

MINUTES

MONTANA SENATE 51st LEGISLATURE - SECOND SPECIAL SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Bruce D. Crippen, on May 23, 1990, at 10:00 a.m. in Room 325 of the Capitol.

ROLL CALL

Members Present: Chairman Bruce Crippen, Vice Chairman Al Bishop, Senators Tom Beck, Bob Brown, John Harp, Mike Halligan, Loren Jenkins, Joe Mazurek, R. J. Pinsoneault and Bill Yellowtail.

Members Excused: None

Members Absent: None

Staff Present: Staff Attorney Valencia Lane and Committee Secretary Rosemary Jacoby

Announcements/Discussion:

Chairman Crippen welcomed the judicial appointees and their families to the hearing. He thanked members of the bench and bar for attending. He then announced the manner in which the confirmation hearings would be conducted. He stated that Rick Bartos, Attorney for the Office of the Governor would be presenting the judicial appointees to the committee by reading summaries of their professional experience. The appointees would follow with short presentations. After all appointees had been allowed the opportunity to speak before the committee, there would be a period allotted for questions by committee members and answers by judges. Lastly, the committee would vote on confirming the appointments. Senator Crippen told those present that this was only the second occasion when there had been confirmation hearings for judges in the Montana Senate and that they were copied after those held in Congress. He had urged that the hearings be held to give judges a sense of pride and honor in their new positions.

HEARING ON CONFIRMATION OF APPOINTMENTS TO JUDICIAL POSITIONS

Presentation and Opening Statement by Sponsor:

Rick Bartos said it was with a great deal of pride and honor that he introduced five distinguished Montana citizens to the Senate Judiciary Committee. He said that when a judicial office becomes vacant, by statute, a judicial nomination commission is established and receives applications from interested attorneys. After review, the commission submits three final names to the Governor. At that point, he stated, an extensive review takes place. Applicants are requested to submit written materials including a summary of their litigation experience, a summary of their community experience and a summary of their lives in general. Extensive interviews then take place from 90 minutes to 2 1/2 hours. The Governor then asks for public comments by telephone and letters, Mr. Bartos told the committee. Using the Canons of Judicial Ethics as a measuring stick, the Governor then determines which candidate is most qualified for the particular position, he added.

On behalf of the Governor, Mr. Bartos asked that the committee recommend confirmation of the individuals to the whole Senate.

Barz Presentation: Rick Bartos then read a written statement in presentation of Justice Diane Barz, Justice of the Montana Supreme Court (Exhibit 1).

Moran Presentation: He then read a written statement in presentation of District Judge Larry Moran, Eighteenth Judicial District, Bozeman (Exhibit 2).

Colberg Presentation: Rick Bartos read a written statement in presentation of District Judge Maurice R. Colberg of the Thirteenth Judicial District Court in Billings (Exhibit 3).

McCarter Presentation: Rick Bartos read a written statement in presentation of Judge Dorothy McCarter of the First Judicial District Court in Helena (Exhibit 4).

Loble Presentation: Chief Justice Jean Turnage presented Judge C. Bruce Loble, Chief Water Judge for the State of Montana (Exhibit 5). He added that Judge Loble was married to Sally E. Loble and had two children -- Brian and Chandler. He stated that Judge Loble's professional reputation had been excellent. He felt that, in Judge Loble, the people of the state of Montana would have a very competent person for the position. Because the Water Court has been located in Bozeman, Judge Loble had agreed to move his family there, Judge Turnage concluded.

Statements by Judges regarding qualifications and views, followed by questions from committee members:

Judge Barz Statement: (See Exhibit 6)

Questions by Committee Members:

Senator Bishop stated that it was the perception of the public that, much too often, there are great delays in capital cases dealing with the death penalty i.e. the time lag between sentencing and execution of judgment. Hence, the public thinks the whole judicial process has broken down. He asked Judge Barz how that time lag could be corrected.

Judge Barz said she felt the thrust of the time lag problem lies with the federal court system. She believed that the Montana Supreme Court system was running well. She commented that Montana should consider how it could be removed from the 9th Circuit because the judges sitting there were against the death penalty.

Senator Bishop commented that he appreciated her candor.

Senator Pinsoneault said there was a possibility of a constitutional convention in 1992. He said he had reservations about the appointive vs. the elective processes.

