

## **MINUTES**

### **MONTANA HOUSE OF REPRESENTATIVES 52nd LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON JUDICIARY**

**Call to Order:** By Chairman Bill Strizich, on February 4, 1991,  
at 9:07 a.m.

#### **ROLL CALL**

##### **Members Present:**

Bill Strizich, Chairman (D)  
Vivian Brooke, Vice-Chair (D)  
Arlene Becker (D)  
William Boharski (R)  
Dave Brown (D)  
Robert Clark (R)  
Paula Darko (D)  
Budd Gould (R)  
Royal Johnson (R)  
Vernon Keller (R)  
Thomas Lee (R)  
Bruce Measure (D)  
Charlotte Messmore (R)  
Linda Nelson (D)  
Jim Rice (R)  
Angela Russell (D)  
Jessica Stickney (D)  
Howard Toole (D)  
Tim Whalen (D)  
Diana Wyatt (D)

**Staff Present:** John MacMaster, Leg. Council Staff Attorney  
Jeanne Domme, Committee Secretary

**Please Note:** These are summary minutes. Testimony and  
discussion are paraphrased and condensed.

#### **HEARING ON SJR #1 COMMEMORATE 100TH ANNIVERSARY OF NCCUSL**

##### **Presentation and Opening Statement by Sponsor:**

**SEN. MAZUREK, SENATE DISTRICT 23,** stated this is a joint resolution that commemorates the 100th anniversary of the National Conference of Commissioners on Uniform State Laws. This resolution is being presented in the legislature of all 50 states to commemorate the 100th anniversary the uniform law

commissioners. It is an organization that was started by the American Bar Association. It represents a commission of 300 lawyers, judges, law professors and some legislators which promotes uniform laws in areas where uniformity is desirable. We currently have 49 uniform laws in place. Our participation is a nominal cost of \$6000 a year. I hope the committee will concur with this resolution.

Proponents' Testimony:none

Opponents' Testimony:none

Questions From Committee Members: none

Closing by Sponsor:none

**HEARING ON SB #6**  
**REVISE UNIFORM STATUTORY RULE AGAINST PERPETUITIES**

Presentation and Opening Statement by Sponsor:

SENATOR MAZUREK, SENATE DISTRICT 23, stated this is a correction to a uniform act which the legislature adopted in the last session. It is to revise the uniform statutory rule against perpetuities. The adoption of the uniform rule against perpetuities was good for two groups of people. One were lawyers and drafters of documents such as deeds and trusts. The other was for people who wanted to pass property on from generation to generation. The problem with the rule against perpetuities essentially said when a lawyer drafted an instrument to call for the vesting of property in another generation and if they made a mistake in drafting that violated the rule against perpetuities, it was void. This amendment is designed to correct that. He gave two letters of support for the record. EXHIBIT 1 & 2

Proponents' Testimony:none

Opponents' Testimony:none

Questions From Committee Members:none

Closing by Sponsor:none

**HEARING ON HB #310**  
**REVISE CRIME OF ESCAPE**

Presentation and Opening Statement by Sponsor:

REP. HOFFMAN, HOUSE DISTRICT 74, stated this bill was requested by the Montana County Attorney's Association to address the loopholes in the statutory crime of escape. The first amendments on page 2, line 18 through 20 are proposed to correct the problem

with the role of prosecution. The second part of the amendment on page 2, lines 20 through 22, is the escape statute.

**Proponents' Testimony:**

John Conner, Montana County Attorney's Association, stated this bill is relatively non-controversial. It deals with a subject that has given rise this bill as a result of a Supreme Court decision pointing out difficulty with the law. The escape statute provides that it is a felony to escape from a county jail. In one case, a person was charged in the State and prosecuted and convicted of that crime but he was sentenced under the misdemeanor provision of the statute because in the judgement of the district court he was not actually in the county jail. This case was appealed to the Montana Supreme Court and they agreed with this in court and pointed out the facts have to be construed according to it meaning. Since he was not an actual prisoner of the county jail and just in transit, therefore, he wasn't guilty of the type of offense normally carried as a felony.

As a result of Duro some of the Montana County Attorney's are now being required to prosecute cases against non-member Indians for crimes committed on the reservation and they don't particularly like that responsibility. This additional language in lines 20-23 on page 2 stems from a situation similar to this case.

