

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
February 17, 1979

The forty-first meeting of the Senate Judiciary Committee was called to order by Senator Everett R. Lensink in Room 331 of the Capitol building on the above date at 9:32 a.m.

ROLL CALL:

All members were present.

CONSIDERATION OF SENATE BILL 286:

Senator Brown stated that he believes that this is the most important bill of the session. This bill is an act to increase the number of associate justices on the supreme court. He said that the court has had an almost 100 percent increase in the number of cases they try and the opportunity to go to seven justices will ease the work load and will give the court some flexibility.

Chief Justice Frank Haswell passed out some information for the committee and stated that the supreme court has looked over the various alternatives available to handle their increased caseload and found this to be the most feasible method and the least costwise. He said that they would contemplate using the additional justices as sort of spare and that the court would still sit on a five-judge panel, and they would set up procedures for a full seven-man court to sit in cases involving more important views.

J. C. Weingartner, representing the Montana Bar Association, gave a statement in support of this bill. There were no further proponents and no opponents.

Senator Brown stated that he could not overemphasize what the judge says about the expenses as the other three alternatives were much more expensive.

Senator Healy asked if these judges would be appointed by the governor, and Senator Brown answered, yes, from a list of three to five people and he would select from that list.

Senator Turnage moved that the bill do pass.

Senator Towe asked how they envision the work; and on the cases where they used a seven-member panel, who would formulate the rules.

Judge Haswell stated that these rules would be subject to legislative review. It was asked how would you select panel members and Senator Towe stated that it may be random and in San Francisco, they have a rotation basis.

There were no further questions and comments and the vote on the motion to do pass carried unanimously.

CONSIDERATION OF SENATE BILL 431:

Senator Hafferman from Lincoln County gave an explanation of this bill. He introduced Ed Carney, director of the Professional and Occupational Licensing Department.

Mr. Carney gave a statement in support of this bill and he stated that this particular problem gave them problems last summer.

There were no further proponents and no opponents.

Senator Towe asked what kind of licensing were they talking about and Mr. Carney stated that it means all licensing - all that come into our department and all other departments and he stated that we will know if you really want us to take that step.

Senator Brown stated that the point to emphasize is that this does not do away with the notice of a hearing. He said first you get a notice that you are thinking about revoking a license; and then you get a second notice that means now you have an opportunity for a hearing, he gets an opportunity to appear and he can show his compliance with the rules. He stated that we are talking about doing away with an extra notice and it can be taken care of without a hearing.

Senator Turnage asked if he can be put out of business, pending that hearing and Senator Brown said no, he is not -- that it is not effective until a final administrative opinion.

Senator Turnage stated that he wants to help the program but he really doesn't want to put a guy out of business. Senator Towe asked what is the process if this bill passes. Mr. Carney said that you don't get involved without a complaint, both parties are talked to, this report is filed back with the board and the board makes a decision based on the report. If a revocation of a license may be contemplated, a notice of a hearing for revocation of license is issued, we interpret this now to mean you must write to this fellow. He is allowed a hearing in any situation and can continue in business until the hearing.

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There were no further questions or comments and Senator Lensink said that we will take this bill under advisement. The hearing on this bill was closed.

CONSIDERATION OF SENATE BILL 432:

Senator Hafferman gave an explanation of this bill, which is an act to revise the law relating to attendance of trial juries in district court. He stated that a lot of people will not register to vote as they do not want to serve on juries.

Robert Holter, District Judge in the 19th Judicial District, stated that he was partially in favor of this bill. He stated that in subsection (3) this change would permit a court to draw more than one jury in one term and he said that a lot of people in Lincoln became professional jurors when they had a murder trial and he stated that he began to sweat because he did not know if the jury was legal. He stated that in subsection (4) this covers "one-day or one-trial" system and this cuts down the amount of jury service per person and makes it much more attractive and that this would be discretionary with the judge.

Under Section 5, Notice to Jurors, he said this would change the system of calling jurors and he stated that there are many different systems used in the state to call juries. He said they could use a letter notice with a jury questionnaire and that most of them answer this questionnaire and this would also serve as an acknowledgement that they had been served and he said that in Texas they have very little opposition to serving on juries using this method.

Maggie Davis, representing the Montana League of Women Voters, stated that they were not too familiar with this bill itself, but she did know that people are refusing in droves to register because of this reason and this is particularly so in Great Falls.

There were no further proponents and no opponents.

Senator Towe moved that the bill do pass. The motion carried unanimously.

