

MINUTES OF THE JUDICIARY COMMITTEE
April 12, 1983

The meeting of the House Judiciary Committee was called to order by Chairman Dave Brown at 9:02 a.m. in room 224A of the capitol building, Helena, Montana. All members were present except for Representative Ramirez. Brenda Desmond, Staff Attorney for the Legislative Council, was also present.

SENATE JOINT RESOLUTION 25

SENATOR MARBUT stated that this is a resolution that proposes a study during the interim for the creation of a unified court system. This resolution was the result of a recommendation out of the Senate Judiciary Committee because of his submission of SB 440, which was, in fact a unified court system bill. He explained that this bill would have established a unified court system; it would have provided an administrative structure for that system; it would define district courts, court reporters, juvenile probation officers; defense for indigents; and would place supervisory control over the entire system to the chief justice of the supreme court. He indicated that it would have also provided for an entirely state-funded court system. He said that the reason for a unified court system is that the system we have now is funded almost entirely by local property taxes and this is the crisis of the situation and the poorest form of management, where one person is paying the bills and the other person is calling the shots.

He felt that it was very important that in a study such as this that they have the input of justices, probation officers, county officials and, especially, the supreme court. He indicated that, if they do not have the input of the various elements that would have to deal with this system after it is established, it is not going to work. He presented to the committee a copy of an editorial that was in the Independent Record last week. See EXHIBIT A.

MIKE ABLEY, Administrator of the Montana Supreme Court, stated that the supreme court has never taken a position on the unified court system, but they have observed such systems being developed in states around us; as a result, the court is very concerned that if we go to a unified court system, that it be done only after a thorough analysis; it is a very complicated process; and they would get

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something and they would lose something in a unified court system. He advised that they would use all of their resources including their staff to be available to assist with such a study.

There were no further proponents and no opponents.

SENATOR MARBUT pointed out that there are a few counties around the state that are not assessing property mills for the operation of a district court and most are at the maximum of six mills. He indicated that he would appreciate the support of the committee and the support of the resolution.

REPRESENTATIVE JENSEN asked what information did he expect that this study will generate in addition to the Constitutional Convention study that recommended adopting and proposed a unified court system. SENATOR MARBUT replied that the study that was undertaken during the Constitutional Convention was not complete in any way; there was available at that time, a recent nationwide study for unified court systems done in the late '60s; the Constitutional people did not even look at it; they did not even take into consideration the good evidence and good information that was available; and apparently there was no great interest or mandate at that time. He continued that, since that time, we have begun to implement all the existing Constitutional and now common law cases, which are requiring the court system to be responsive to the citizenry; he feels that they have arrived at a point where they are going to have to make some decisions about our court system. He thought there was a bundle of information that should be brought to a study like this and, in addition, they now have some other states that have run the gauntlet for us.

REPRESENTATIVE JENSEN inquired how has the authority and power been wrested from judges in a unified court system politically; what have these other states done and how have they gone about getting that degree of power away from judges. SENATOR MARBUT responded difficultly; it has been a job; he knows that that is tough; what they are saying to the local judge is that they are not taking his power as a judge away at all; they are only relieving him of the responsibility of things like

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budgeting; hiring and firing, etc. He commented that there is going to be a lot of resistance in that area; that is exactly why we are going to need a study; and they are going to have to help them see the light. He contended that the system is inappropriately designed and there is going to have to be a relinquishment of authority in some areas and an increase in authority in other areas.

REPRESENTATIVE JENSEN noted on page 3, line 20, there was a technical area wherein they referred to the Montana Supreme Court Law Library and that should say "the State Law Library".

REPRESENTATIVE JENSEN questioned MR. ABLEY as to a statement he made wherein he said that they had a lot to gain and a lot to lose and he asked if he would comment on these losses. He replied that the losses are mostly one of control; that is one of the more sensitive issues; Idaho suffered through that; their judges were much more autonomous than were their staff; North Dakota not so much so; they welcomed the relief from a lot of administrative duties and the local control; what happened was that in North Dakota, they already had relatively modest budgets and worked much more closely with the counties. He also noted that a problem that also might arise is that there is a day-to-day contact with the counties now, and, if the judges need something, they can go directly to the county commissioners; in a unified court system, the judges have a program set up and they might have to wait two years for something to be passed, funded and to go through the whole process. He stated that this is what you lose when you go to centralization.

REPRESENTATIVE JENSEN asked if he thought the district judges would be willing to relinquish the internal management, i. e. scheduling, etc., in their courts. MR. ABLEY responded that he did not think they should; he thought there should be some rules and guidelines established, but the actual case management should be left up to the judges or their staff; there is no way someone from here can tell a judge from Glendive how to process his case; and he did not think the judges would ever give that up.

REPRESENTATIVE JENSEN asked if he felt that judges should be doing more judging and less managing. MR. ABLEY replied that they have tried to push that for some time and they are getting it done in some areas. He indicated that they have a couple of trial programs set up in some counties trying to do just that.

REPRESENTATIVE EUDAILY commented that if they are going to have a unified court system, they should not have district court judges, they should have judges working for a unified system and this would open up the opportunity to assign these judges any place they are needed in the state instead of the district. He said that if this is really going to work, that is what you are going to have to do. SENATOR MARBUT replied that he would agree with him, but he is trying to keep an open mind to let the study produce some results and not the other way around.