Judge Barz said she thought the framers of the '72 Constitution did great service by going both ways. She said that the appointive system is one of merit that can't be "reached" in public election for judges. Judicial candidates are not to be political, and find that they cannot speak freely, she pointed out. She felt that the appointive process for judges was good, but should be followed by election.

Senator Pinsoneault asked if the orientation process she had received to accomplish her transition from Youth Court Judge to Supreme Court judge had been adequate. He said he had heard good things about the National Judicial College in Nevada and wondered if she felt qualified when she was first appointed.

Judge Barz said she had a great deal to learn. She commented that she hadn't expected the volume of cases to be so substantial. She said she strived to stay abreast of the law in order to make competent decisions on a daily basis.

Senator Mazurek said he tended to share some of Judge Barz' reservations on elections. However he wondered if she would comment on judges resigning before completing their terms of office. He asked if judges didn't have an obligation to complete their term of office.

Judge Barz said she felt that most resignations were due to personal health reasons. She thought judges should have the right to resign. She, herself a two-time judge, had resigned to accept her present position, she commented.

Senator Mazurek said he felt that she was continuing in service as a judge. However, he said, that the public had recently expressed displeasure with early resignations, and said many legislators had indicated an interest in changing the law requiring election after any vacancy occurred.

Judge Barz said she felt both the appointment and election processes had merit.

Senator Bob Brown asked Judge Barz how she felt about use of the exclusionary rule. He said that sometimes evidence was disallowed which could have led to a judicial finding on the basis of something that appeared to be trivial.

Senator Barz said a judge must first consider the basic constitutional right and then the 1972 Constitution of the State of Montana, which was instituted to be a very strong statement on the right of privacy. She felt that the exclusionary rule was always a subject of a great deal of debate. She said that present interpretation was very conservative and in line with that of the present U. S. Supreme Court.

Senator Jenkins asked how Judge Barz would feel if required to sign a death penalty.

Judge Barz said that had already happened in the case of the State vs. Dawson and that it was a difficult decision.

Senator Jenkins said that legislators sometimes feel the Supreme Court is legislating, rather than interpreting.

Judge Barz commented that she was more of the conservative bent. She did not feel the court should interfere with the legislative intent.

Senator Jenkins said there had recently been a decision in the U. S. Supreme Court to limit the number of appeals.

Senator Crippen said, in clarification, he thought Senator Jenkins was asking for Judge Barz opinion on whether or not legislation should be enacted that would limit the appeal process.

Judge Barz said that persons had the right of only one appeal to the Supreme Court. In her observance, she told the committee, state courts did pretty well in moving cases right along.

Senator Yellowtail asked Justice Barz to comment on the authority of the state to assume jurisdiction in criminal offenses on Indian reservations. Should contentions between Indian and non-Indian entities be adjudicated through state courts, he asked.

Judge Barz said that was a question she had yet to resolve in her own mind.

Chairman Crippen said that the legislature had sometimes considered reducing the number of justices back down to five. He said the Senate Judiciary Committee had resisted that change and asked for Judge Barz' comments on that suggestion.

Judge Barz said the volume in her court was absolutely shocking. The cases were divided up, she said, with seven justices, the court was able to assure that all cases were heard by a panel of five, which wouldn't be possible with a smaller court.

Chairman Crippen stated that some states have another level of judiciary.

Judge Barz felt that would be ideal, that Montana could use the intermediate court. Many cases such as marriage, dissolution and workers' compensation could be taken care of at that level, she commented. These currently make up a large percentage of the Supreme Court's workload.

Chairman Crippen asked if the J.P. Courts should be courts of record.

Judge Barz said she thought that would be necessary if they were to become courts of final resolution. She felt J.P. courts should be courts of final resolution and it should not be necessary for cases to start all over again on appeal to district court.

Judge Moran's Statement:

Judge Moran apologized for his cold. He said the first time he entered the Old Supreme Court on an appeal in 1976, he thought the room looked very dark. He didn't know whether the room had lightened or his view of it had changed. He stated it was quite an honor to appear for the confirmation process.

