITH STATISTICS NOT LISTED AS IS USUAL IN SYNOPSIS.

4. TEXTBOOK - ABRAHAMSON, MARK, SOCIAL RESEARCH METHODS, PRENTICE-HALL, INC., ENGLEWOOD CLIFFS, N. J. 07632, 1983. WILL BE USED AS EXHIBIT. I AM SURE IF REQUIRED, COLLEGE HAS A COPY
5. OUTLINE OF TEXTBOOK - THIS REPRESENTED A LOT OF WORK. WILL BE USED AS EXHIBIT
- ✓ 6. ABSTRACT - OPTIONAL, CERTAINLY A SYNOPSIS. HANDED IN WITH RESEARCH
- ✓ 7. QUESTIONNAIRE, COVER LETTER, QUESTIONNAIRE RESULTS MAILED TO 46 LARGEST MONTANA HIGH SCHOOLS (SAMPLE WAS ATHLETICALLY DESIGNATED AA AND A SCHOOLS)
RESEARCH METHOD 2-11-86
- ✓ 8. NOTES TAKEN TO COMMITTEE HEARING-FROM WHICH I SPOKE.
9. HOME SCHOOL COORDINATOR HANDBOOK - RELATING TO INDIAN CHILDREN EXCLUSIVELY MY RESEARCH INCLUDES AVAILABLE DATA ON THIS PROGRAM. HANDBOOK PREPARED BY OFFICE OF PUBLIC INSTRUCTION. WILL BE USED AS EXHIBIT
10. TRANSCRIPT OF COLLEGE OF GREAT FALLS HEARING - STUDENT RIGHTS AND RESPONSIBILITIES COMMITTEE - 3 FACULTY MEMBERS AND 3 STUDENT MEMBERS, SISTER LAWRENCE CROWLEY, CHAIRMAN, FACULTY ELECTED BY OTHER FACULTY MEMBERS TO BE ON THIS COMMITTEE. I FOUND ERRORS NOTED BY ME, THE WORSE OF WHICH WAS HAVING ME SAY, "HE CAN CUSS IF HE WANTS TO," WHICH I NEVER SAID AND REGARDED AS PREJUDICIAL TO ME. DEAN OF STUDENTS, FATHER SIKORA, TOLD ME HE ALONE LISTENED TO THE TAPES AND HAD HIS SECRETARY TYPE THEM UP. I PAID FOR A TRANSCRIPT, NOMINAL FEE. WILL BE USED AS EXHIBIT. MY COPY NOT FOUND IN MATERIALS RETURNED.
11. EXTRACTS FROM MY DIARY WHICH HAVE NOTATIONS ON HAPPENINGS IN CLASSES I TOOK SPRING SEMESTER, SOCIAL RESEARCH METHODS AND CRIMINAL JUSTICE SYSTEM. DATES CLASS MEETING DAYS BETWEEN JANUARY 9, 1984 AND MAY 2, 1984 WHEN FINAL EXAM IN SOCIAL RESEARCH METHODS HANDED IN. THESE ARE HANDWRITTEN, BECAUSE OF LACK OF TIME TO TYPE THEM. THESE ARE SUBMITTED WITH THE STIPULATION THAT THE ACTUAL PAGE OF THE DIARY FROM WHICH THE ENTRY CAME MAY BE VIEWED BY THE HEARING OFFICER AND RESPONDENTS, BUT THE ENTIRE DIARY WILL NOT BE TURNED IN AS AN EXHIBIT FOR THE OBVIOUS REASON THAT IT WOULD CONSTITUTE INVASION OF PRIVACY INCLUDING THAT OF OTHER PEOPLE IN NO WAY ASSOCIATED WITH THE CASE. MY QUESTION INQUIRING ON USE OF THESE EXTRACTS TO SHOW PROGRESSION OF CLASS DID NOT REACH THE HEARING EXAMINER IN TIME FOR HIS DECISION BEFORE HE LEFT ON VACATION, SO IS NOT AVAILABLE AT THE TIME OF THIS WRITING. IF I AM TO BE DENIED THE NAMES OF CLASS MEMBERS AS WITNESSES, WHICH WAS DONE BY THE REGISTRAR AT THE COLLEGE OF GREAT FALLS ON 3/29/86, THE DIARY WILL BE NEEDED FOR TANGIBLE EVIDENCE. THE REASON GIVEN BY THE REGISTRAR WAS THAT THIS WOULD BE AN INVASION OF PRIVACY. SHE DETERMINED THIS AFTER CONSULTATION WITH SOMEONE ELSE AT THE COLLEGE.
12. CORRESPONDENCE BETWEEN ME THE RESPONDENTS AND ALSO THE HUMAN RIGHTS COMMISSION WILL BE ON HAND AT THE DIARY TO BE ENTERED AS EXHIBITS IF NECESSARY, BUT BOTH SHOULD HAVE COPIES AND I WAS TOLD BY HUMAN RIGHTS STAFF MEMBER ON THE PHONE THAT THEY DID NOT NEED TO BE INCLUDED. MEMO NOTES OF CONFERENCES WITH COLLEGE OF GREAT FALLS CONCERNED PROFESSORS OR SECRETARIES TO THEM ARE ALSO AVAILABLE TO BE USED AS VERIFICATION. AVAILABLE AS EXHIBITS - CHART AND NOTATION ON BACK OF EXAMINATION PAPER
13. THE EXAMINATION PAPER OF SOCIAL RESEARCH METHODS CLASS SOCIOLOGY 312 DR. PAUL RENZ INSTRUCTOR WHO GAVE CLASS TAKE-HOME EXAM APRIL 27, 1984 AND WAS RETURNED TO HIM BY ME ON MAY 2, 1984. NOTATION ATTACHED SHOWING DISCREPANCIES IN DR. RENZ'S GRADING MENTIONED IN MY CONTENTIONS. A CHART OF THIS MAY BE PREPARED AS AN EXHIBIT TO BE USED FOR EXPLANATIONS AT THE 9/18/86 HEARING. I HAVE AVAILABLE A FLIP CHART OF THE RESEARCH QUESTIONNAIRE WITH FINDINGS PREPARED FOR A PRESENTATION SPEECH I MADE TO THE GREAT FALLS AREA COUNSELOR'S ASSOCIATION FALL OF 1984. NOTE: NOTICE THE NOTATION ON THE BACK OF THE EXAMINATION PAPER WHICH I PERSONALLY REGRADED AND INITIAL BY OUR DIRECTOR OF EMPLOY, BEING FULLY QUALIFIED TO GRADE SOCIAL RESEARCH HAVING MY MASTER'S DEGREE IN EDUCATION-EMPHASIS COUNSELING (MONTANA STATE UNIVERSITY 1977) AND HAVING HAD ALL REQUIRED COURSE TO MEET PROFESSIONAL STANDARDS. ON THIS NOTATION I ASK THAT A COMMITTEE OF IMPARTIAL PROFESSORS QUALIFIED TO EVALUATE AND GRADE SOCIAL RESEARCH REGRADE THIS EXAMINATION PAPER AS EVIDENCE THAT THIS EXAMINATION PAPER SHOULD HAVE BEEN GRADED AN "A" RATHER THAN A "B".
14. SECOND SYNOPSIS HANDED IN ON OR ABOUT MARCH 21, 1986 WITH LETTERS TO DR. SHIELDS AND DR. RENZ AS A CONCILIATORY MOVE TO RESOLVE THIS. ALL OF THIS INFORMATION MAY BE FOUND IN THE ORIGINAL SYNOPSIS IN THE ESSAY QUESTION OF THE EXAMINATION PAPER WITH THE EXCEPTION OF THE ACTUAL