Bill Fleiner, Montana Sheriff's and Peace Officer's Association, stated they rise in support of this legislation that has been presented to you today. It was made in regard to escape in transit. There is much more potential danger to an officer who is handling a prisoner in transit than there would be at a facility. The reason is because there would be much more planning in an escape from a facility than if someone was to escape from within transit. The officer and prisoner in transit are left to the environment and his actions are likely to be sporadic and might involve a weapon. We hope the committee gives this bill a do pass.

**Opponents' Testimony:** none

**Questions From Committee Members:**

REP. RUSSELL asked John Conner if we are getting into an area that is not needed for the non-governmental agencies because of the reversal of Duro for one year? Mr. Conner said this bill was primarily to deal with this transit situation and the Duro related language has a limited application. Some members of the association had said as long as we were dealing with this, why not include into the statute at the same time.

**Closing by Sponsor:**

REP. HOFFMAN stated this bill closes a loop hole in the state statute and asked the committee to give the bill a do pass.

HEARING ON HB #311DRUG LAW FINES AND FORFEITURES TO BE USED TO COMBAT DRUG CRIMESPresentation and Opening Statement by Sponsor:

REP. HOFFMAN, HOUSE DISTRICT 74, stated this bill is an act allowing fines, penalties, and forfeitures for violations of drug laws to be paid into accounts used to combat drug crimes.

Proponents' Testimony:

John Conner, Montana County Attorney's Association, stated this bill was requested due to some problems with the Justice Court fine distribution in drug cases. On page 2, under section 2, it says, "the money collected by a court expect money collected by a justice court" etc. and then skip down to sub 2 of that section it says "if the fine was imposed for a violation of 45-5-206 - the court may order". Some Justice Courts are construing those sections to disallow placement by them or costs to the drug forfeiture fund because of the language at the beginning of section 2. What we are trying to is correct this inequity in interpretation by making it clear in saying the Justice Courts do have the authority to put those fines into this forfeiture funds if they so desire.

Bill Fleiner, Montana Sheriff's & Peace Officers Association, stated they rise in support of this particular piece of legislation. The drug forfeiture account for enforcement are a very key tool to drug enforcement investigators in counties when they need such things as buy money.

Pat Bradly, Montana Magistrates Association, stated they are in support of HB #311.

Opponents' Testimony: noneQuestions From Committee Members:

REP. RICE asked Mr. Conner why wouldn't we try to address this phrase at the bottom of page 2, "except money collected by a justice's court"? Mr. Conner said he thought it was because the language in 3-10-601. One delineates what happens to the money when it is collected by a Justice Court.

Closing by Sponsor:

REP. HOFFMAN stated he hoped the committee would agree to this bill and give it a do pass.

HEARING ON HB #381  
CLARIFY STATUTE OF LIMITATIONS FOR PERJURY

Presentation and Opening Statement by Sponsor:

REP. HOFFMAN, HOUSE DISTRICT 74, stated in 1989 the Montana Supreme Court in a decision suggested a legislative change in the statute dealing with perjury. This bill is a result of this suggestion. The Supreme Court recognized an inconsistency with the existing statute.

Proponents' Testimony:

John Conner, Montana County Attorney's Association, stated this bill is designed to address the situation in the law that presents a procedural disparities that a court pointed out in the 1989 decision called State vs. Stelling. What the statute now says, "a person who commits the offensive perjury if in any official proceeding, knowingly makes a false statement under oath". These charges are mostly prosecuted under subsection 6 that says "where the defendant made inconsistent statements under oath or equivalent acclamation". Here is the court language description of this bill. "Both having been made within a period of the statute of limitations, the prosecution may proceed, etc.". The offense does not occur until the second comment has been made. We support this bill and ask you give it a do pass.

Opponents' Testimony: none

Questions From Committee Members:

REP. MEASURE asked John Conner if this change in the law only address that situation where the individual is being prosecuted for his own inconsistency rather than another individuals? Mr. Conner said yes. REP. MEASURE asked if the problem now is there is the possibilities those inconsistent statements could fall outside the present 5 year statute of limitations that begins to run the inconsistent statement has been made. Mr. Conner said you are prosecuting under subsection 6, which deals with inconsistency made under oath. The prosecution doesn't have to prove which statement was false but only that one or the other was false. This amendment addresses subsection 6 of the constitution.

REP. RICE stated his understanding is that the you are just asking to make the statute exact with the already existing law with the case law. Mr. Conner said that was correct.

Closing by Sponsor:

REP. HOFFMAN stated it was clear from the testimony that the crime of perjury is not effective until the second statement has been made during the time of the statute of limitations. I ask the committee to give this bill a do pass.

