

THE MINUTES OF THE MEETING OF THE JUDICIARY COMMITTEE  
February 10, 1981

The meeting of the House Judiciary Committee was called to order by Vice Chairman, Carl Seifert at 8:00 a.m. in Room 437 of the capitol. The members who were excused were Rep. Keyser, Rep. Matsko, and Rep. Teague. Rep. Yardley was absent. Jim Lear, Legislative Counsel was also present.

HOUSE BILL 621 REP. DARRYL MEYER presented the bill which would define and prohibit computer-related crimes. Crimes are on the increase in cases such as using the computer without the consent of the owner or using the computer to steal or embezzle. This bill would address the definition of property so the offense can be covered. Now, as the law stands, one who steals from the computer is taking a service or destroying a service which is not defined in the law with a monetary value. EXHIBIT 1.

JIM HUGHES, sponsoring Mountain Bell, spoke as a proponent. With the growing number of computers, there is a growing number of incidents involving computer theft. One can get the information for stealing from banks quite easily. One problem is that it is possible to obtain the information without taking anything of value from the owner. The thief can use the information or can destroy the programmed material. This bill would allow the statute of limitations to run for about a year. This bill is patterned after some in other states and defines what computer crime is and has been researched.

JOHN SCULLY, representing Independent Bankers, supported the bill and said the information can be used for many other purposes.

There were no Opponents.

REP. MEYER closed the bill.

During questions from the committee, REP. HANNAH asked why the current law is not working. MR. HUGHES replied that actual property is included in the current law. This bill defines what is the theft of money and data. This provides a definition.

REP. HANNAH then asked how you can set a value on information. The answer was that the programming is valued. MR. SCULLY further stated that value is lost when someone erases something from the computer, this law says it is valuable.

REP. HUENNEKENS questioned that in the penalty section of the bill the value is two and one-half times the value of the property taken. MR. SCULLY said that the monetary penalty is the only way of getting restitution back to the victim.

REP. CURTISS asked about the statute of limitations. REP. HANNAH said it looked as though the bill changed the statute from five

years to forever. MR. SCULLY said if you apply the statute of limitations to this crime, you may never find it out. It only extends to a certain period of time.

REP. BENNETT asked if there are enough instances to justify changing the law. The answer was yes.

The hearing closed on House Bill 621.

HOUSE BILL 626 REP. KEEDY, chief sponsor, stated this bill is to repeal the "Exclusionary Rule" providing a civil remedy for violation of a person's constitutional privacy rights. If this bill is passed section 46-13-302 would be repealed. It provides for the suppression of any evidence obtained in violation of the 4th amendment. It requires evidence be kept from the consideration of the jury if obtained through unlawful search and seizure. This bill is designed to substitute a number of provisions to do a more appropriate job. The exclusionary rule is not of constitutional mandate, it is a court-made rule of law.

It was basically a law by the United States Supreme Court as to what public policy should be. REP. KEEDY believes the legislature should be able to determine this. The rule is not working. The rule does not provide for the innocent victim. A process needs to be devised that will protect the victims by controlling the police activities. Policemen will not take meaningful measures to correct their own people. There are some things the Exclusionary Rule does not do. It does not compensate the victim.

A trial is supposed to be a truth-seeking function. With this rule the truth is distorted. Evidence should be excluded when its reliability is questioned. The exclusionary rule does not make major or minor distinctions. Rather than disciplining the policemen it allows them to lie about their activities. It does not promote due process. It inspires the police to give harassment. We need to prevent the guilty from going free. This will deter police misconduct. The innocent victim needs to be protected from the police when the police are wrong. A bill similar to this was passed last session and vetoed by the governor after adjournment.

TOM HONZEL, representing County Attorney's Office, feels there are problems with the exclusionary rule; therefore, the rule should be replaced. HONZEL stated this bill is good as it takes care of the many problems in the past. HONZEL quoted from Chief Justice Burger's talk to the American Bar Association of changes needed. BURGER's talk suggests repeal of the exclusionary rule. It was a remedy for violations of constitutional rights under the 4th amendment. The Chief Justice has not been able to get a majority of the court to agree. They indicate the change must be legislative. HONZEL stated the Attorney General's Office supports this bill.