SENATE JUDICIARY

EXHIBIT NO. 2

DATE 1-27-87

BILL NO. S.B. 152

DOCUMENTS - (CONTINUED)

STATISTICS OF THE RESEARCH STUDY WHICH ARE NOT COMMONLY FOUND IN A SYNOPSIS BUT IN THE BODY OF THE STUDY. THESE STATISTICS WERE IN THE BODY OF MY RESEARCH STUDY WHICH WAS PART OF THE GRADE. A COMPREHENSIVE SYNOPSIS OF THE 10 YEAR UPDATE OF MY RESEARCH WAS IN THE ESSAY QUESTION PLUS A COMPLETE LISTING OF SOCIAL RESEARCH METHODS RELATING IT IN ALL DETAIL TO THE STUDY AND THE COURSE. THIS IS "A" WORK OF GRADUATE LEVEL QUALITY. THE ESSAY QUESTION SHOULD HAVE BEEN GRADED AN "A".

D. WITNESSES

THE FOLLOWING IS SUBMITTED AS REQUESTED BY HEARING EXAMINER

" A LIST OF ALL INDIVIDUALS, INCLUDING THE CHARGING PARTY, WHO THE CHARGING PARTY INTENDS TO CALL AS WITNESSES AT THE TIME OF THE HEARING, ALONG WITH FULL NAME, ADDRESS AND TELEPHONE NUMBER OF EACH, AND A SHORT DESCRIPTION OF THE EXPECTED TESTIMONY OF EACH WITNESS."

WITNESSES AT TIME OF FILING OF THIS INFORMATION ORDER BY HEARING EXAMINER, NOTING UNDER CONTENTION AT THIS TIME IS WHETHER I WILL BE ABLE TO OBTAIN THE NAMES OF OTHER MEMBERS OF THE SOCIAL RESEARCH METHODS CLASS. I HAVE WRITTEN TO REQUEST SUBPOENA FORMS SIGNED BY THE HEARING EXAMINER TO OBTAIN THESE. I WOULD BE AT A LEGAL DISADVANTAGE IF THE RESPONDENTS IN THIS CASE HAVE THESE NAMES AND I DO NOT.

LIST OF WITNESSES:

EXPECTED TESTIMONY

- | | |
|---|---|
| 1. PROFESSOR RAY WALTERS
COLLEGE OF GREAT FALLS
1301-20TH ST. SOUTH
GREAT FALLS, MONTANA
59405-4996
761-8210 | SCHOLARSHIP - AS INSTRUCTOR IN CRIMINAL JUSTICE SYSTEMS GRADUATE COURSE TAKEN SAME QUARTER AS SOCIAL RESEARCH METHODS |
| ✓ 2. PROFESSOR JESS FARRIS
COLLEGE OF GREAT FALLS
1301-20TH ST. SOUTH
GREAT FALLS, MONTANA
761-8210 | SCHOLARSHIP- INSTRUCTOR IN GRADUATE COURSE "COUNSELING THE CHEMICALLY DEPENDENT" TAKEN SPRING SEMESTER 1985 - PSYCHOLOGIST |
| ✓ 3. DR. HAROLD ANDERSON
COLLEGE OF GREAT FALLS
1301-20TH ST. SOUTH
GREAT FALLS, MONTANA | ACADEMIC ADVISOR, DIRECTOR GRADUATE SCHOOL, FORMER INSTRUCTOR. SCHOLARSHIP, DISCUSSED THIS WHOLE SITUATION WITH HIM. TESTIMONY ON WHAT HE KNEW OF WHOLE PROCESS OF GRADE PROCESS PROCEEDINGS. |
| ✓ 4. PROFESSOR ANTHONY GREGORY
COLLEGE OF GREAT FALLS
1301-20TH ST. SOUTH
GREAT FALLS, MONTANA
761-8210 | SCHOLARSHIP - FORMER INSTRUCTOR IN GRADUATE SOCIOLOGY CLASS. SOMEONE I HAVE KNOWN FOR MANY YEARS, HAVE GIVEN HIM AS A REFERENCE IN JOB APPLICATION. |
| ✓ 5. FATHER FRANCIS MCINNIS
COLLEGE OF GREAT FALLS
1301-20TH ST. SOUTH
GREAT FALLS, MONTANA
761-8210 | SCIENCE PROFESSOR, FORMER DIRECTOR OF GRADUATE SCHOOL WHEN I DID MY GRADUATE WORK--IN COOPERATIVE MA PROGRAM OF COLLEGE OF GREAT FALLS AND MONTANA STATE UNIVERSITY. SCHOLARSHIP-CHARACTER |
| ✓ 6. PROFESSOR PAT LEE
COLLEGE OF GREAT FALLS
1301-20TH ST. SOUTH
GREAT FALLS, MONTANA
761-8210 | LITERATURE PROFESSOR. SOMEONE I HAVE KNOWN FOR YEARS. IN FACULTY LOUNGE THE DAY I TALKED WITH DR. ANDERSON AFTER CONFERENCE WITH DR. RENZ IN EFFORT TO RESOLVE CASE WITHOUT FURTHER LITIGATION |
| 7. SISTER MARGARET LA FORTE
LIBRARIAN
COLUMBUS HOSPITAL
500 15TH AVE. SOUTH
GREAT FALLS, MONTANA
727-3333 | FORMER FACULTY MEMBER AT COLLEGE OF GREAT FALLS WHOM I HAVE KNOWN FOR A NUMBER OF YEARS. WHO HAS SEEN ME DOING RESEARCH IN HER LIBRARY. WHOM I TOLD OF MY DISSATISFACTION WITH THE GRADE |
| 8. SISTER MARGARETE O'CONNOR
REGISTRAR-COLLEGE OF GREAT FALLS
ADDRESS SAME AS ABOVE | I HAVE ALSO KNOWN SISTER MARGARETE FOR YEARS. SHE COULD VERIFY MY CREDENTIALS. SHE COULD ALSO EXPLAIN THE POLICY GIVEN HER NOT TO GIVE OUT THE NAMES OF MY FELLOW STUDENT'S IN THE SOCIAL RESEARCH METHODS CLASS |
| ✓ 9. SISTER LAWRENCE CROWLEY
MODERATOR AT CGF HEARING
COLLEGE OF GREAT FALLS
ADDRESS ABOVE | SISTER LAWRENCE WAS MODERATOR AT THE CGF HEARING. SHE PRESIDED AFTER I LEFT. I WOULD QUESTION HER ON WHETHER HER REMARKS BEFORE THE VOTING WERE ACCURATELY RECORDED IN THE TYPED TRANSCRIPT OF THE RECORDED PROCEEDINGS OF THE CGF HEARING. I HAVE OBJECTED TO THEIR BEING PARTIAL TO THE PROFESSOR IF ACCURATELY REPORTED. |

LIST OF WITNESSESWITNESSES TO TESTIFY

✓ 10. DR. WILLIAM SHIELDS,
PRESIDENT,
COLLEGE OF GREAT FALLS
1301-20TH ST. SOUTH
761-6210

DR. SHIELDS HAS BEEN IN THE WHOLE PROCESS, AND WE HAVE EXCHANGED COURTESY AND SERVICE. HIS TESTIMONY MIGHT BE NEEDED ON MANY POINTS WHICH WILL BE DISCUSSED.