HEARING ON HB #416  
REMOVE BURDEN OF DISPROVING UNLAWFUL POSSESSION OF STOLEN PROP.

Presentation and Opening Statement by Sponsor:

REP. BROWN, HOUSE DISTRICT 72, stated this bill came from a Supreme Court decision of State vs. Kramp and that case the court held up the provision of 45-6-304 that required the person in possession of stolen property to prove that he came into the possession lawfully was unconstitutional. The Supreme Court said the law states if you were in possession of stolen property it was up to you to prove it was legal, and they said that is not the way the law is suppose to work.

"The Department Of Justice came to me last week when they saw this bill was in and they have another bill, HB #555, which says we will appeal this whole statute. They have some additional language they want to add. I would ask the committee to hold this bill out of action until we can see HB #555 here and then we can decide what direction we would prefer to go."

Proponents' Testimony:

Beth Baker, Department of Justice, stated she wanted to confirm what Rep. Brown stated. We do have a bill that deals with the statute as well as adding new language. I would reserve my comments until HB #555 comes to this committee.

Opponents' Testimony:none

Questions From Committee Members:none

Closing by Sponsor:none

EXECUTIVE ACTION ON SJR #1

Motion/Vote: REP. BROOKE MOVED SJR #1 BE CONCURRED IN. Motion carried unanimously.

EXECUTIVE ACTION ON SB #6

Motion/Vote: REP. BROWN MOVED SB #6 BE CONCURRED IN. Motion carried unanimously.

EXECUTIVE ACTION ON HB #310

Motion: REP. STICKNEY MOVED HB 310 DO PASS.

Motion/Vote: REP. MEASURE moved to amend HB 310 by removing the underlined language on page 2, lines 20, 21, 22 and on page 3, lines 5, 6, and 7. Motion carried 18 to 2 with Rep's: Boharski and Keller voting no.

Motion/Vote: REP. BROOKE MOVED HB 310 DO PASS AS AMENDED. Motion carried unanimously.

EXECUTIVE ACTION ON HB #311

Motion: REP. BROOKE MOVED HB 311 DO PASS.

Discussion:

REP. MEASURE stated he was concerned with the distribution of funds. Presently, the funds go to alot of different people. The amendment would direct those funds to the law enforcement agencies. It would be better if we left the funds distributed as they are.

CHAIRMAN STRIZICH said we are not changing anything, we are just clarifying that the Justice Court can do that if they so desire.

REP. BROWN asked if this would allow the Court to decide to put the funds into a local account dealing with drugs and not put it in the other funds?

CHAIRMAN STRIZICH stated it is permissive now. It doesn't change the law it clarifies the law.

John Connors said this isn't really necessary, they have the authority now. There are a few Justice of the Peace that believe they cannot put money into this fund. This is to clarify they can do that if they choose to.

Motion: REP. MEASURE moved to amend HB 311 by deleting lines 22, 23, 24 on page 1 and striking "or Justices" on page 3, line 11.

Discussion:

REP. RICE stated this amendment would change the intent of the bill. It would do just the opposite of what it was meaning to do.

John MacMaster said he agreed with Rep. Rice. The amendment does change the entire bill to do just the opposite of the intent.

REP. MEASURE withdrew his motion to amend HB 311.

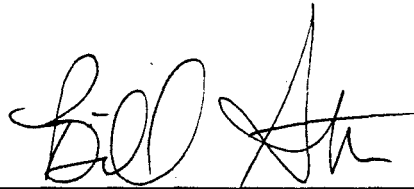
Vote: Motion carried 12 to 8 with Rep's: Russell, Brooke, Brown, Measure, Nelson, Toole, Whalen, and Wyatt voting no.

EXECUTIVE ACTION ON HB 416

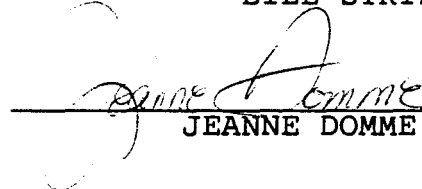
Motion/Vote: REP. BROWN MOVED HB 416 BE TABLED. Motion carried unanimously.

ADJOURNMENT

Adjournment: 10:40 a.m.