REPRESENTATIVE EUDAILY asked what the situation is going to be with these county courthouses if they go to a unified court system and take the local control away, what obligation is there going to be at the county level to provide courtrooms - they will say go build your own courthouse. SENATOR MARBUT responded that in SB 440, his recommendation was that the system rent space from the county; that the county and the court system are, in fact, independently operated; that the courts go to the counties on an arrangement for space; and if it is the intent of the court system to have a contractual arrangement with the counties, the guidelines of that will have to be established in the bill. He stated that his position was that it would be independent and the court system will rent space from the counties.

REPRESENTATIVE EUDAILY asked if they were not obligating the state to some terrific expense, if the counties decided they needed that space. SENATOR MARBUT replied that that is already the case; they are doing this on the backs of the local property tax payer; and if this is going to be an obligation to the state, it is then going to be a cost to the state. He stated that he did not envision that they would allow that the county make a profit from the state and then put money in their general fund to do other things, but the way it stands right now, if a judge wants a larger chamber, we know what he does, but it is all on the backs of the local taxpayer and that is what he is trying to cure.

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REPRESENTATIVE CURTISS commented that the interim committee looked at this in the past and there has been growing pressure for a unified court system for a long time and she noted that Ms. Menzies was here and she wondered if she would summarize the findings of their committee.

LOIS MENZIES, Legislative Researcher for the Legislative Council, explained that this committee took a look at some past surveys, collected some information on costs, they looked a little bit at total assumption, etc., and then focused on the district court grant program and recommended full funding for that.

There were no further questions and the hearing on this bill was closed.

EXECUTIVE SESSION

SENATE JOINT RESOLUTION 25

REPRESENTATIVE JENSEN moved that this bill BE CONCURRED IN. REPRESENTATIVE JAN BROWN seconded the motion.

REPRESENTATIVE EUDAILY commented that every interim, there has been a study on the court system; they have been adding judges, etc., and he is not convinced that this is the way to go.

CHAIRMAN BROWN stated that this was one of the things he heard the most in the interim; that this study would take a comprehensive look at the system to ascertain if there is a better way to do it; and, from his point of view, that is reasonable.

REPRESENTATIVE DAILY commented that this might be a good idea, but it is not realistic, simply because the judges are not going to let it happen and neither are the communities. He contended that every community in this state that has a couple of judges, certainly wants the state to finance them, but they still want the judges.

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REPRESENTATIVE CURTISS commented that she did not think Montana is going to embrace the unified court system philosophically, besides the cost, which is mind-boggling. She indicated that she is going to support the study, because there is a real problem.

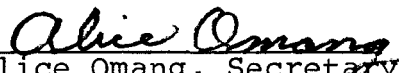
CHAIRMAN BROWN stated that, unless they take a serious look at this matter, they are not going to lay it to rest and they should take a comprehensive look at it; and he did not think they have done that, at least not since the Constitutional Convention.

The motion carried with REPRESENTATIVE EUDAILY voting no.

The meeting adjourned at 9:34 a.m.



DAVE BROWN, Chairman



Alice Omang, Secretary

STANDING COMMITTEE REPORT

April 12

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MR. Speaker

We, your committee on Judiciary

having had under consideration Senate Joint Resolution Bill No. 25

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A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES
OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF THE
CREATION OF A UNIFIED COURT SYSTEM AND THE FINANCING OF SUCH A
SYSTEM; REQUIRING A REPORT OF THE FINDINGS OF THE STUDY TO THE
49TH LEGISLATURE.

Respectfully report as follows: That Senate Joint Resolution Bill No. 25

~~DO PASS~~ BE CONCURRED IN

Exhibit A
SSR 25
4/12/83



INDEPENDENT RECORD

Single copy 25¢
Delivered to you home or office
FROM MONTANA STATE BAR ASSOCIATION

State should fund district court system

Last week the Senate Judiciary Committee unanimously approved a resolution requesting an interim study which it is hoped would clear the way for the state to take over the financing and administration of the state's court system.

It's about time.

Counties live in a never-never land when it comes to district court operations.

The Legislature allows counties to levy up to 6 mills for the operation of their courts. In all too many cases the 6 mills don't cover the cost and commissioners are forced to look elsewhere in the budget for funds to keep the judicial system rolling. Yet, county commissioners have virtually no say in the budgeting process for courts.

**AN
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VIEW**

A perfect example occurred a few years ago in Flathead County. The district judge submitted a budget which included funding for a family services program. Commissioners refused to approve that portion of the budget. The judge issued a court order telling the commissioners to comply or else. The commissioners appealed the case and lost.

There is absolutely no reason for compelling county property taxpayers to pay 85 percent of the cost of operating the district court system without any say whatsoever in their operation.

Cascade County is probably the worst case that can be described. It recently reported a \$450,000 deficit in court funding. Lewis and Clark County is projecting a deficit of about \$60,000 for this fiscal year.

The Legislature has granted some relief, but as would be expected, it hasn't been enough.

The state has a grant-in-aid program for financially troubled courts. In 1981 the Legislature appropriated \$750,000 for this fund — \$375,000 for each year of the biennium.

In fiscal '82, courts requested a total of \$605,000 from the state to cover their deficits. They got their \$375,000, or about 61-cents on the dollar. This year they are requesting \$1.277 million. As they did last year, they'll get another \$375,000, a payoff of about 29-cents on the deficit dollar.

It doesn't take a mental giant to realize we've got problems.

If the Legislature and the Supreme Court are going to make district judges omnipotent, they damn well better figure out how to handle their problems instead of making them our problems.