✓ 11. LEE ZADICK, SECRETARY
TO DR. SHIELDS
COLLEGE OF GREAT FALLS
SAME ADDRESS AS ABOVE

THERE WERE TIMES WHEN I HAD TO LEAVE MESSAGES WITH HER FOR DR. SHIELDS; ALSO I LEFT THE MATERIALS FOR HIM TO READ WITH HER. I HAVE KNOWN HER FOR YEARS.

• 12. DEAN OF STUDENTS CGF
FATHER JAMES SIKORA
COLLEGE OF GREAT FALLS
SAME ADDRESS AS ABOVE

DEAN SIKORA WAS ALSO IN ON THE WHOLE COLLEGE GRADE PROCESS, SO COULD VERIFY MANY POINTS.

X 13. PAULA SPANO
212 33 NORTH
GREAT FALLS, MONTANA
727-5639

IN MORE THAN ONE GRADUATE CLASS WITH ME IN HUMAN SERVICES WA COURSES COULD ATTEST TO KIND OF STUDENT I AM

✓ 14. CHAR SCHRAM
DIRECTOR RUNAWAY ATTENTION
HOME
618 3RD AVE. NORTH
GREAT FALLS, MONTANA
452-7672

PSYCHOLOGIST, PRESIDENT OF GREAT FALLS AREA COUNSELOR'S ASSOCIATION WHILE I SERVED AS VICE-PRESIDENT OF THAT PROFESSIONAL ORGANIZATION. SHE COULD TESTIFY TO MY HAVING MADE A REPORT OF MY 10 YEAR UPDATE OF RESEARCH AT THAT GROUP AND OF THE FAVORABLE RECEPTION BY THE PROFESSIONALS IN THE FIELD.

✓ 15. HELEN O'CONNELL
703 4TH AVE. S. W.
GREAT FALLS, MONTANA
453-5873

LEGISLATOR FOR MY DISTRICT AND COULD TESTIFY ON LEGISLATION RELATED TO LAWS UNDER WHICH THE HUMAN RIGHTS COMMISSION OPERATES

✓ 16. FATHER JAY PETERSON
FACTOR ST. JOSEPH'S CHURCH
420 2ND AVE. S. W.
GREAT FALLS, MONTANA
453-3533

PASTOR OF MY CHURCH WHO KNOWS ME WELL, AND WHOM I HAVE MENTIONED THIS CASE TO.

✓ 17. GEORGE LINDGREN
400 1ST AVE. N. W.
GREAT FALLS, MONTANA
761-5283

HUSBAND, WHO IS VERY MUCH AWARE OF THE TIME AND EFFORT I PUT INTO MY CLASSES, AND PREPARATION OF THIS REPORT. HE KNOWS THE STRESS THIS HAS CREATED FOR ME.

✓ 18. RICHARD LINDGREN
624 5 AVE. N. W. #716
GREAT FALLS, MONTANA
761-0526

SON, WHO COULD ALSO BE ABLE TO TESTIFY TO THE HOURS AND MONTHS OF WORK WHICH WENT INTO THIS CLASS, AND OF THE DURESS CAUSED BY THE MISGRADING OF THE WORK, THE HEARINGS ETC.

19. THE 3 FACULTY MEMBERS OF
COLLEGE OF GREAT FALLS
WHO SERVED ON THE STUDENT
FACULTY COMMITTEE :

I SHALL LIST THESE AS HOSTILE WITNESSES BECAUSE THEY MADE A DECISION AGAINST ME WITHOUT GETTING INTO THE MERITS OF THE WORK

• PROFESSOR HUGHES-BRIANT
• PROFESSOR RICHARD SCHROYEN
• PROFESSOR CORNELIUS FOLEY
ADDRESSES ABOVE

STUDENTS ON THIS COMMITTEE

TONY FITZPATRICK

MARIA CHRISTIAENS

RICHARD LEWIS

3 COLLEGE OF GREAT FALLS AS

OF THIS DATE ADDRESSES REFUSED BY CGF

I WOULD LIKEWISE LIST THESE THREE STUDENTS HOSTILE WITNESSES AS THEY MAKE A DECISION AGAINST ME WITHOUT FAMILIARIZING THEMSELVES WITH THE ACADEMIC WORTH OF THE RESEARCH OR EXAMINATION BEFORE VOTING.

20. ANY STUDENTS WHO TOOK THIS CLASS WITH ME. PRESENT SITUATION THE COLLEGE OF GREAT FALLS REFUSES TO RELEASE THEIR NAMES TO ME BASING THEIR DECISION ON THE FACT THAT THEY CONSIDER IT AN INVASION OF THEIR PRIVACY. I HAVE PROTESTED. I ASK IN ENCLOSED LETTER THAT SUBPOENA FORMS SIGNED BY THE HEARING EXAMINER BE SENT TO ME SO I MAY OBTAIN THESE NAMES. THIS SITUATION PUTS ME AT THE DISADVANTAGE OF NOT HAVING WITNESSES TO THE KIND OF A STUDENT I WAS, AND THE DISCRIMINATORY ACTS COMMITTED BY DR. RENZ IN THE CLASSROOM WHICH ARE THE BASIS OF MY CONTENTIONS.

LIST OF WITNESSES (CONTINUED)

21. DR. PAUL RENZ
COLLEGE OF GREAT FALLS
1301 - 20TH ST. SOUTH
761-8210

22. GERTRUDE R. LINDGREN
400 1ST AVE. N. W.
GREAT FALLS, MONTANA
761-8293

EXPECTED TESTIMONY

INSTRUCTOR IN CLASS IN PROTESTED GRADE, SOCIAL RESEARCH METHODS, SOCIOLOGY 312 SPRING SEMESTER 1984 - HOSTILE WITNESS IT IS EXPECTED THAT HE WILL CONTINUE TO SAY THE RESEARCH AND EXAMINATION ARE ALL "A" ACADEMIC WORK, BUT THAT HE LOWERED THE UNDERGRADUATE GRADE TO A "B" BECAUSE ACCORDING TO HIM I DID "NOT SYNOPSISIZE" MY OWN RESEARCH PROFESSIONAL PAPER ANBD IO YEAR UPDATE OF THE RESEARCH DONE RESPECTIVELY AT MONTANA STATE UNIVERSITY (1974) AND COLLEGE OF GREAT FALLS (1984) IN THE ESSAY QUESTION OF THE EXAMINATION PAPER. IF HE REPEATS HIS ANSWER TO MY QUESTION TO HIM AT THE CGF STUDENT-FACULTY HEARING 6/84, IT IS EXPECTED HE WILL SAY THAT , "HE FOUND MATURE STUDENTS TO RECEIVE BETTER GRADES THAN THE YOUNGER STUDENTS."