Having been a judge for nine months, the one thing he found difficult was the pressure of always being behind, because there were so many cases. He said that his original intention was not to become a judge, but to be a trial lawyer. He did so for over 30 years having had every conceivable kind of case. When the judicial position became open, upon Judge Gary's retirement, he saw an opportunity to give the people of Gallatin County the perception that a court of law was truly an office of the people. He had attempted to accomplish this through the process of efficiency. However, some of the problems with the judiciary cannot be solved even by lawyers who have been practicing for over 30 years, he said but that the public did not understand that. He would endeavor to serve the public with integrity and efficiency, he told the committee.

Questions by Committee Members:

Senator Bishop commented that he had noticed that the Great Falls Bar Association intended to sue the State of

Montana because of underfunding. He asked for Judge Moran's personal opinion of that.

Judge Moran agreed that there were instances of underfunding for public defenders services. There had been tremendous problems in Gallatin County as a result of costs going up the last 5 years, he said. The judges would have to be more firm about the appointments made, that there had to be more care, insight and review. The problems in Great Falls had been exacerbated by carrying forward the debt that has accumulated over the last five years. At this point, he said, Gallatin County was able to meet its budget, but had no surplus. His view was that underfunding was a sign of the times was common in innumerable areas of government, and that more efficiency would have to be employed.

Senator Pinsoneault asked if Judge Moran had any religious or personal objections to imposition of the death penalty.

Judge Moran stated that it was a tool of law and man. He felt it was an essential element, but found it difficult to impose. If one is human, he said, he does not impose the penalty lightly.

Senator Pinsoneault asked if Judge Moran would feel more comfortable with the death penalty if the jury recommended it.

Judge Moran said he felt it was the judge's responsibility to interpret statute. If the jury were to make a recommendation in conflict with the court's view, there would be a situation of even more conflict. He would feel more comfortable if he agreed with the jury, he stated. However he felt that sentencing decisions should be left up to the judge.

Senator Pinsoneault asked if Judge Moran had toured the state prison.

Judge Moran said he hadn't since his appointment as a judge. However, he had been there many times to visit clients who were in prison.

Senator Mazurek asked how Judge Moran felt about judges completing their terms.

Judge Moran said he felt a judge should serve out his term. He would hesitate greatly to accept another position.

He felt that the reason for many resignations was to open up the process for politics. He said that on occasion, there might be a political result. He personally felt that was wrong.

Senator Beck said he was currently president of the Governor's Task Force trying to address the problem of overcrowding in the prison. He asked how Judge Moran would address that problem.

Judge Moran said he and his clerk had studied this problem at the district level because the Gallatin County Jail had also suffered from overcrowding. He felt there had to be alternative sentencing. The economic reality of prison sentencing had to be recognized. When a person is sentenced to the state prison, he said, there was a minimum cost of \$20,000 to the taxpayers of the State of Montana. He felt that more sentencing in the form of community service should be used. He also said that an effort should be made to take the profit out of crimes by levying stiff fines. He stated that prison was a place for violent offenders rather than for a person who had written several bad checks. However, there is not always the option of alternative sentencing, he said. Long sentences lower the opportunity for rehabilitation. He said he would like to see a study on recidivism with short sentences as opposed to long sentences.

Senator Jenkins asked for what reason Judge Moran might allow plea bargaining.

Judge Moran told Senator Jenkins and the committee that there are multiple reasons for plea bargaining. A judge has to have a good conscience in looking at the motivation in dealing with the plea bargaining. Reasons may vary from the prosecutor not having a good case to a defendant who is obviously guilty and hasn't got a prayer. If the facts are such that the county attorney has strong evidence but little chance of a conviction, then perhaps there should be a plea bargain. He said, however, that a prisoner shouldn't be coerced into pleading guilty.

Judge Colberg's Statement of Experience and Views:

Judge Colberg told the committee of some of his experience early in his profession (see Exhibit 3). He told the committee he had been married in 1959 and had three grown children, all of whom were making their ways in the

world. He had started his career in the Old Supreme Court, he told the committee, where he was sworn as an attorney and later worked as Clerk for the Montana Supreme Court. He stated that he had just begun his professional career when he met Senator Hibbs outside the door of the Supreme Court. Senator Hibbs asked him to join the Doak firm.