CONSIDERATION OF SENATE BILL 476:

Senator Van Valkenburg gave an explanation of this bill, which is an act to license and regulate persons who purport to be able to detect deception, verify truthfulness, or provide a diagnostic opinion of either through the use of any device or instrumentation as lie detectors, etc. He stated that he thinks this is necessary because of the increasing use of polygraph in law, in employment, and personal use. He stated that people come in and say they are trained, and they really do not have

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sufficient background to be advancing an opinion when they really do not know.

Arnie Sand, a deputy attorney with the Cascade County Sheriffs' Office in Great Falls, stated that he had the highest degree in the northwest; and he told of an individual in Montana, who ordered his instrument out of a catalogue, read some material and calls himself a polygraph examiner and he felt that this type of operation has to be stopped. He also told of another individual who wants to order an instrument, type up some instructions and he will rent this machine to anyone who comes along. He said that at the present time, there are sixteen people who are running polygraphs and they need some help in trying to control this type of individual.

He stated that they belonged to the Montana Association of Polygraphic Operators and we have to be a graduate of an approved school, and they also have to attend a training seminar once a year.

Harry Younker, representing the Advanced Polygraph Service of Helena, stated that they are definitely in need of this bill.

Wendel Froscheim, Missoula, said that it was important to know how to use a polygraph because of the effects it can have on an individual.

There were no further proponents and no opponents.

Senator Healy questioned if there were qualifications needed in order to be accepted to the school. Mr. Sand stated that yes there is - that you must have two years of college, you have to pass an entrance examination plus you have to have a polygraph test yourself. He stated that all the time you are in school you must maintain a certain grade level, if you don't hold it, you are automatically dropped from the course, it is open to both private and the law enforcement industry and the minimum is 200 hours of classroom instruction. Afterwards you have to go out and run 300 examinations and you are checked to be sure you are running them with accuracy.

Senator Healy questioned if there were any of these schools in the northwest and Mr. Sand said, no, they are in California, Denver, Chicago, New York and Georgia.

Senator Towe questioned on page 7, lines 23 and 24 - issuance of license - how they were going to determine that, are you going to ask to see records and he wondered if there was anything that describes the circumstances of a polygraph

test - when it can be used and when it cannot be used. Mr. Sand said there is nothing in the bill, but he said that a person that is being run on a polygraph, must submit to it and this is throughout the United States.

Senator Lensink asked if they were certified and Mr. Sand said, yes, we are, we are certified by the American Polygraph Association and we have to meet their guidelines.

Senator Lensink asked who makes use of the services of the polygraph examiners and Mr. Sand said that the largest use is law enforcement, private companies that are having problems with internal theft are using it, insurance companies use it to find out whether or not claims have been falsified, etc.

Senator Lensink asked what advantages does licensing them have over certifying them. Mr. Sand said that they can control whoever is operating in the state and the way it is right now they can call themselves a polygraph examiner and have absolutely no training.

Senator Lensink wondered who is the loser if the insurance company is dumb enough - is it the insurance company or is it the other people. Mr. Sand said that it can work both ways and he gave an example of a polygraph examiner who was not up to date who had a \$186,000 insurance claim and who read the graphs wrong and the ethics he used in the procedure were all wrong.

Senator Towe said that he was not terribly enthused about polygraphs but he felt that professionalism was important and he would support the bill.

There being no further questions and no comments, the hearing on this bill was closed.

CONSIDERATION OF SENATE BILL 426:

Senator Stimatzi gave an explanation of this bill, which is a bill to provide that a criminal offender is considered nondangerous for purposes of parole eligibility unless the sentencing court specifies that the offender is not a nondangerous offender.

Nick Rotering, representing the Department of Institutions, gave a statement in support of this bill, and he said that in 1976 a bill was passed that did just the opposite, and they found that this was not the intent of the district judges and he said that this puts the burden back on the sentencing court.

Tom Honzel, representing the Association of County Attorneys, stated that they would like to make the law consistent and right now it is inconsistent and recommended that they change the "or" to an "and". He said that SB 260 would do away with nondangerous situation and he said that SB 223 was incorporated into SB 228 and this has to be acted on yet.

There were no further proponents and no opponents.

Senator Turnage moved that the bill do pass.

Senator Van Valkenburg stated that a lot of people have affected by this in the last two years and are we going to make sure these people are taken care of it this bill passes. Mr. Rotering explained what they have done to protect these people.

The motion carried unanimously.

CONSIDERATION OF SENATE BILL 468:

Senator Stimatz testified in connection with this bill, which is an act to generally revise the laws relating to courts of limited jurisdiction. He introduced Jim Jensen, representing the Montana Magistrates Association.