REP. AUBYN Curtiss, supports this bill. She read from an article of November, 1980. EXHIBIT 2.

There were no further proponents.

JOHN SCULLY, Montana Peace Officers Association, opposed the bill. He felt this bill had not received the attention it should. The proposal is born out of frustration. The individual is allowed to go free because of a technicality. The process of a search warrant is as follows: The police officer goes to the county attorney to obtain the warrant. The county attorney signs the form stating that there is probable cause to go in and search. The judge then has to sign it. After the search the warrant is brought back to the judge. SCULLY does not feel it is fair the policeman acts as a supreme court justice and if he chooses the wrong action he is liable for civil action. SCULLY stated that not five cases could be named where this has happened. SCULLY felt that the prosecutors immunity should be taken away instead of the policeman's for civil cases. Or maybe the judge's immunity should be taken away since he signed the search warrant.

SCULLY stated he would advise the police not to apply for search warrants; instead let the county attorney do it. It is impossible to tell what will happen in search and seizure. SCULLY stated if evidence is to be used, fine; but put yourself in the shoes of the police officers. They do have personal pride. They are not going to ruin months of work to harass a citizen. The process is not perfect but the solution is not to make the officer liable.

There were no further proponents.

In closing, REP. KEEDY stated Scully's concern is what would happen to the police officer. On page 7 line 3 deals with the employee causing or committing the violation in good faith that his conduct comported with existing law. There is a question of what happens in civil damages. Is the police officer going to have to pay out of his pocket to compensate the property damages or injuries? That is a possibility, but on page 3 line 5 deals with damages. Civil action would be against the state and not the employee. REP. KEEDY feels this bill is not a threat to the police activities.

REP. DAILY asked if a police officer goes into search is he criminally liable now? SCULLY replied nothing in the bill affects the criminal liability. The solution is there is no civil suit available against police officers or prosecutor.

REP. DAILY stated it would seem this would help the police instead of harming them. REP. KEEDY felt it is frustrating for any law enforcement agency. This bill will give law enforcement agents

a sense of justice. Their hard work will result in good.

REP. BENNETT questioned that police officers lie on the stand. REP. KEEDY stated that does happen. REP. BENNETT indicated it would seem all the officer would have to do is say he acted under good faith. REP. KEEDY felt the police have the right to say that. The plaintiff has the burden of proof.

REP. BENNETT stated a policeman would be on 30 days suspension, 90 days the second time and more the next time: Would that deter him from doing it again? REP. KEEDY stated he did not know for certain if it would deter the officer. REP. KEEDY felt that losing a month's pay or more might have an affect on the actions of the officer. A police force might not want to retain an officer whose actions continue in this manner.

REP. EUDAILY asked what section 13 is about. REP. KEEDY stated it is important to mention that section in the bill. REP. SCULLY felt it benefits the bill.

That ended the discussion on House Bill 626.

HOUSE BILL 658 The committee allowed testimony from judges who were in town for their opinion on this bill. JUDGE GULBRANDSON handed out three exhibits showing case load for the judges throughout the state. EXHIBITS 3, 4 and 5. It was stated the figures really don't tell the whole story. There are backcases that are still pending from last year.


REP. IVERSON asked if districts could be combined. The judge replied a lot of territory would have to be covered.

REP. EUDAILY asked who is responsible for setting up the districts. The legislature was the answer.

REP. EUDAILY asked if a second judge was provided where would be his homebase? GULBRANDSON replied in Sidney. His base is in Glendive. Because of the constant travel it would be better to have the judges in two different towns so mileage could be cut down. The costs for a new judge would include employing a court reporter, maintenance of the office and a law library.

The bill will be given a formal hearing on February 12, 1981.

The meeting adjourned at 10:00 a.m.