THE STUDENT WHO IS APPEALING THE GRADE GIVEN BY DR. RENZ TO HER IN THE UNDERGRADUAT COURSE SOCIAL RESEARCH METHODS, SOCIOLOGY 312, AND IS APPEALING FROM THE DECISION OF THE STUDENT-FACULTY COMMITTEE AND DECISION OF PRESIDENT WILLIAM SHIELDS CONCURRING IN THEIR DECISION. WHO IS ALSO APPEALING THIS CASE TO THE HUMAN RIGHTS COMMISSION AND ASKING FOR A REVIEW OF THE ACADEMIC MERITS OF HER RESEARCH WORK -IO YEAR UPDATE RESEARCH STUDY-BY AN IMPARTIAL COMMITTEE OF PROFESSORS QUALIFIED TO GRADE SOCIAL RESEARCH. SHE IS THE CHARGING PARTY AND WILL TESTIFY TO DISPARAGING REMARKS MADE BY THE PROFESSOR, DR. RENZ, ABOUT HE R AGE, AND THE INSULTING REMARKS HE MADE IN CLASS RELATING TO WOMEN AND CHILDBIRTH ALL OF WHICH COULD HAVE HAD A BEARING ON THE OBVIOUS INCORRECT GRADING OF MY WORK IN THE COURSE. I SHALL TESTIFY ON ALL OF THE INFORMATION CONTAINED IN MY CONTENTIONS PREPARED FOR THE HEARING OFFICER, JIM ZION, AS ORDERED IN HIS HEARING EXAMINER ORDER OF AUGUST 7, 1986

PREPARED AND SUBMITTED BY:

Gertrude R. Lindgren
GERTRUDE R. LINDGREN,
CHARGING PARTY
400 1ST AVE. N. W
GREAT FALLS, MONTANA

SEPTEMBER 5, 1986

BEFORE THE HUMAN RIGHTS COMMISSION

OF THE STATE OF MONTANA

* * * * *

GERTRUDE LINDGREN,)	
Charging Party,)	Case No. SAED85-2711
vs.)	
COLLEGE OF GREAT FALLS,)	PROPOSED ORDER
Respondent.)	

* * * * *

This contested case, arising out of an alleged discriminatory incident based upon the classifications of sex and age and involving an enrolled college student in terms, conditions or privileges of an educational institution, came on for hearing at the College of Great Falls at 10:00 a.m. on September 18, 1986. The charging party, Gertrude Lindgren, personally appeared and represented herself during the hearing. The respondent, the College of Great Falls, appeared through its President, Dr. William A. Shields, who represented it.

PROCEDURAL HISTORY

This case involves the contention of the charging party that a grade of "B" given to her in a course on social research methods at the college should have been an "A" instead, and that she received the lower grade due to her age or sex. The original incident arose on May 12, 1984 when she received her report card. Proceedings before the Commission were initiated by means of a letter of complaint, filed with the Human Rights Division on January 14, 1985. A perfected complaint was filed on April 23, 1985. On March 5, 1986 the Human Rights Division made a finding of a lack of reasonable cause based upon the failure of the charging party to file her complaint within the 180 day statutory filing period. On March 10, 1985 the charging party contested the lack of reasonable cause finding, and following the determination

1
2 of the Division Administrator to sustain the previous finding, the
3 charging party requested a contested case hearing on April 29,
4 1986.

5 This contested case was certified for hearing and notice of
6 certification was made on July 8, 1986. The undersigned hearing
7 examiner was appointed on July 9, 1986.

8 The date of his appointment the hearing examiner sent a
9 memorandum to the parties to advise them of certain matters that
10 could, in the minds of the parties, create a potential conflict of
11 interest and to ask whether they wished to waive the right to
12 counsel and proceed by means of an informal hearing. The hearing
13 examiner disclosed that his former wife (the former Rosemary
14 Blanchard Zion) had previously acted as an attorney for Gertrude
15 Lindgren as well as previously serving as a member of the faculty
16 of the College of Great Falls. On July 15, 1986 the charging
17 party indicated she found no conflict of interest with the
18 appointed hearing examiner, waived counsel and indicated she
19 wished to proceed by means of an informal hearing. On July 22,
20 1986, President William A. Shields of the college also accepted
21 the appointment of the hearing examiner, waived counsel and agreed
22 to proceed informally.

23 On August 7, 1986 the hearing examiner entered a hearing
24 order fixing the issues to be heard and requiring the parties to
25 make written submissions of their contentions. The hearing
26 examiner had previously excused the respondent from filing a
27 formal answer, and the order required written contentions from the
28 parties in order to enter a hearing order outlining the relevant
29 issues for the hearing. The charging party's contentions were
30 filed on September 8, 1986, and those of the respondent were filed
31 on September 10, 1986. A hearing order based upon the written
32 submissions of the parties was entered on September 12, 1986.

1
2 When the hearing was opened on September 18, 1986 the hearing
3 examiner conducted a prehearing conference with the parties. He
4 advised them that a hearing had been set on both the issues of the
5 timeliness of the filing of the complaint as to the provision of
6 §49-2-501(2) that "Any complaint not filed within the time set
7 forth herein may not be considered by the commission," and as to
8 the merits. A hearing had been set on both issues because of the
9 potential that an immediate decision might not be reached on the
10 question of timeliness, depending upon the testimony received. In
11 a letter dated September 2, 1986 Dr. Shields took the position
12 that the question of timeliness should be resolved prior to
13 proceeding to a hearing on the merits, but prior to hearing he
14 advised the hearing examiner the respondent would be prepared to
15 proceed on both questions. During the prehearing conference the
16 hearing examiner ruled that should the evidence on timeliness, and
17 particularly whether there should be an equitable tolling of the
18 statutory period, be such as to make an immediate ruling at the
19 close of evidence on the question, the hearing could be terminated
20 at that point.

*I have
not
delivered
this*

21 Following two hours and fifteen minutes of testimony on the
22 question of timeliness the hearing examiner ruled that the
23 evidence was clear that the complaint had not been timely filed
24 and there were no equitable considerations to excuse that fact,
25 and terminated the hearing on the ground it could not be
26 considered by the commission under the statute.

27 PRELIMINARY RULINGS

28 There were two procedural rulings entered during the course
29 of the hearing prior to its closing.

30 First, an individual who identified himself as Peter Johnson,
31 a reporter for the Great Falls Tribune, asked whether he would be
32 allowed to be present during the hearing. The hearing examiner
indicated that the Montana Open Meeting Act applied to the hearing

1 and asked both parties whether they had any objections or
2 information indicating that considerations of individual privacy
3 outweighed the right of the press to be present. Dr. Shields
4 objected that he understood the hearing was to be "informal" and
5 felt that there should be no press coverage of it. Mrs. Lindgren
6 indicated she wished the reporter to be present. The hearing
7 examiner ruled that since there was no showing of important
8 privacy considerations the Open Meeting Act required that the
9 hearing be open to press coverage.
10

11 Second, the hearing examiner advised the parties that they
12 had a right to move that only the parties (with Dr. Shields as the
13 representative of the College of Great Falls) and the witness
14 giving testimony be present in the hearing room and that all other
15 witnesses be excluded. Dr. Shields indicated he wished to use
16 this procedure, and Mrs. Lindgren asked that academic witnesses be
17 present during testimony regarding the grading of her examination
18 paper. The hearing examiner ordered that only the parties and
19 witnesses giving their testimony would be allowed to be present,
20 and all other witnesses would be excluded from the hearing room.