Mr. Jensen gave a statement in support of this bill.

Mike Abley, the Administrator for the Supreme Court, stated that they are the primary agency for the training of judges and we have now made arrangements with Mike Greeley to use the training academy which will further reduce the cost and that the costs are very minimal and they have no problem with this bill.

M. Turcott, a justice of peace from Broadwater County, said he has been talking to attorneys that bring up all the things that are being done wrong especially in the lower courts and he said that 90 to 95 per cent of the judges attend these schools but the 5 to 10 per cent that are not attending are the ones that are making the problems.

Maggie Davis, representing the League of Women Voters, stated that they favor supervision of the supreme court, costs for education by the counties and also support on page 4 facilities for the court.

There were no further proponents and no opponents.

Senator Galt moved that the bill do pass.

Senator Van Valkenburg questioned on page 3, line 14, what exactly is insolent behaviour. Mr. Jensen said that this is difficult to define but he certainly has seen it.

Senator Healy questioned how this would affect a handicapped judge such as he has in his district. Senator Stimatz said that this probably would not affect him at all as he is a good judge, he is blind, but this bill would not affect him. He said that in the future they may be able to have facilities available for these people.

Senator Towe questioned why is it we are repealing the small claims court without mentioning it in the title. Mr. Jensen stated that this was not the intent and he explained some problems they have had and they want to work on this. Joan Mayer from the Legislative Council stated that this was in the draft that came down to the council. Senator Towe stated that if you utilize that procedure then the attorneys are not involved and Senator Lensink said that the district court small claims court has not been used.

Senator Towe said that he would make a substitute motion to delete section 11 on the repealers. The motion carried, with Senator Anderson voting no.

Senator Galt moved that the bill do pass as amended. The motion carried unanimously.

CONSIDERATION OF SENATE BILL 516:

This was a Senate Judiciary Committee bill, which is an act to revise the law concerning custody orders, to allow ex parte temporary custody orders, to delete the two-year restriction on seeking modification of a custody order, etc. Senators Turnage and Van Valkenburg explained the changes in this bill.

Senator Lensink asked if they had had a chance for Senator Turnage to go over this bill and Senator Turnage said that he was satisfied with it and he stated that we have locked the hands of district judges when some real and apparent problem exists and they have no temporary resources and that is what the law was for many, many years.

Senator Towe said that the main danger to there being an abuse of this temporary order and it will be an automatic thing.

Senator Turnage moved that the bill do pass. The motion carried unanimously.

CONSIDERATION OF SENATE JOINT RESOLUTION 27:

This is a resolution to urge the Montana Supreme Court to appoint laymen to the Commission on Practice and to require the commission to report biennially to the legislature. This bill was requested by the committee.

Senator Brown moved that this bill do pass. The motion carried unanimously.

RECONSIDERATION OF SENATE BILL 431:

Senator Turnage questioned if they think they will abuse this and Senator Towe said that there is no warning any more. Senator Brown stated that there really is a warning and they will try to work it out without going to a hearing and if there is an abuse, I will come back and put this back in.

Senator Brown moved that this bill do pass. The motion carried.

CONSIDERATION OF SENATE BILL 476:

Senator Turnage moved that this bill do not pass.

Senator Van Valkenburg said that he did not have any great love for polygraphs but that he accepts them as a fact of life and this should really get at and stop the shoddy operators.

Senator Turnage said that there is a law on the books right now, but that law enforcement is exempt.

Senator Turnage said that if you leave it like it is right now, the courts are going to keep them out but if you pass this, you are inviting the courts to bring them in.

Senator Lensink stated that in all states, they are swinging away from licensing to being certified and he objected to it on that basis.

Senator Towe said that he agreed with Fred that they do exist and it is better to have a handle on them.

Senator Turnage said that you will have them in your life everywhere, and he felt that the possession of them should be a felony.

Senator Towe said that an unreliable person can really hurt someone very much and Senator Turnage said that under the present law they have no right to do that.

Senator Turnage moved that they pass consideration on this bill for the day. The motion carried unanimously.

There being no further business, the meeting was adjourned.

Everett R. Lensink
SENATOR EVERETT R. LENINK, Chairman
Senate Judiciary Committee

Date Feb 1-2

ROLL CALL

JUDICIAL

COMMITTEE

46th LEGISLATIVE SESSION - 1979

Each Day Attach to Minutes.

Please sign & return to library's circulation

SENATE *Subcommittee* COMMITTEE

BILL

VISITORS' REGISTER

DATE 2/10/01

Please note bill no.