  
\_\_\_\_\_  
CARL SEIFERT, VICE-CHAIRMAN

## YOUR MONEY'S WORTH



# Fraud! 1981 varieties Push-button criminals

By SYLVIA PORTER

(Second of four columns)

A new criminal has emerged for the decade of the 1980s — a sophisticated thief who even at this date is stealing as much as \$40 billion a year out of your pocket and mine and whose crimes often go unpunished because they are undetected.

He (she) is the high technology crook, operating in the field of electronics, concentrating on computer frauds. And the irony is that such is the secret, impersonal nature of the computer that even when a computer fraud is discovered, it may be impossible to find who actually pressed the button.

So relatively easy is computer fraud that smaller companies particularly are deeply alarmed about their vulnerability. The cost of retaining trained personnel capable of trapping the technically adept crooks is prohibitive for all except the giants.

For business in general, even larger problems may lie ahead along with the proliferation of home computers and electronic transfer of funds via data banks that are accessible through telephone lines. Billions of dollars will pass through these systems, notes the Insurance Information Institute. And as the transfer systems gain in acceptance, security experts well may find it extremely difficult to keep the computer crook under control.

Not even the federal government is immune. In sensitive agencies, millions of dollars are being invested to safeguard vital information that could be beyond price to foreign agents and would-be terrorists in this age of terror.

A computer crime does not even require an extensive technical knowledge. One office worker discovered he could print multiple copies of his company paycheck simply by pressing the repeat button on the firm's computer. He had inflated his salary by printing 200 duplicates of his paycheck before he was caught.

The precise cost of computer crime to the nation can't even be calculated — and most law enforcement agencies acknowledge that they are not sufficiently equipped to cope with the problem.

All estimates are classified as guesswork because only a comparative handful of crimes — fewer than 15 percent — are believed to have been reported to law enforcement officials.

"It's not currently possible to build an adequate technically-secure computer system," says computer security specialist Donn Parker, author of "Crime by Computer." Parker has files on 700 or more cases, but he adds "even when computer customers get all the security systems, they find it sometimes interferes with the use of the computer, so they don't use the security."

The ingenuity of the computer crook seems limitless.

As an example, there is the individual who tapped the computerized accounts of a Washington, D.C. bank without even coming close to a machine.

He merely put his personal deposit slips on the counter for other customers to use. He sat quietly at home while other depositors put a quarter-million dollars of their own money into his account as the bank's computer merrily hummed away reading his account number in the magnetic ink on the bottom of the tickets.

Subsequently, the man returned to the bank, withdrew \$100,000 and vanished!

This is not an isolated incident.

As far back as 1978, a Los Angeles computer analyst took advantage of his knowledge of secret fund transfer codes, posed as a bank official and made off with more than \$10 million from a local bank. He was caught, pleaded guilty, and was sentenced to prison.

Then there was the notorious fraud involving Equity Funding Corp. In that instance, the management harnessed the computer to fake 64,000 fictitious customers of life insurance policies involving billions of dollars.

What makes computers so vulnerable to sophisticated thieves is the very element that lies behind their appeal; minimizing paperwork plus speed and efficiency. Computer criminals also are aided by the absence of witnesses and easy evidence. On top of all this complexity is the continuous introduction of ever more advanced computers.

But even though many crimes are never discovered and many more are not admitted for fear of frightening customers and stockholders, both business and government are stepping up their attacks on the thieves. The FBI has given several hundred of its agents courses ranging up to four weeks on detecting this form of theft.

There is a waiting list for classes in computer crime at the Quantico, Va., headquarters of the FBI academy. Prosecutors also are being schooled. Federal legislation is being considered that would define and punish computer crime.

And meanwhile? Use your common sense. Be skeptical of all safeguards on electronic equipment. The pitfalls are obvious. Avoid them.

Tomorrow: Medical insurance claims.

FIRST AMENDMENT

## Editors Press for Counsel At Arms' Length'

Editors are often suspicious of their lawyers' motivations and would rather they kept "at arms' length." Despite those findings in a recent survey of Florida newspaper editors, three out of four editors said they were satisfied with the legal help they get on First Amendment issues.