Judge Colberg hoped his appointment as a judge would benefit from his 28 years experience in a great variety of matters, including state work, contracts, wills, administrative proceedings, trusts, corporate documents etc. He said that a judge must be honest, fair, courteous, patient, knowledgeable, and prompt in dealing with litigants. He felt qualified with those criteria and with his experience. He had served as a trustee of the State Bar of Montana, said he had standing in his community and in his professional affairs. He also felt he had the proper temperament for being a judge, which had been tested when he served on his local school board. He was attempting to be a good judge and had been told that he was doing a good job. He said he hoped to keep his position and intended to run for reelection when his term ended. He hoped the Senate Judiciary Committee would confirm him.

Questions from the Committee:

Senator Pinsoneault asked Judge Colberg whether or not he had any opposition to the death penalty.

Judge Colberg said he certainly didn't, but there were statutory criteria for the death sentence. He said he had heard his first deliberate homicide trial, but the death sentence was not at issue and the man was acquitted. Judge Colberg had read the statute dealing with the death penalty and had no religious or moral qualms against using it. He stated that it was an appropriate penalty in an appropriate case.

Senator Pinsoneault asked if Judge Colberg would object to his confirmation being attached to a requirement to visit the state penitentiary.

Judge Colberg said he would prefer that it not be attached, but felt it was something a judge should do.

Senator Mazurek asked for Judge Colberg's opinion about a judge finishing his term.

Judge Colberg told the committee he felt a person should not accept an appointment without intending to complete a term. He didn't think it appropriate for a judge to win an election and then quit to do something in a political sense. There might be, he added, some good reasons for a judge resigning.

Senator Jenkins asked what would be reason for plea bargaining in Judge Colberg's court.

Judge Colberg said that, in his county, the County Attorney didn't use plea bargains except in rare cases. He said that in some cases, there might be information that would become available to a judge that might not be available to a prosecutor which might lend itself to use of a plea bargain. There could be many reasons why a judge could justify the use of a plea bargain, he told Senator Jenkins.

Senator Beck asked how Judge Colberg felt about mandatory sentencing?

Judge Colberg stated that mandatory jail sentences in law give a judge no discretion. He stated that he thinks they exacerbate the situation.

Senator Crippen said that mandatory sentencing is a problem for the legislature. Citizens think that criminals are getting out (of prison) because the judges are soft. Yet, more and more mandated sentences are being requested by citizens, he stated.

Judge Colberg said he felt that a judge needed to have discretion in sentencing. He had asked other judges to discuss sentencing standards with him. He felt that persons who would say the judges were soft on criminals would likely be the ones who would not support more prison space. He said that Judge Battin, whom he considered to be very conservative, did not feel that mandated sentences were desirable.

Judge McCarter's Statement:

Judge McCarter told the committee she felt it was an honor to be appointed judge. She said that her approach was that a judge should be impartial and have an even temperament. She said that the harder she had tried to be

like that, the better the response had been from the attorneys. She told the committee she felt comfortable in dealing with attorneys in criminal and civil matters. She felt privilege to be working in a very good legal community. Her position on the death penalty, she commented, was that it was a very serious sentence to impose. She stated that before imposing a death sentence, she would consider the economic impact on the state. She said that the defendants spend a lot of the state's money appealing a death sentence. That should be taken into consideration, she stated.

Questions by the Committee:

Senator Pinsoneault asked Judge McCarter if she had visited the prison in the last 3 or 4 years.

Judge McCarter answered yes.

Senator Halligan asked how reforms might be made regarding child victims of sexual abuse, and for prosecuting abusers.

Judge McCarter stated that was a real dilemma. She said that many child abusers were not being prosecuted because the children were not being permitted to testify out of court. A child can no longer have a screen placed before them in court for testifying because of a Supreme Court ruling that required the defendant to be allowed to be face to face with his accuser, she told Senator Halligan.

Senator Halligan asked how Judge McCarter felt about sanctions against attorneys in court with frivolous lawsuits. He thought Rule II could be used to protect the public.

Judge McCarter agreed. She said she wanted it perfectly clear that she would not hesitate to impose sanctions.

Senator Pinsoneault stated that he had difficulty with Judge McCarter's suggestion that economic considerations were to be taken in the imposition of the death penalty. He asked what economic consideration had to do with justice.

Judge McCarter stated that there was no perfect sentence, but in determining the sentence, she felt that benefit of the society and the defendant should be considered.

Senator Pinsoneault strongly disagreed.

Senator Jenkins asked when Judge McCarter would employ plea bargains.