21 Upon the testimony, exhibits and other evidence received upon
22 the question of the timeliness of the filing of a complaint under
23 §49-2-501(2), MCA the following findings of fact are made:

24 FINDINGS OF FACT

- 25 1. The charging party was, as of May 12, 1984, 68 years of
26 age.
- 27 2. The charging party is of the female sex.
- 28 3. The respondent, College of Great Falls, is a private
29 institution and a college, which offers terms, conditions or
30 privileges to enrolled students.
- 31 4. As of the Spring, 1984 academic semester at the College
32 of Great Falls the charging party was enrolled as a student,

1 taking courses in social research methods (an undergraduate
2 course) and criminal justice systems (a graduate course).

3 5. This action arises out of a grade given by the instructor
4 of the course in social research methods at the College of Great
5 Falls, which is situated in Great Falls, Cascade County, Montana.

6 6. On May 12, 1984 the charging party received her report
7 card in the mail, and on that date she first learned that she had
8 received a "B" grade in her social research methods course rather
9 than an "A," which she expected.

10 7. In January of 1983 the College of Great Falls adopted its
11 Student Rights and Responsibilities Handbook, which contains a
12 "Procedure for Student Appeal in Academic Matters" (pages 6-8).

13 8. The academic appeal procedures provide for a formal
14 appeal "for a reconsideration of a teacher's procedures or
15 evaluation" in which a student may have a grade reconsidered
16 through the process of a meeting with the teacher following the
17 filing of a formal complaint, discussions with "the appropriate
18 division [i.e. academic department] head" and the Dean of the
19 College.

20 9. If a student is still dissatisfied following these
21 procedures, he or she may request a hearing before the Student
22 Rights and Responsibilities Committee.

23 10. The committee is composed of three faculty members (one
24 from each of the three academic divisions of the college), three
25 student members appointed by the Student Senate and a non-voting
26 chairman appointed by the president of the college.

27 11. The charging party elected to undertake each of the
28 steps to appeal the teacher's "evaluation" by way of her grade,
29 and that process was followed from May 15, 1984, when the charging
30 party met with the Dean of Student Services, until July 10, 1984,
31 when the decision of the Student Rights and Responsibilities
32

1
2 Committee transmitted a decision adverse to the charging party to
3 the Dean of Student Services.

4 12. On the face of the policy with respect to student
5 appeals in academic matters the final stage of the appeal process
6 for disputes on grading is a hearing before the Student Rights and
7 Responsibilities Committee.

8 This was the first case following the adoption of the
9 student handbook in which a student appeal reached the committee,
10 and the charging party was advised of her^s right to further appeal
11 to the president of the college under the rules for "Judiciary
12 Procedures in Non Academic Matters" (pages 9-10 of the Handbook).

13 14. The pertinent provision of the non-academic appeal
14 procedure is that: "The decision of the Dean is final unless the
15 student has elected to appear before the Student's Rights and
16 Responsibilities Committee. In this case, the decision of the
17 committee is final, subject only to the student's right of appeal
18 to the President of the college." (Handbook, p. 10).

19 15. On July 13, 1984 the charging party made her appeal to
20 the president of the college, who rendered a report denying
21 further relief on October 22, 1984.

22 16. The charging party testified she did not receive the
23 president's decision in the form of a letter until October 29th or
24 30th, 1984.

25 17. Accepting the date of October 30, 1984 as the date of
26 termination of the academic appeals process for the purposes of
27 argument only, the charging party had until Thursday, November 8,
28 1984 (180 days next following May 12, 1984) in which to file her
29 complaint, and the charging party had eight working days (i.e. not
30 counting Saturdays and Sundays but including October 30th) in
31 which to contact the Human Rights Commission with respect to the
32 filing of a complaint.

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2 18. Adopting July 10, 1984 as the date of final termination
3 of the appeals process, the charging party had approximately four
4 months in which to act.

5 19. The first contact the charging party had with the Human
6 Rights Commission or the Human Rights Division of the Department
7 of Labor and Industry was by means of a letter which was received
8 by the Division on January 14, 1985, approximately 247 days after
9 she received her report card.

10 20. The charging party's perfected appeal was filed on April
11 23, 1985, approximately 346 days following the receipt of her
12 grade.

13 21. It was the testimony of the charging party that on May
14 12, 1984, when she received her report card, she "believed
15 something was wrong," had "heard some things" about the
16 professor's grading and felt that she had been discriminated
17 against.

18 22. The pertinent date of the alleged discriminatory
19 practice is May 12, 1984, when the charging party had information
20 upon which to act.

21 23. The charging party testified that she relied upon the
22 representations of Fr. James Sikora, Dean of Student Services,
23 that the charging party's grade could have been changed at any
24 point in the appeal process, and Fr. Sikora admits he could have
25 or did tell the charging party "the matter could be settled at any
26 point" and leave the impression the grade could have been changed
27 at any time.

28 24. Despite any possible reliance upon any representation
29 made by any agent of the College of Great Falls, the academic
30 appeal process was completely finished by October 29th or 30th of
31 1984 and the charging party could have filed a complaint with the
32 commission within the statutory period.

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25. The charging party had no further contact or discussion with any agent of the College of Great Falls following the receipt of the president's letter on August 29th or 30th, and there were no representations made by them upon which the charging party could rely.

26. The charging party did not contact either the commission or the Human Rights Division following the termination of the academic appeal process, and instead her initial efforts were to contact attorneys in the Great Falls area with respect to her case; She was unable to obtain the services of an attorney.

*including
and
filed
no
year*

27. The charging party excuses her failure to make any contact with the commission or the division prior to January of 1985 on the grounds she was seeking an attorney, she "ran into the holidays," and she felt "the Human Rights Commission wouldn't want to get started [on the case] on the holidays."

28. At hearing the charging party repeated the contentions made in her previous written submission and provided the following reasons why her failure to file a complaint within the 180 day period should be excused:

a. She was going through the college appeal process where her grade could have been changed at any stage, and she was in the middle of the "negotiation process" with the college, which she did not wish to jeopardize by the filing of a complaint;

b. Any delay was due to the fault of President Shields because he had the materials on her case from early July through October 30th, a period of some four months;

c. She began contacting attorneys on October 30th, but was unable to obtain the services of one, the holidays intervened and the commission would not want to "get started" on the holidays;

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2 d. Dean Sikora had represented to her that her grade
3 could be changed at any time during the academic appeal
4 process;

5 e. May 12, 1984 should not be the date on which the 180
6 day time period should have commenced, but rather following
7 the receipt of President Shield's letter on October 30, 1984;

8 f. It is a general axiom of law that there should
9 always be time for appeal;

10 g. Federal law takes precedence over state law, and
11 certain federal laws provide for an appeal following the
12 grievance procedure;

13 h. The Montana Legislature is reviewing the question of
14 whether 180 days is a sufficient time for the filing of
15 discrimination appeals;

16 i. It is the basic right of every citizen to appeal;
17 and

18 j. The academic appeal of the College of Great Falls
19 was inadequate because it failed to properly evaluate the
20 grade given on the basis of evidence submitted by the
21 charging party.

22 29. The academic appeal taken before the bodies established
23 by the College of Great Falls was irrelevant to the issue and
24 question of discrimination.

25 30. The charging party did not clearly raise the question of
26 discrimination during the academic appeals process, but this too
27 is not relevant to the question of timeliness.