Responses from 98 editors, including one from major Florida dailies, showed ambivalence about their newspapers' lawyers, said University of Florida journalism professor Jo Anne Smith, who conducted the survey of attitudes about newspaper use of communications lawyers. Although editors said they appreciated lawyers' accessibility, they also warned of the dangers of too close a relationship, she reported.

In Florida, a state regarded as a growing newspaper market, the editors said they consult lawyers more frequently than they did 10 years ago. They stated that daily newspapers increasingly are seeking First Amendment specialists, Smith said. For various reasons, she said, newspapers often go out of town to find legal counsel.

Part of the reason is the "arms' length" attitude cited by one editor. Editors are very concerned about lawyers name-dropping or using the newspaper as their power base," Smith told *LawScope*. One editor said that "under the circumstances" would he seek in-house legal counsel even from a "superb" First Amendment lawyer. Editors are aware of the potential conflict of interest a lawyer representing a client who may be the target of a newspaper's investigation, Smith said.

The most common problem in the editor-lawyer relationship, she said, is the difference in professional goals. Many editors perceive lawyers as not understanding or not being in sympathy with journalistic goals," she said. Editors are interested in publishing the news, and they want lawyers with that interest."

Although editors fear the conse-

quences of litigation, they also can be frustrated by lawyers who either aren't available to answer pressing questions, Smith said, adding, "The news can't wait 24 hours."

The "ideal communications lawyer," the survey found, is one who is responsive, accessible, committed to publication and has First Amendment expertise.

Although three-fourths of the editors said they were "satisfied" with their legal counsel, more than half said there also could be improvement. —Bill Winter

FOURTH AMENDMENT

## Moves to Limit Use of Exclusionary Rule

Two recent actions may represent blows to the Fourth Amendment's controversial exclusionary rule. A holding by a majority of the *en banc* Fifth Circuit U.S. Court of Appeals says that even evidence seized without authorization could not be suppressed as long as police acted in "good faith." Also, the California Legislature may be asked to consider a state constitutional amendment to limit use of the rule, which allows suppression of evidence wrongfully seized by police.

The Fifth Circuit's holding was the first time that a circuit court has adopted such an explicit exception to the exclusionary rule. Prosecutors view the Fifth Circuit's holding in *U.S. v. Williams* [622 F.2d 830] as possibly leading to a Supreme Court test of the exclusionary rule, even though a majority of the justices support the rule in its present form as a deterrent to illegal police activity. The rule has been attacked by police and prosecutors who contend it allows criminals to be set free.

The "good faith" exception, signed by 13 judges on a 24-member Fifth Circuit panel, came in a case involving the arrest of a woman at the Atlanta International Airport in September 1977 on charges of violating the terms of her release on appeal of a drug conviction. The woman subsequently was searched by the arresting Drug Enforcement Administration agent, who found a packet of heroin in her coat pocket. She moved to have the

heroin suppressed as evidence on grounds the arrest was illegal.

The U.S. District Court for the Northern District of Georgia granted the motion to suppress the evidence of drug possession. The Fifth Circuit at first affirmed, then granted a hearing *en banc*. That decision of the panel reversed the district court holding and remanded it to the lower court.

The Fifth Circuit held that the arrest was legal and that evidence of drug possession could not be suppressed. Then, in a separate opinion, a majority went on to address the issue of the exclusionary rule. "Evidence," the judges said, "is not to be suppressed under the exclusionary rule where it is discovered by officers in the course of actions that are taken in good faith and in the reasonable, though mistaken, belief that they are authorized."

The majority noted that the U.S. Supreme Court and the Fifth Circuit have "all but explicitly adopted the technical-violation facet of the good-faith exception," observing that most good-faith violations concern police judgmental errors concerning the facts necessary to establish probable cause for an arrest or reliance on an invalid law.

John West of Cincinnati, the defendant's attorney in the *Williams* case, said he plans to appeal the Fifth Circuit's decision to the U.S. Supreme Court, where four justices are said to favor adoption of a good-faith exception. With the Fifth Circuit's holding, West said, "the law has gone by the wayside. An officer can do anything under the pretense of good faith."