Judge McCarter said she had increased sentences and added probation in some cases. If the sentences had not been stiff enough in her opinion, she had not hesitated to revise them.

Judge Loble's Statement of Experience and Views:

Judge Loble told the committee that approximately 50% to 60% of his work had been primarily regarding water rights and in related areas. He said he had appeared many times before Judge Lessley and had been trained by him as well as by his father, Judge Lester Loble. He stated his intention to move to Bozeman where the Water Court has been located for several years. Further, he stated his intention to remain in the position until the completion of his term. Judge Loble stated that there had been 6 final decrees, 7 preliminary decrees, 31 temporary preliminary decrees and one more in a couple of months. This meant that 45 Basins had been adjudicated partially or wholly with 40 left. He said, out of the 40 left to do, there were still 30 that had not been reviewed by the Department of Natural resources. The 10 related to Indian use would be examined last, he told committee members. Judge Loble said he looked forward to the major task before him.

Questions from the Committee:

Senator Mazurek stated that the title "judge" fitted well with the name "Loble." He told those present that the family was held in high regard. As to the Water Court, Senator Mazurek asked how long Judge Loble felt completion of adjudication should take.

Judge Loble said that Judge Lessley had been optimistic that the process would finish quickly, but the massive numbers of rights that needed adjudication indicated that it will take a fairly long period of time. He thought the "water resources" indicated 10 to 16 years just to verify the remainder of water rights. He commented that Wyoming had one federal lawsuit which took 10 years. Further, he urged Indian tribes to settle their rights amicably.

Senator Beck asked for Judge Loble's opinion on water rights applying to agriculture, mining etc.

Judge Loble said that was a difficult question. He stated that Water Courts have to determine whether claims are valid regarding leasing of water. He felt determination should be made by a Water Court. He also felt the State should come to some consensus to avoid litigation. A mediator had been established which was hoped would help solve disputes amicably.

Senator Beck stated that, on already adjudicated streams, "we" are trying to take the last court decree. If the individuals involved came to an agreement, would the Water Court would accept that agreement to speed up the process, he asked.

Judge Loble told Senator Beck that, even if people came forward with a settlement proposal, further study would still be needed. If the people were using more water than agreed upon, he would rely on the Water Master's report in his decision, he said.

Senator Yellowtail asked if Judge Loble felt that federal and Indian rights would move quickly to adjudication.

Judge Loble said a set time would mean a great deal in getting the issues resolved.

Chairman Crippen announced that the hearing was closed.

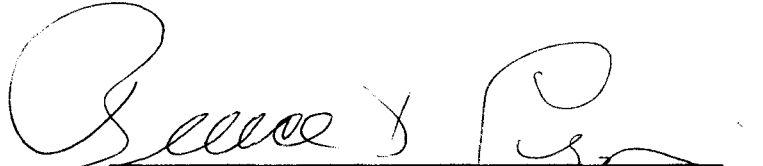
DISPOSITION OF THE CONFIRMATION HEARINGS

Recommendation and vote: Senator Mazurek MOVED that Senate Resolutions 1, 2, 3, 4 and 5 BE ADOPTED. The committee voted in the affirmative by a UNANIMOUS vote.

ANNOUNCEMENT: Chairman Crippen announced that a buffet luncheon sponsored by the State Bar, the Montana Trial Lawyers and the Montana Defense Lawyers would be served in the Old Supreme Court in honor of the confirmations upon adjournment. He stated there would be a short delay while it was being set in place.

ADJOURNMENT

Adjournment At: 12:30 P.M.



SENATOR BRUCE D. CRIPPEN, Chairman

BDC/rj

minrj.523

SENATE STANDING COMMITTEE REPORT

May 23, 1990

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration Senate Resolution 3 (first reading copy -- white), respectfully report that Senate Resolution 3 do pass.

DO PASS

Signed: 
Bruce D. Crippen, Chairman

SENATE STANDING COMMITTEE REPORT

May 23, 1990

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration Senate Resolution 2 (first reading copy -- white), respectfully report that Senate Resolution 2 do pass.

DO PASS

Signed: 
Bruce D. Crippen, Chairman

SENATE STANDING COMMITTEE REPORT


May 23, 1990

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration Senate Resolution 4 (first reading copy -- white), respectfully report that Senate Resolution 4 do pass.