BILL STRIZICH, Chair



JEANNE DOMME, Secretary

BS/jmd

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL

DATE Feb. 4, 1991

NAME	PRESENT	ABSENT	EXCUSED
REP. VIVIAN BROOKE, VICE-CHAIR	/		
REP. ARLENE BECKER	/	X	
REP. WILLIAM BOHARSKI	/		
REP. DAVE BROWN	/		
REP. ROBERT CLARK	/		
REP. PAULA DARKO	/		
REP. BUDD GOULD	/	X	
REP. ROYAL JOHNSON	/		
REP. VERNON KELLER	/	X	
REP. THOMAS LEE	/	X	
REP. BRUCE MEASURE	/		
REP. CHARLOTTE MESSMORE	/		
REP. LINDA NELSON	/		
REP. JIM RICE	/		
REP. ANGELA RUSSELL	/		
REP. JESSICA STICKNEY	/		
REP. HOWARD TOOLE	/		
REP. TIM WHALEN	/	X	
REP. DIANA WYATT	/		
REP. BILL STRIZICH, CHAIRMAN	/		

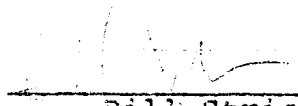
11.30  
2-4-91  
TDB

HOUSE STANDING COMMITTEE REPORT

February 4, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that  
Senate Joint Resolution 1 (third reading copy -- blue) be  
concurrent in.

Signed:   
Bill Strizich, Chairman


11-22  
2-4-41  
JDB

HOUSE STANDING COMMITTEE REPORT

February 4, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that  
Senate Bill 6 (third reading copy -- blue) be concurred in .

Signed: 

Bill Strizich, Chairman

HOUSE STANDING COMMITTEE REPORT

February 5, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that House Bill 310 (first reading copy -- white) do pass as amended .

Signed: Bill Strizich, Chairman

And, that such amendments read:

1. Title, lines 7 through 9.

Strike: "TO INCLUDE" on line 7 through "GOVERNMENT;" on line 9

2. Page 2, line 19.

Following: "~~er~~"

Insert: "or"

3. Page 2, lines 20 through 22.

Strike: ", or" on line 20 through "government" on line 22

4. Page 3, lines 5 through 7.

Following: "~~er~~" on line 5

Insert: "or"

Strike: ", or" on line 5 through "government" on line 7

HOUSE STANDING COMMITTEE REPORT

February 4, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that House Bill 311 (First reading copy -- white) do pass .

Signed: [Signature]  
Bill Strizich, Chairman

# University of Montana

School of Law  
University of Montana  
Missoula, Montana 59812-1071  
(406) 243-4311

EXHIBIT 1  
DATE 2-4-91  
SB 6

January 10, 1991

Rep. Howard Toole  
Montana House of Representatives  
State Capitol Complex  
Helena, Montana 59620

Re: Uniform International Wills Act  
Uniform Statutory Rule Against Perpetuities Act

Dear Howard:

Just a note to thank you for your willingness to sponsor the above two acts.

I confirmed with the Legislative Council that Sen. Joe Mazurek has already made drafting requests for both of these acts. The amendments to the Uniform Statutory Rule Against Perpetuities Act have been assigned L.C. number 145. The Uniform International Wills Act has been assigned L.C. number 530.

The Legislative Council further advises me that your introduction of both of these acts will not count as bill drafting requests by you.

Uniform Statutory Rule Against Perpetuities Act ("USRAP")- amendment.  
Montana adopted this Act in 1989. The Act validates a number of contingent interests which would have been invalid under the common law rule.

Subsequent to the adoption of USRAP, the Internal Revenue Service raised an issue concerning its application to the federal generation-skipping transfer tax system. The federal generation skipping transfer tax does not apply to irrevocable trusts created before September 26, 1985. Such trusts are said to be "grandfathered" from the tax. The USRAP amendment is designed to save the "grandfather" status of pre-September 26, 1985 trusts which contain certain "savings clauses." The Treasury has given informal approval to this amendment.

Uniform International Wills Act. The purpose of this act (part of the national Uniform Probate Code, but not part of the Montana Uniform Probate Code) is to provide testators with a way of making wills valid as to form in 42 countries which were represented at a 1973 Convention in Washington, D.C. on the topic.

EX. 1

2-4-91

SB 6

Representative Howard Toole  
January 10, 1991  
Page 2

Conclusion. I appreciate your willingness to sponsor these Acts. . If you wish additional information from me or testimony at a hearing, please give me a call at 243-6534.

Again, thank you.