28 31. The charging party failed to file a complaint within 180
29 days of the alleged unlawful discriminatory act, which was also
30 the date of its discovery.

31 31. The charging party failed to provide any evidence or
32 argument which moved the conscience of the trier of fact and law,

*Submitted
Dec
-1987
Sincerely,
J. [unclear]*

1 hearing matters of equity, to excuse her failure to make a timely
2 filing as required by law.

3 As applied to the foregoing findings of fact, the following
4 conclusions of law are made:

5 CONCLUSIONS OF LAW

6 1. The Human Rights Commission of the State of Montana has
7 jurisdiction over the charge of discrimination in this contested
8 case in that the respondent is an "Education institution" within
9 the meaning of §49-2-101(6), MCA, the charging party was an
10 individual enrolled as a student at the respondent college and she
11 complained of discrimination in the terms, conditions or
12 privileges of the institution because of her age and her sex.
13 §49-2-307(1), MCA.

14 2. The date of the alleged unlawful discrimination practice
15 was May 12, 1984, when she received a report card giving her the
16 grade of "B" in a social research methods course, and she failed
17 to file a complaint by November 8, 1984, 180 days from the date of
18 the alleged discriminatory practice.

19 3. The complaint not having been filed within 180 days after
20 the alleged unlawful discriminatory practice, it may not be
21 considered by the commission. §49-2-501(2), MCA.

22 4. The existence or utilization of grievance procedures does
23 not toll the running of the statutory 180-day limitations period
24 or otherwise excuse filing within that period because the remedy
25 afforded the charging party is an independent statutory right.
26 Electrical Workers v. Robbins & Mevers, Inc., 429 U.S. 229, 13 FEP
27 Cases 1813, 1815-1816 (1976).

28 5. The Montana Human Rights Act was "closely modeled" upon
29 Title VII of the Federal Civil Rights Act of 1964, and therefore
30 the commission may utilize the rationale of a "considerable body
31 of law" interpreting that Act, and "reference to pertinent federal
32 case law is both useful and appropriate." Martinez v. Yellowstone

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2 County Welfare Dept., 626 P.2d 242, 245 (Mont. 1981); Snell v.
3 Montana Dakota Utilities Co., 643 P.2d 841, 844 (Mont. 1982).

4 6. Section 49-2-501(2), MCA with respect to the filing of a
5 complaint within 180 days of the alleged unlawful discriminatory
6 practice or its discovery is not a jurisdictional prerequisite but
7 a requirement subject to waiver or tolling when equity *Equity*
8 requires, due to the remedial purpose of the Human Rights Act.
9 Zipes v. TWA, 455 U.S. 385, 28 FEP Cases 1, 6 (1982); Simmons v.
10 Mountain Bell, HpE81-1468 (Human Rights Commission, May 8, 1986).

11 7. In this case the unlawful discriminatory practice
12 occurred, and the charging party had knowledge of the facts
13 essential to her complaint as of May 12, 1984; Such was also the
14 date of discovery. Simmons, Id., at 8-9.

15 8. The respondent has not waived the 180-day filing
16 requirement but maintained its affirmative defense of the statute.
17 Id. at 7.

18 9. The charging party has failed to demonstrate that in
19 equity the 180-day requirement has been tolled by way of showing
20 (1) the respondent effectively misled the charging party in an
21 active sense; (2) the charging party was in some extraordinary way
22 been precluded from asserting her rights; or (3) the charging
23 party made a timely submission in the wrong forum. Id. at 12.

24 a. While it may be argued that she relied upon
25 representations that her grade could be "changed at any time"
26 during internal grievance procedures, the procedure under the
27 Human Rights Act is an independent statutory right and
28 procedure (finding 4, above) and she was under a duty to
29 inquire as to her remedies;

30 b. Accepting the assertion of detrimental reliance for
31 the purposes of argument, the charging party ceased
32 communication with the respondent as of October 29th or 30th,
1984 following the complete conclusion of internal

1
2 procedures, and had remaining time in which to file her
3 complaint within the statutory period;

4 c. The charging party was not precluded from asserting
5 her rights within the statutory period in any extraordinary
6 way, and the justifications offered for such purposes failed
7 to demonstrate any valid reason for equitable tolling of the
8 statute;

9 d. The charging party made an untimely submission to
10 the correct forum.

11 10. Since the statutory requirement may be tolled when
12 equity so requires, the maxims of jurisprudence and equity of the
13 Field Civil Code, as adopted by Montana in 1895, are applicable to
14 this contested case, but nothing therein provides any ground for
15 equitable tolling. Title 1, Chapter 3, MCA; and

16 a. There has been no waiver of the statute by the
17 respondent. §1-3-204, MCA;

18 b. The charging party should not be permitted to take
19 advantage of her own failure to inquire as to her rights.
20 §1-3-209, MCA;

21 c. The charging party has not suffered for the act of
22 another but for her own act. §1-3-211, MCA;

23 d. The charging party has failed to properly seek a
24 remedy for the alleged wrong done her. §1-3-214, MCA;

25 e. The law helps the vigilant before those who sleep on
26 their rights, and the charging party was not vigilant but
27 slept on her rights. §1-3-218, MCA.

28 11. With respect to the reasons offered by the charging
29 party to excuse untimely filing contained in paragraph 28 of the
30 findings of fact:

31 a. The availability of a grievance or negotiation
32 process does not excuse timely filing because the procedures

1
2 under the Human Rights Act are independent of such process.
3 Law Finding 4, supra;

4 b. Aside from the fact that available internal remedies
5 or grievance procedures do not toll the time in which to
6 file, there was no delay or detrimental reliance upon the
7 conduct of Dr. Shields in finally reviewing the charging
8 party's academic grievance, and even if there were, the
9 charging party could have filed her complaint within the
10 statutory period;

11 c. The charging party was aware of the existence of the
12 Human Rights Commission and the Human Rights Division of the
13 Department of Labor and Industry and failed to contact such
14 bodies until January of 1985; Neither the charging party's
15 efforts to seek the advice of counsel nor her subjective
16 feeling that the commission would not want to "get started"
17 during a holiday period excuses the charging party's neglect
18 because of her knowledge of the appropriate remedial remedial
19 bodies and her failure to contact them to ascertain what her
20 rights were;

21 d. Any representation that the charging party's grade
22 could be changed at any time is not a ground for the
23 application of the doctrine of detrimental reliance. Law
24 Finding 9, supra;

25 e. As of May 12, 1984 the charging party had knowledge
26 of the facts essential to her complaint, she testified that
27 she "discovered" alleged discrimination as of that date, and
28 May 12, 1984 is the correct date for the purposes of the
29 180-day period. Law Finding 7, supra;

30 f. There is no general axiom of law that there should
31 always be time for appeal, but the law may fix periods of
32 time in which to seek a remedy;

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4 g. This complaint is not an "appeal" from the
5 procedures of the College of Great Falls, and even if it
6 were, there is no right to an appeal. National Union of M.C.
7 & C. v. Arnold, 348 U.S. 37 (1954);

8
9 h. While Federal law may take precedence over State law
10 in those instances where the Constitution of the United
11 States permits Congress to regulate a given area of law, none
12 of the Federal statutes cited by the charging party has any
13 applicability to this contested case, and Montana Law has not
14 been pre-empted;

15
16 i. While Congress has the authority to enter the field
17 of discrimination law, Title VII of the Civil Rights Act of
18 1964 specifically permits the State of Montana to enact and
19 enforce the Human Rights Act, and the 180-day limitation in
20 Montana law is substantially equivalent to applicable Federal
21 law;

22
23 j. The commission has applied applicable Federal
24 precedent to this ruling. Law Finding 4, 6, supra;

25
26 k. Whether or not the Montana Legislature is in the
27 process of review of the 180-day requirement, such matter is
28 irrelevant since administrative agencies are to follow and
29 apply their own statutory mandates as previously enacted by
30 the Montana Legislature;

31
32 l. The merits or procedures of the academic appeal
procedures of the College of Great Falls as applied to this
contested case are irrelevant. Law Finding 4, supra.