DO PASS

Signed


Bruce D. Crippen, Chairman

SENATE STANDING COMMITTEE REPORT

May 23, 1990

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration Senate Resolution 5 (first reading copy -- white), respectfully report that Senate Resolution 5 do pass.

DO PASS

Signed 

Bruce D. Crippen, Chairman


SENATE STANDING COMMITTEE REPORT

May 23, 1990

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration Senate Resolution 1 (first reading copy - white), respectfully report that Senate Resolution 1 do pass.

DO PASS

Signed: 

Bruce D. Crippen, Chairman

sr00101.523

41. C. 1990
5/23/90
12:30 P.M.

DIANE G. BARZ**Education:**

Bachelor of Arts, Summa Cum Laude, Whitworth College,
Spokane, Washington
Attended University of Heidelberg, Germany, 1963-1964
University of Montana School of Law, J.D. Degree in Law,
1968
National Judicial College, University of Nevada, 1979

Experience:

Law Clerk, Montana Supreme Court, 1968-1969
Montana Criminal Law Commission, 1969-1970
Deputy County Attorney, Yellowstone County, 1970-1974
Elected Public Administrator, Yellowstone County,
1974-1979
Yellowstone County Public Defender, 1976-1979
Law Partner in Poppler and Barz, 1973-1979
Elected District Judge of 13th Judicial District, 1979 until
nomination for Supreme Court
Served as Chief Judge of District for 3 years, 1982-1984
Youth Court Judge, 1979 until nomination for Supreme Court

Professional Affiliations:

Past Member of the Board of Visitors, University of Montana
Law School
American Bar and State Bar of Montana
Montana Trial Lawyers Association
National Association for Juvenile and Family Court Judges
Montana Trial Judges Association
National Judges Committee to improve State Courts
Past President Montana Judges Association
National Association of Women Judges
Montana Board of Crime Control
Montana State-Federal Judicial Council

Community Activities:

Past member of the Mental Health Center Advisory Board
Coordinating Committee of Comprehensive Emergency Services
Big Brother-Big Sister Board Member
Past director of the Yellowstone Exhibition Commission
State 4-H Foundation Board Member
Founder of the Youth Court Conference Committee
Board of Trustees, Billings Deaconess Medical Center
Montana State University Advisory Board

Achievements:

Who's Who in American Colleges and Universities, 1965
Who's Who in American Women every year since 1973
Outstanding Young Women of America Nominee for nine years
1989 Achievement Award for Establishing Youth Court
Conference Committee in Yellowstone County

LARRY MORAN

Education:

Undergraduate course work at Ohio University, Athens, Ohio
Bowling Green State University, Ohio
Kent State University, Ohio
University of Colorado School of Law, JD Degree in Law, 1959

Admitted to practice:

Montana State Courts
United States District Court for the District of Montana
Colorado State Court
United States District Court for the District of Colorado

Experience:

Assistant City Attorney for the City of Boulder, Colorado,
1965-1967.

Former Deputy County Attorney for Boulder County, Colorado
with emphasis on legal practice on development, county
zoning and real estate matters.

Mr. Moran was in private practice in Boulder, Colorado and
is experienced in civil and criminal defense.

Mr. Moran moved to Bozeman in 1972, was admitted to practice
in the state and has been in private practice since that
time.

Also served in Korea and Japan with the United States Army
during the Korean conflict.

Professional Affiliations:

American Bar Association
State Bar of Montana
Montana Trial Lawyers Association
State Bar of Colorado
Trial Lawyers Association of America

MAURICE R. COLBERG

EXHIBIT NO. 3
DATE 5-23-90
BILL NO. SR 1, 2, 3, 4 & 5

Education:

University of Montana, BS, Business Administration
University of Montana, LLB Degree in Law, June 1960
University of Montana, JD Degree in Law, June 1970

Admitted to practice:

Montana State Courts
United States District Court for the District of Montana
United States Circuit Court of Appeals Ninth Circuit
United States Supreme Court

Experience:

Clerk for the Montana Supreme Court, 1960-1961.

Prior to being appointed to District Court Judge, Maurice Colberg was a partner in the law firm of Sweeney, Colberg, Koessler and Doak. He had been associated with the same firm since May, 1961.

Extensive civil practice including personal injury litigation; commercial litigation, real estate, creditor rights, farm and ranch litigation; constitutional issues; dissolution of marriage cases.