(check one)

OPAC

857 500-1

MEMORANDUM

TO: State Senate

FROM: Montana Supreme Court

DATE: January 22, 1979

RE: Two Additional Justices

We wish to stress two important factors regarding this important legislation:

1. There is an immediate and compelling need.
2. How a seven-justice court would operate.

1. THERE IS AN IMMEDIATE AND COMPELLING NEED:

(a) In calendar 1978, 517 cases were filed. The Court disposed of 475. On January 3, 1979, there were 364 active cases pending in the court.

(b) Case filings are continuing unabated. In the first fifteen working days of January 1979 (to January 22), 32 cases have been filed.

(c) The five man Court is now working at full capacity. We prepared and issued 269 full opinions in 1978, in addition to dissents, memorandum opinions, orders and dismissals to dispose of 475 cases.

(d) Hearing oral arguments by five justices takes up opinion-writing time, yet oral arguments are essential. Examples:

Between November 14 and November 28, 1978,

we heard oral arguments in 28 cases

Between December 11 and December 21, 1978,

we heard oral arguments in 26 cases

Between January 26 and February 14, 1979,

we will hear oral arguments in 41 cases

During the days we are hearing oral arguments,

there is little time to do anything else.

We hear four cases per day, except Wednes-

days, when our weekly court conference

occupies the morning and we hear two cases

in the afternoon. Each day after the

cases are heard, we discuss each and arrive

at tentative conclusions. We then must

prepare for the cases on the following day.

(e) We cannot reduce the number of cases for oral argument.

We now eliminate oral argument in cases which do not present novel questions or which can be decided simply on the briefs.

(f) Unless we obtain help, it now appears inevitable that an unmanageable backlog will result by the time the next session of the Legislature meets.

(g) We have been unable to promptly and efficiently exercise supervisory and administrative duties for lack of time and personnel. Examples: Modernization, updating and upgrading Supreme Court Rules; procedural and substantive rules of the Board of Bar Examiners; procedural rules of the Commission on Practice; the Judicial Standards Commission and the Sentence Review Division; revision of the Code of Professional Responsibility

for lawyers and the Code of Judicial Ethics for judges; various supervisory of functions over the District Courts and magistrate courts; the five Court Planning Committees; continuing legal education standards for judges; continuing judicial education standards for judges.

2. HOW A SEVEN-JUSTICE COURT WOULD OPERATE:

(a) The 1972 Montana Constitution now provides for the enlargement of the Supreme Court by the Legislature to a seven justice Court, including the Chief Justice. (Article VII, Section 3(1).)

(b) The same constitutional section provides that a majority of the Court must join in written decisions.

(c) The Court plan is to utilize five justice panels for all cases, with four justices necessary to a decision. In constitutional or other far-reaching cases, we would utilize the full seven man Court.

(d) Panels would be selected for each case on a random basis. There are 21 possible combinations of five in a seven justice Court.

3. ADVANTAGES:

(a) Forty percent more judicial capacity on a straight-line basis.

(b) Two justices freed in each case for other opinion writing, routine administrative and other work of the Court.

(c) Speedier decisions in civil and criminal cases.

(d) Avoids a stereotyped Court or the impression of
the same.

(e) Greater assurance of high quality legal work.

Frank I. Haswell

Chief Justice Frank I. Haswell
for the Court

SENATE COMMITTEE JUDICIARYDate 2/ Bill No. 476 Time _____

NAME	YES	NO
Lensink, Everett R., Chr. (R)	✓	
Olson, S. A., V. Chr. (R)		<i>abstained</i>
Turnage, Jean A. (R)	✓	
O'Hara, Jesse A. (R)		✓
Anderson, Mike (R)		<i>abst</i>
Galt, Jack E. (R)	✓	
Towe, Thomas E. (D)		✓
Brown, Steve (D)		
Van Valkenburg, Fred (D)		✓
Healy, John E. (Jack) (D)		✓

*no*Place Name
SecretaryEverett R. Lensink, Jr.
ChairmanMotion: Do not pass

(include enough information on motion--put with yellow copy of committee report.)

STANDING COMMITTEE REPORT

February 17, 1972

MR. PRESIDENT

We, your committee on Judiciary

having had under consideration Senate Joint Resolution Bill No. 27

Respectfully report as follows: That Senate Joint Resolution Bill No. 27

DO PASS

STATE PUB. CO.
Helena, Mont.

Everett R. Lansink Chairman.

84

JL

STANDING COMMITTEE REPORT

.....February 17,.....19 72.....

MR. President:.....