12. The law is with the respondent with respect to the
question of timeliness under §49-2-501(2) and not with the
charging party, and the complaint not having been filed within the
time set forth in the Human Rights Act, it may not be considered
by the commission.

DISCUSSION

As a supplement to the foregoing findings, it should be noted that the charging party found out she possibly had been discriminated against as of May 12, 1984, when she received a report card giving her a "B" rather than an "A" in a social research methods course. She also testified, under oath, that she had reason to believe or arrive at her own conclusion that she had been discriminated against at the same time.

The law is clear that the existence of internal grievance mechanisms does not excuse the filing of a complaint of discrimination using the procedures adopted by the Montana Legislature for alleged discrimination by educational institutions. The charging party testified that she had been a resident of Montana all her life. She admitted she regularly reads the newspapers (i.e. the Great Falls Tribune) and watches the news on television. It is common knowledge that the activities of the Human Rights Commission are regularly reported in the news media, and the charging party knew, or should have known, that the commission was the appropriate agency to contact for information about the filing of complaints. By her own testimony, the first contact made with the commission or the Human Rights Division was made in January of 1985, long after the expiration of the 180-day period on November 8, 1984.

There is nothing in the record to suggest that faculty members or officials of the College of Great Falls in any way affirmatively attempted to prevent the charging party from filing a complaint against it, and the charging party had sufficient time following the completion of the grievance process to file her complaint even if she feared that the filing of a complaint in some way would jeopardize her grievance or "negotiations" with the College. While the charging party does have the right to counsel in proceedings before the commission, seeking counsel does not

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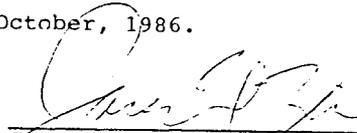
excuse compliance with the clear requirements of the Human Rights Act. more likely than not that any attorney contacted by the charging party would have advised her of the 180 day period in which she must file and of the existence of the commission as the proper remedy.

While the charging party put forward many justifications for her failure to file within the 180-day period, none move the conscience of the commission in applying principles of equity to the situation. Instead it appears that the charging party failed to make reasonable inquiry as to her rights, was not vigilant in the pursuit of her rights and instead slept on her rights. She comes before the commission at fault for her failure to file, and there is no apparent reason why her own fault should be excused.

PROPOSED ORDER

Gertrude Lindgren, the charging party, having failed to file a complaint with the commission within 180 days after the alleged unlawful discriminatory practice occurred or was discovered, such complaint may not be considered by the commission under the clear requirements of §49-2-501(2), MCA, and it should be dismissed.

DATED this 14th day of October, 1986.


James W. Zion
Hearing Examiner

Rec
10-17-26

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

GERTRUDE LINDGREN,)	
Charging Party,)	Case No. SAEd85-2711
vs.)	NOTICE OF ENTRY OF
COLLEGE OF GREAT FALLS,)	PROPOSED ORDER
Respondent.)	

TO: Gertrude Lindgren, charging party
Dr. William A. Shields, for the respondent

PLEASE TAKE NOTICE that on this date the hearing examiner of the Human Rights Commission has made and filed his written proposed order in this contested case, and such order is final for the hearing examiner.

Under the provisions of §24.9.245, Administrative Rules of Montana, if any party or the Human Rights Division is dissatisfied with the proposed order, written exceptions must be filed at the offices of the Human Rights Commission, P.O. Box 1728, 1236 6th Avenue, Helena, Montana 59624, within twenty (20) days of the date of the proposed order, or within ten (10) days after the filing of exceptions by another party or the Division.

The first party to file exceptions to the proposed order as not having been based upon the evidence at hearing must, at the time of filing such exceptions, request a written transcript of proceedings or indicate one will be filed within forty (40) days after the date of the proposed order. Any party requesting a transcript must pay for it and make provision for payment at the time a request is made.

Briefs of law must be filed with the exceptions unless exceptions are made to findings of fact, in which case a brief

1
2 need not be filed until twenty (20) days after the filing of the
3 written transcript.

4 A copy of the proposed order of the hearing examiner is
5 served with this notice.

6 DATED this 16th day of October, 1986.

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8 
9 James W. Zion
Hearing Examiner

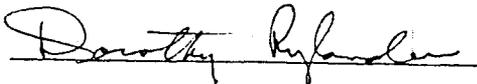
10 CERTIFICATE OF SERVICE

11 The undersigned secretary of the Human Rights Division, Department
12 of Labor and Industry, certifies that copies of the foregoing
13 NOTICE OF ENTRY OF PROPOSED ORDER as well as the PROPOSED ORDER
14 recited therein were mailed to the parties named below, and on the
15 date indicated, by means of first class mail.

16 Gertrude Lindgren
17 400 1st Avenue N.W.
Great Falls, MT 59404

18 Dr. William A. Shields
19 College of Great Falls
20 1301 20th Street South
Great Falls, MT 59405

21 DATED: 10-16-86

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MISSOULA

PERSONNEL OFFICE

201 W. SPRUCE • MISSOULA, MT 59802-4297 • (406) 721-4700

January 23, 1987

SENATE JUDICIARY

EXHIBIT NO. 5

DATE Jan. 27, 1987

BILL NO. SB 152

Senator Mike Walker

Senator Joe Mazurek, Chairman
Senate Judiciary Committee

RE: SUPPORT OF SENATE BILL #152

Dear Senators:

This letter is written in support of Senate Bill #152 which proposes to extend the time for filing a complaint with the Commission for Human Rights if the parties attempt to resolve the dispute by settlement, arbitration or any other method.

Recently, the City of Missoula was involved in a discriminatory complaint that was filed by an employee against the City and in order to resolve the claim, the employee filed a discrimination claim simultaneously with both the Human Rights Division and the employee's bargaining unit grievance committee. Due to the fact that the employee was following two different discrimination claim procedures, the City Personnel Office had a difficult time trying to resolve the grievance in a manner that would be acceptable to both parties that the claim was filed with. In addition, twice as much staff time was spent preparing written responses and appearing at meetings and hearings to discuss the discrimination claim because of the requirements to respond under both processes.

If this bill were approved, an employee would still have the ability to file a claim with the Human Rights Division if the employee felt that the claim had not been properly resolved within the discriminatory claim procedures adopted by either their employer's personnel policies or outlined in a collective bargaining agreement. In addition, costs to both the employee and employer would be reduced because the time spent trying to resolve the grievance under one procedure would be less than trying to comply with two procedures simultaneously, if the claim was resolved during the initial claim procedure. In addition, by adopting this bill, the number of discrimination claims filed with the Human Rights Division should be reduced because some of the claims would be solved following the procedure for resolving discrimination claims outlined in the employer's personnel policies and/or a collective bargaining agreement.