Whether the *Williams* case establishes a national precedent remains to be seen. Ten judges on the Fifth Circuit admonished their brethren for choosing the wrong case to alter the exclusionary rule. They argued that a case involving an improper arrest would have been a better vehicle for raising the issue.

The California Assembly's Criminal Justice Committee heard testimony in September on proposals that would restrict a court's use of the exclusionary rule. Los Angeles County District Attorney John Van de Kamp told *LawScope* that a bill to seek the amendment will be introduced this fall. —Bill Winter

American Bar Assn Journal

Exhibit 3

STATE OF MONTANA  
 POPULATION (7/1/1978) 784500  
 AREA IN SQUARE MILES 145319  
 DENSITY PER SQUARE MILE 5.398

## C A S E L O A D

CASE TYPE	FILINGS			DISPOSITIONS		THRUPUT (4)/(3) X100
	GRIG	RE-OP	TOTAL	CASES	AVG TIME	
	(1)	(2)	(3)	(4)	DAYS (5)	
CRIMINAL CASES (DC)	2542	91	2633	2430	96	92
CIVIL CASES	21911	348	22259	19086	189	86
GENERAL CIVIL (DV)	13885	122	14007	11675	208	83
DOMESTIC REL. (DR)	8026	226	8252	7411	159	90
JUV., PROB., & MISC.	5893	143	6036	4599	303	76
JUVENILE (DJ)	1205	89	1294	949	79	73
PROBATE (DP)	3447	37	3484	2492	467	72
INSANITY (DI)	468	17	485	484	250	100
ADOPTION (DA)	773	0	773	674	53	87
TOTAL	30346	582	30928	26115	201	84

