

Senate JOINT RESOLUTION NO. 30

INTRODUCED BY *Watt Sherman Brown Murphy*
Alan E. Smith *Al Shaker* *R. Smith* *Doyle*
McCall *Ward* *Rebert* *Stalder*
A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF

REPRESENTATIVES OF THE STATE OF MONTANA ENCOURAGING THE
JUDICIAL BRANCH TO REFRAIN FROM EXALTING THE ADVERSARY
THEORY OF JURISPRUDENCE ABOVE THE INTERESTS OF THE OVERALL
COMMUNITY AS PERCEIVED BY PUBLIC AGENCIES.

WHEREAS, the Legislature creates the departments,
boards, and other agencies of the executive branch for the
purpose of carrying out the laws which often require such
agencies to weigh the unrepresented public interest against
the articulate advocacy of private interests; and

WHEREAS, the advocacy retained by the private interests
often exploits the "adversary system" theory of
jurisprudence against state agencies; and

WHEREAS, the idea of the adversary system evolved as a
part of a world view developed by philosophers from John
Locke to Herbert Spencer, who saw society as the sum of a
multitude of competing individual interests and nothing
more; and

WHEREAS, the modern view of American society is more
community-oriented, involving sharing of risks through
private institutions, such as insurance, and public

institutions, such as administrative agencies; and
WHEREAS, a community-oriented view of society is often
at odds with an adversary theory of jurisprudence, as
exemplified by concern over issues such as victims of crime,
no-fault loss compensation, no-fault divorce, and
administrative procedure.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE
OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the judicial branch of Montana government is urged
to strictly adhere to the admonition of section 82-4216(7),
R.C.M. 1947, that a court "shall not substitute its judgment
for that of the agency as to the weight of the evidence on
questions of fact", and in the spirit of this provision to
refrain from placing the technicalities of the adversary
system above the interests of the overall community which an
agency is directed to advance.

-End-

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