We, your committee on.....Judiciary.....

having had under considerationSenate..... Bill No.236....

Respectfully report as follows: That.....Senate..... Bill No.236....

DO PASS

STATE PUB. CO.
Helena, Mont.

Everett R. Tensink Chairman.

PLC.

STANDING COMMITTEE REPORT

.....February 17,..... 19...70...

MR.President:.....

We, your committee onJudiciary.....

having had under considerationSenate..... Bill No.426....

Respectfully report as follows: That.....Senate..... Bill No.425.....

DO PASS

STATE PUB. CO.
Helena, Mont.

.....# 41.....
Chairman.

1/10

STANDING COMMITTEE REPORT

.....February 17.....19.....72.....

MR.President:.....

We, your committee onJudiciary.....

having had under considerationSenate..... Bill No.431.....

Respectfully report as follows: That.....Senate.....Bill No.431.....

DO PASS

STATE PUB. CO.
Helena, Mont.

Everett R. Pensink

Chairman.

431

STANDING COMMITTEE REPORT

.....February 17,.....19 79.....

MR.President.....

We, your committee on.....Judiciary.....

having had under considerationSenate..... Bill No.432.....

Respectfully report as follows: That.....Senate..... Bill No.432....

DO PASS

STATE PUB. CO.
Helena, Mont.

Everett R. Lensink

Chairman.

4641

STANDING COMMITTEE REPORT

February 13 1979

MR. President

We, your committee on Judiciary

having had under consideration Senate Bill No. 463

Respectfully report as follows: That Senate Bill No. 463, introduced bill, be amended as follows:

1. Title, lines 7 through 11.

Following: "MCA" on line 7

Strike: remainder of line 7 through "MCA" on line 11

2. Page 6, lines 20 through 24.

Strike: section 11 in its entirety

Renumber: subsequent section

And, as so amended,

DO PASS

4/1

STATE PUB. CO.
Helena, Mont.

Everett R. Lensink, Chairman

4/6

STANDING COMMITTEE REPORT

.....February 17, 1972.....

MR.President:.....

We, your committee onJudiciary.....

having had under considerationSenate....., Bill No. 515

Respectfully report as follows: ThatSenate....., Bill No. 515

DO PASS

STANDING COMMITTEE REPORT

February 17, 1979

MR. President:

We, your committee on Judiciary

having had under consideration Senate Bill No. 54

Respectfully report as follows: That Senate Bill No. 54, introduced bill, be amended as follows:

1. Title, line 6.

Following: "OF"

Insert: "TEMPORARY"

2. Page 1, line 19.

Following: "or"

Insert: "temporary"

3. Page 2, line 1.

Following: "a"

Insert: "temporary"

Following: "by"

Insert: "["

4. Page 2, lines 1 and 2.

Following: "27-19-305"

Strike: ", NCA"

Insert: "]"

X90 PASS

5. Page 2, line 8.

Following: "or"

Insert: "temporary"

February 17, 1979

6. Page 2, line 13.

Following: "or"

Insert: "temporary"

7. Page 2, line 16.

Following: "or"

Insert: "temporary"

8. Page 3.

Following: line 10

Insert: "Section 3. Codification. If Senate Bill 243 becomes law,
the reference in section 1, subsection (2), of this act to
27-19-305 shall be changed by the code commissioner to a reference
to section 7 of Senate Bill 243."

And, as so amended,
DO PASS

STANDING COMMITTEE REPORT

February 17, 1972

MR. President:

We, your committee on Judiciary

having had under consideration Senate Bill No. 54

Respectfully report as follows: That Senate Bill No. 54, introduced bill, be amended as follows:

1. Title, line 6.

Following: "OF"

Insert: "TEMPORARY"

2. Page 1, line 19.

Following: "or"

Insert: "temporary"

3. Page 2, line 1.

Following: "a"

Insert: "temporary"

Following: "by"

Insert: "["

4. Page 2, lines 1 and 2.

Following: "27-19-305"

Strike: ", MCA"

Insert: "]"

XEROX PASS

5. Page 2, line 8.

Following: "or"

Insert: "temporary"

6. Page 2, line 13.
Following: "or"
Insert: "temporary"

7. Page 2, line 16.
Following: "or"
Insert: "temporary"

8. Page 3.
Following: line 10

Insert: "Section 3. Codification. If Senate Bill 243 becomes law,
the reference in section 1, subsection (2), of this act to
27-19-305 shall be changed by the code commissioner to a reference
to section 4 of Senate Bill 243."

And, as so amended,
DO PASS

G.A.