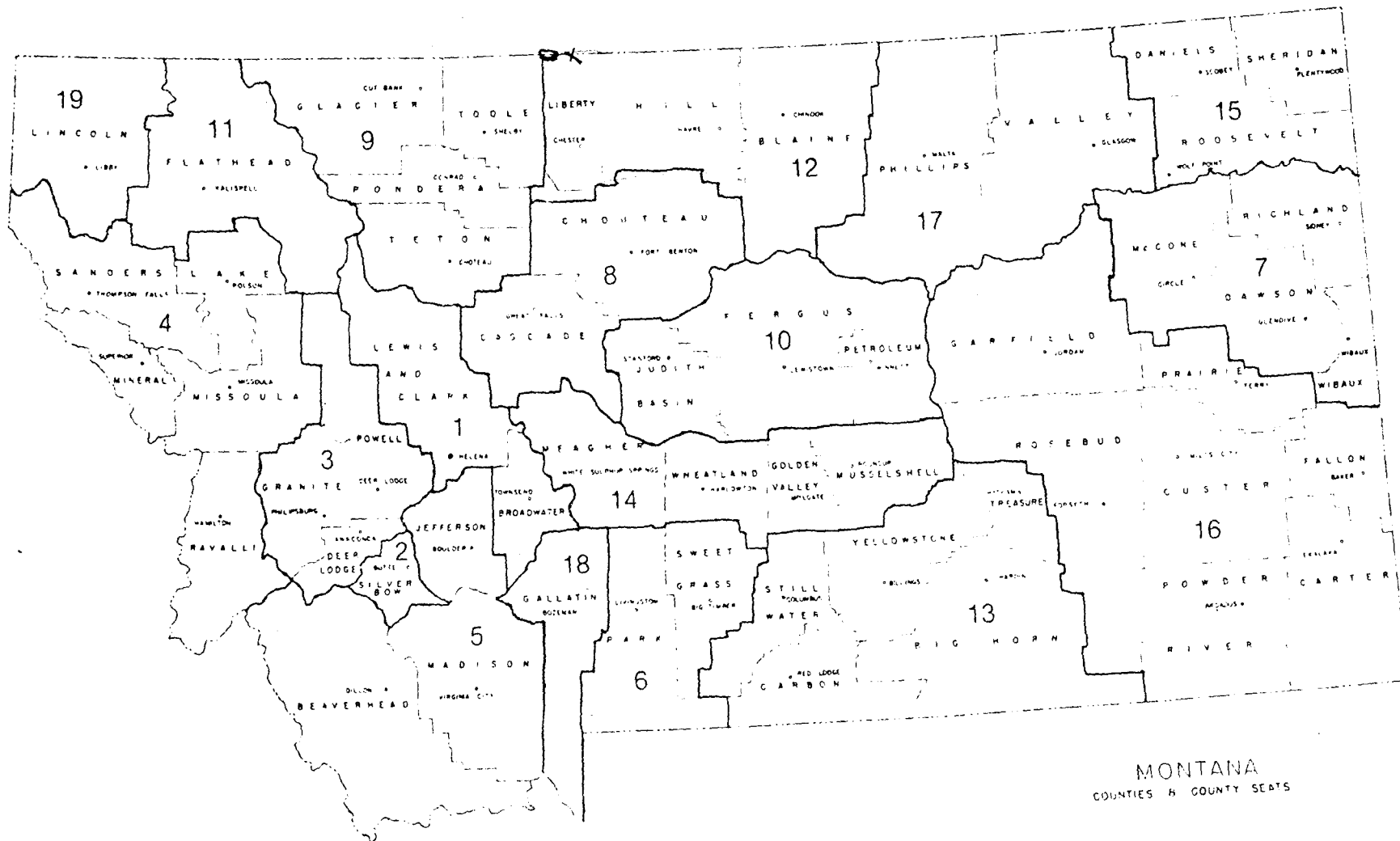
## P E N D I N G C A S E L O A D

CASE TYPE	TOTAL	0-90	PCT.	91-180	PCT.	OVER 180	PCT.
	PENDING	DAYS	OF	DAYS	OF	DAYS	OF
	CASES	OLD	TOTAL	OLD	TOTAL	OLD	TOTAL
CRIMINAL CASES (DC)	1124	237	21	225	20	662	59
CIVIL CASES	14438	2507	17	2388	17	9543	66
GENERAL CIVIL (DV)	9931	1547	16	1602	16	6782	68
DOMESTIC REL. (DR)	4507	960	21	786	17	2761	61
JUV., PROB., & MISC.	7686	884	12	1036	13	5766	75
JUVENILE (DJ)	823	151	18	141	17	531	65
PROBATE (DP)	6312	624	10	829	13	4859	77
INSANITY (DI)	266	27	10	30	11	209	79
ADOPTION (DA)	285	82	29	36	13	167	59
TOTAL	23248	3528	16	3649	16	15971	69

Exhibit 4

<u>DISTRICT</u>	<u>TOTAL CASELOAD</u>	<u>NUMBER OF JUDGES</u>	<u>CASELOAD PER JUDGE</u>	<u>MILES TRAVELED</u>	<u>MILES PER JUDGE</u>
1	2,353	2	1,176	7,816	3,908
2	1,239	2	619	4,045	2,022
3	745	1	745	7,897	7,897
4	5,567	3	1,855	45,859	15,286
5	768	1	768	18,546	18,546
6	632	1	632	13,681	13,681
7	1,191	1	1,191	14,371	14,371
8	3,414	3	1,138	7,987	2,662
9	938	1	938	16,662	16,662
10	614	1	614	12,919	12,919
11	1,868	2	934	4,773	2,386
12	1,112	1	1,112	13,291	13,291
13	5,761	3	1,920	10,953	3,651
14	364	1	364	14,880	14,880
15	503	1	503	14,964	14,964
16	1,367	2	683	21,032	10,516
17	438	1	438	13,448	13,448
18	1,383	1	1,383	7,913	7,913
19	671	1	671	14,078	14,078





JUDICIAL DISTRICTS

Exhibit C

HOUSE JUDICIARY COMMITTEE

BILL 626

Date 2/10/81

SPONSOR      KEEDY

[illegible]

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