Community Activities:

U.S. Army Reserve Officer, active duty 1957-1958
Active Reserve 1958-1965

Clerk for the Montana Supreme Court, 1960-1961

City of Billings Zoning Commission, 1970-1977

Billings Elementary and High School District No. 2 Trustee, 1977-1983

Publication:

Montana Law Review "Criminal Law-Larceny by Bailee-Criminal Intent." Published 1959.

Professional Affiliations:

Member of the State Bar of Montana
American Bar Association, Litigation and Trial Practice Committee
Montana Trial Lawyers Association
Phi Delta Phi Legal Fraternity

DOROTHY B. McCARTER**Education:**

B.S. in Elementary Education from the University of Colorado, Boulder, Colorado, 1965-1969. Honors included President's List, Dean's List and Dean's Advisory Committee for the Department of Education and Pre-Law Society.

J.D. Degree from New England School of Law, Boston, Massachusetts, 1973-1977.

Also has teaching certificates in Colorado (1969) and Massachusetts (1970).

Admitted to practice:

Montana State Courts
United States District Court for the District of Montana
United States Court of Appeals for the Ninth Circuit
United States Supreme Court

Experience:

Law Clerk to the Honorable Gordon Bennett, District Judge of the First Judicial District, Helena, Montana, 1978-1981.

Special Assistant U.S. Attorney for Montana, 1985-1986.

Assistant Attorney General for the State of Montana, 1981-1989. Extensive appellate advocacy experience.

Community Activities:

Member of the Board of Directors of the Friendship Center, Helena, Montana.

Cub Scout Den Mother for three years.

Participating parent, timer and judge for swim meets for five years.

Participant in other youth activities, including the Helena City of Gold speech meet and the Expand Your Horizons program.

Professional Affiliations:

State Bar of Montana
American Judicature Society

IN THE SUPREME COURT OF THE STATE OF MONTANA

IN THE MATTER OF THE)	
APPOINTMENT OF A CHIEF WATER)	
JUDGE FOR THE REMAINDER OF A)	
TERM COMMENCING MAY 14, 1990)	O R D E R
AND FOR THE DURATION OF THE)	
TERM ENDING JUNE 30, 1993)	

On June 6, 1989, Honorable W. W. Lessley was appointed by the Chief Justice as Chief Water Judge for the State of Montana for a four-year term of office commencing July 1, 1989, and ending June 30, 1993.

On March 29, 1990, Honorable W. W. Lessley died at Bozeman, Montana. The demise of Judge Lessley created a vacancy in the office of Chief Water Judge for the State of Montana.

Pursuant to the provisions of § 3-1-1010, MCA, the Judicial Nomination Commission met April 21, 1990, and on April 23, 1990, submitted to the Chief Justice a list of five nominees for appointment to fill the term of Chief Water Judge expiring June 30, 1993. The written report submitted by the Judicial Nomination Commission was accompanied by written data which included the applications of the nominees, evaluation of the nominees made by the Commission, and the evaluation ratings of the nominees as made by the Commission. The report indicates that the nominees were rated in the several categories as either excellent or good. The list of nominees submitted by the Commission has provided the Chief Justice a choice of well qualified candidates and makes the selection a difficult task.

See page 2 C. Bruce Loble, one of the nominees, has been designated with a high rating by the Judicial Nomination Commission.

C. Bruce Loble was born February 4, 1947. He received elementary and high school education at Helena, Montana. In 1969

he was awarded a B.A. degree in History and Political Science by the University of Montana. In 1972 he was awarded a J.D. degree by the University of Montana School of Law.

In 1972 Mr. Loble was admitted to the practice of law in Montana and has engaged in an active general practice at Helena, Montana, since 1973. Approximately 50 to 60 percent of Mr. Loble's practice over the past sixteen years has been in water rights and related areas. He has represented a wide variety of clients in District and Water Courts and before administrative agencies.

Mr. Loble's eighteen years of successful practice of law and his experience in water matters are persuasive factors, as well as his high evaluation and rating received from the Judicial Nomination Commission, in my decision to appoint him as Chief Water Judge for the State of Montana.

Having carefully considered the report of the Judicial Nomination Commission, communications received, interviews with the applicants and advice requested by me from the Justices of the Montana Supreme Court, I believe his appointment appropriate and that it will be in the best interest of the citizens of Montana.