Please feel free to contact me regarding the reasons why the City of Missoula supports this particular bill. Your consideration of the City of Missoula's position on Senate Bill #152 is greatly appreciated.

Respectfully Submitted,

Kathi Mitchell /mbr

Kathi Mitchell
Personnel/EEO Officer
City of Missoula

KM:mr

cc: Senator Bill Farrell
Senator Mike Halligan
Senator Bill Norman
Senator Fred Van Valkenburg

SENATE JUDICIARY

EXHIBIT NO. 5

DATE Jan. 27, 1987

BILL NO. SB 152

Amend HB 152 as follows:

Page 2, lines 4 through 12, substitute the following language for the presently proposed language:

(b) In the event that the complainant is covered by a grievance procedure properly established by collective bargaining agreement, rule, or policy, a complaint may not be filed until 180 days after failure of all reasonable good faith attempts to resolve the matter through the grievance procedure. In the event the grievance procedure culminates in a decision by an unbiased decision maker, the commission and its staff in considering a complaint must give due consideration to the decision of the unbiased decision maker and must abide by the decision unless it is not based upon fact, is repugnant to the purposes of this chapter, or one or more of the conditions listed in 27-5-312 and 313, M.C.A., are found to be present.

Page 3, line 2 through 10, substitute the following language for the presently proposed language:

(2) In the event that the complainant is covered by a grievance procedure properly established by collective bargaining agreement, rule, or policy, a complaint may not be filed until 180 days after failure of all reasonable good faith attempts to resolve the matter through the grievance procedure. In the event the grievance procedure culminates in a decision by an unbiased decision maker, the commission and its staff in considering a complaint must give due consideration to the decision of the unbiased decision maker and must abide by the decision unless it is not based upon fact, is repugnant to the purposes of this chapter, or one or more of the conditions listed in 27-5-312 and 313, M.C.A., are found to be present.

and give the victim immediate notice of any legal rights and remedies available. The notice must include furnishing the victim with a copy of the following statement:

"IF YOU ARE THE VICTIM OF DOMESTIC ABUSE, the county attorney's office can file criminal charges against your abuser. You have the right to go to court and file a petition requesting any of the following orders for relief:

- (1) an order restraining your abuser from abusing you;
- (2) an order directing your abuser to leave your household;
- (3) an order preventing your abuser from transferring any property except in the usual course of business;
- (4) an order awarding you or the other parent custody of or visitation with a minor child or children;
- (5) an order restraining your abuser from molesting or interfering with minor children in your custody; or
- (6) an order directing the party not granted custody to pay support of minor children or to pay support of the other party if there is a legal obligation to do so".

History: En. Sec. 3, Ch. 700, L. 1985.

Part 5

Arrest by a Private Person

46-6-501. Definitions. As used in this part, the following definitions apply:

- (1) "Concealment" means any act or deception done purposely or knowingly upon or outside the premises of a wholesale or retail store or other mercantile establishment with the intent to deprive the merchant of all or part of the value of the merchandise. The following acts or deceptive conduct shall be prima facie evidence of concealment:
 - (a) concealing merchandise upon the person or in a container or otherwise removing such merchandise from full view while upon the premises;
 - (b) removing, changing, or altering any price tag;
 - (c) transferring or moving any merchandise upon the premises to obtain a lower price than the merchandise was offered for sale by the merchant; or
 - (d) abandoning or disposing of any merchandise in such a manner that the merchant will be deprived of all or part of the value of the merchandise;
- (2) "Shoplifting" means the theft of any goods offered for sale by a whole sale or retail store or other mercantile establishment.

History: En. 95-611.1 by Sec. 1, Ch. 274, L. 1974; R.C.M. 1947, 95-611.1.

Cross-References

Control of shoplifting, 7-32-4303.

46-6-502. When arrest by private person authorized. A private person may arrest another when:

- (1) the person believes on reasonable grounds that an offense is being committed or attempted in his presence.

(2) a felony has in fact been committed and he believes on reasonable grounds that the person arrested has committed it; or

(3) he is a merchant, as defined in 30-11-301, and has probable cause to believe the other is shoplifting in the merchant's store.

History: En. 95-611 by Sec. 1, Ch. 196, L. 1967; and S.F. 76 JUDICIARY 974; R.C.M. 1947, 95-611(part).

Cross-References

Limitation on arrest authority of auxiliary officer, 7-32-233.

46-6-503. Restrictions on arrest by merchant — liability. (1) A merchant acting under 46-6-502 may stop and temporarily detain the suspected shoplifter. The merchant in such event:

- (a) shall promptly inform the person that the stop is for investigation of shoplifting and that upon completion of the investigation the person will be released or turned over to the custody of a peace officer;
- (b) may demand of the person his name and his present or last address and may question the person in a reasonable manner for the purpose of ascertaining whether or not such person is guilty of shoplifting;
- (c) may take into possession any merchandise for which the purchase price has not been paid and which is in the possession of the person or has been concealed from full view; and
- (d) may place the person under arrest or request the person to remain on the premises until a peace officer arrives.

(2) Any stop, detention, questioning, or recovery of merchandise under 46-6-502(3) and this section shall be done in a reasonable manner and time. Unless evidence of concealment is obvious and apparent to the merchant, 46-6-502 and this section shall not authorize a search of the detained person other than a search of his coat or other outer garments and any package, briefcase, or other container, unless the search is done by a peace officer under proper legal authority. After the purpose of a stop has been accomplished or 30 minutes have elapsed, whichever occurs first, the merchant shall allow the person to go unless the person is arrested and turned over to the custody of a police officer.

(3) Such stop and temporary detention, with or without questioning or removal of merchandise, when done by a merchant in compliance with the law, shall not constitute an unlawful arrest or search. A merchant stopping, detaining, or arresting a person on the belief that such person is shoplifting is not liable for damages to such person unless the merchant acts with malice, either actual or implied, or contrary to the provisions of this law.

History: En. 95-611 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 3, Ch. 274, L. 1974; R.C.M. 1947, 95-611(part).

Cross-References

Limitation on arrest authority of auxiliary officer, 7-32-233.

46-6-504. Concealment not proof of theft. Concealment of merchandise shall not constitute proof of the commission of the offense of theft.

History: En. 95-611.2 by Sec. 2, Ch. 274, L. 1974; R.C.M. 1947, 95-611.2.

EXHIBIT NO. 7

DATE Jan. 27, 1987

BILL NO. SB 104

SENATE JUDICIARY

EXHIBIT NO. 8

DATE Jan. 27, 1987

BILL NO. SB 144

S.B. 144

P.2, L.11 after defect, insert:
"or is not considered a danger to himself or others."

STANDING COMMITTEE REPORT

..... January 27 1938

MR. PRESIDENT

We, your committee on SENATE JUDICIARY

having had under consideration..... SENATE BILL No. 144

first reading copy (white)
color

Review of sentence of a mentally ill offender certified as cured.

Respectfully report as follows: That..... SENATE BILL No. 144

BE AMENDED AS FOLLOWS:

1. Page 2, line 11.

Following: "defect"

Insert: "or is not considered a danger to himself or others"

AND AS AMENDED

DO PASS

~~XXXXXXXXXX~~
DO NOT PASS

.....
Chairman.