IT IS ORDERED:

Pursuant to § 3-7-221(1), MCA, requiring the Chief Justice to appoint a Chief Water Judge from the list of nominees as required by § 3-1-1011, MCA, C. Bruce Loble, 440 Monroe, Helena, Montana 59601, is hereby appointed Chief Water Judge of the State of Montana commencing May 14, 1990, and for the remainder of the term of office ending June 30, 1993, subject to continuation of the Water Courts by the Legislature.

IT IS FURTHER ORDERED:

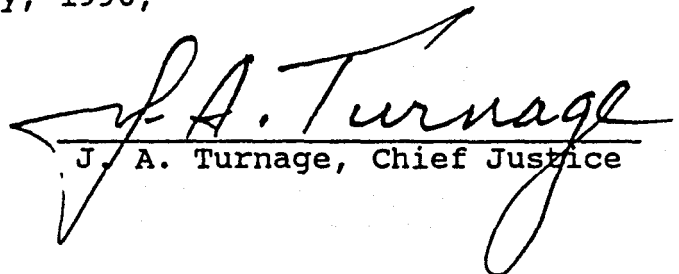
Pursuant to the provisions of § 3-7-223, MCA, the office of the Chief Water Judge shall be at the location that the Chief Justice of the Montana Supreme Court shall designate.

Since the Legislature enacted the statute providing for the office of Chief Water Judge, such office has been located at Bozeman, Montana. The files, records, courtroom and equipment of the system of Water Courts are located in Bozeman, Montana. The staff of the Water Court system located at Bozeman is presently comprised of nine individuals. A relocation of the office of Chief Water Judge would seriously disrupt the lives of nine families, and this is not appropriate. The welfare and employment stability of the staff is of primary importance to the efficient function of the Water Court system.

It is therefore ordered that the office of the Chief Water Judge remain located at Bozeman, Montana.

The Clerk of this Court is directed to file a signed copy of this order with the Secretary of State of the State of Montana and to file a duplicate original of this order in the permanent files of the Clerk of the Supreme Court of the State of Montana.

DATED this 14th day of May, 1990,


J. A. Turnage, Chief Justice

The Chief Justice, having requested the advice of the Justices of this Court concerning the appointment of a Chief Water Judge and good cause appearing, the undersigned Justices concur in the appointment of C. Bruce Loble as Chief Water Judge as provided in the foregoing order.

John Conway Harrison
[Signature]

John L. Sheehy

William E. Hunter Sr

A. C. McConkey

Dani J. Barry
Justices

SENATE JUDICIARY

EXHIBIT NO.

6

DATE

5-23-90

BILL NO.

SR 1, 2, 3, 4 & 5

Burz

The independence of the judiciary is the hallmark of our constitutional framework. Traditionally our courts have been the branch of government that protects the individual against the excesses of government. Today our courts are also expected to find solutions to every social ill and human conflict imaginable.

As an appellate judge, I would weigh carefully the rights of individuals within the framework of constitutional and legislative authority and common law precedent where appropriate. By applying reason and reflecting on experience and values within the framework of laws, I would balance conflicting legal principles working for a consensus with fellow jurists. I will have respect for the fact-finding of lower courts and adhere to the record on appeal. I will use appropriate judicial restraint but not to the extent of avoiding responsibility as a judge. Clear, succinct readable opinions are important, as well as practical good sense. Finally, I would endeavor to make rational decisions in the controversial areas of social, political and economic conflict. Rationality requires interpretation of our constitution and laws, that is neither absolutist nor ad hoc.

I would welcome the opportunity to use my qualifications, experience and judicial philosophy as a member of the Montana Supreme Court.

JUDICIARY

COMMITTEE

SPECIAL LEGISLATIVE SESSION -- 1990

Date 5-23-90

NAME	PRESENT	ABSENT	EXCUSED
SENATOR CRIPPEN	✓		
SENATOR BECK	✓		
SENATOR BISHOP	✓		
SENATOR BROWN	✓		
SENATOR HALLIGAN	✓		
SENATOR HARP	✓		
SENATOR JENKINS	✓		
SENATOR MAZUREK	✓		
SENATOR PINSONEAULT	✓		
SENATOR YELLOWTAIL	✓		

Each day attach to minutes.