Sincerely,

E. EDWIN ECK  
Professor  
Uniform Law Commissioner

cc:

✓ Sen. Joseph P. Mazurek  
P.O. Box 1715  
Helena, MT 59624

Dean Robert E. Sullivan  
112 Hillcrest Loop  
Missoula, MT 59803

Mr. James E. Vidal  
P.O. Box 728  
Kalispell, MT 59901

EXHIBIT 2DATE 2-4-91513 6

Norwest Capital Management & Trust Co.  
 Montana  
 Norwest Bank Building  
 Post Office Box 597  
 Helena, Montana 59624  
 406/447-2050

January 17, 1991

TO	ORIGINAL CHECK	DATE
.....John .....	.....For Your Information .....	.....
.....Cheri .....	.....Mail Copy To .....	.....
.....Tami .....	.....Home To .....	.....
.....Alex .....	.....Return Original To .....	.....
.....Bev .....	.....File .....	.....
.....Sharon .....	.....	.....

John P. Cadby  
 Montana Bankers Association  
 One North Last Chance Gulch  
 Helena, MT 59601

Re: Senate Bill No. 6

Dear Mr. Cadby:

You have asked that I comment as Chairman of the Trust Committee of the Montana Bankers Association concerning Senate Bill No. 6. Senate Bill No. 6 is an amendment to Section 70-1-802 of the Montana Code Annotated. This section of the code is entitled "Uniform Statutory Rule Against Perpetuities" (USRAP). The definition of the Law of Perpetuity is stated in Section 70-1-802 (1) as follows:

A non-vested property interest is invalid unless;  
 (a) when the interest is created, it is certain to vest or terminate no later than twenty<sup>one</sup> years after the death of an individual then alive; or (b) the interest either vests or terminates within ninety years after its creation.

Of the above (a) is the old common law rule. If a trust did not fit into this life plus twenty-one years, that portion of the trust was invalid. In 1989, the law was improved by adding (b) which allowed the trustee to keep the trust in effect for up to ninety years to see if the life plus twenty-one years was, in fact, attainable.

I have enclosed a copy of a letter from E. Edwin Eck who was involved in the drafting of this bill wherein he states the purpose of the bill. In his letter he states that the main purpose of this bill is to satisfy the IRS with regard to those irrevocable trusts that are presently grandfathered for generation-skipping transfer tax. Briefly, the generation-skipping transfer tax is a tax on a trust that skips a generation. For example, if you had

Ex. 2  
2-4-91  
SB 6

John P. Cadby  
January 17, 1991  
Page Two

a trust that continued for the lifetime of your children and distributed to your grandchildren, you are skipping the generation of your children. If the trust is large enough under the Generation-Skipping Transfer Tax Law, a tax would be imposed upon the death of a child; then the trust could continue for the benefit or distribute to the second generation.

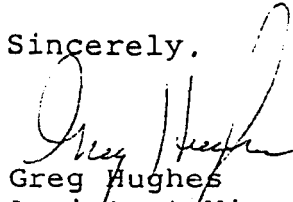
Prior to September 26, 1985, you could skip a generation without incurring a transfer tax. All trusts that were irrevocable prior to September 26, 1985, are grandfathered.

The purpose of this bill, as previously mentioned, is to protect those trusts that are grandfathered for generation-skipping transfer tax.

I realize this is very complicated, as not only does it involve the rule against perpetuities but the generation-skipping transfer tax, both which very seldom come into play, especially here in Montana.

As chairman of the trust committee of the MBA, I do request that the MBA support this bill so Montana is in conformity with the rest of the states that have adopted the uniform code.

Sincerely,



Greg Hughes  
Assistant Vice President  
and Trust Officer

Enclosure

University of  
**Montana**

School of Law  
University of Montana  
Missoula, Montana 59812-1071  
(406) 243-4311

Σx 2  
2-4-91  
SB 6

January 10, 1991

Rep. Howard Toole  
Montana House of Representatives  
State Capitol Complex  
Helena, Montana 59620

Re: Uniform International Wills Act  
Uniform Statutory Rule Against Perpetuities Act

Dear Howard:

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Uniform Statutory Rule Against Perpetuities Act ("USRAP")- amendment.

Montana adopted this Act in 1989. The Act validates a number of contingent interests which would have been invalid under the common law rule.

Subsequent to the adoption of USRAP, the Internal Revenue Service raised an issue concerning its application to the federal generation-skipping transfer tax system. The federal generation skipping transfer tax does not apply to irrevocable trusts created before September 26, 1985. Such trusts are said to be "grandfathered" from the tax. The USRAP amendment is designed to save the "grandfather" status of pre-September 26, 1985 trusts which contain certain "savings clauses." The Treasury has given informal approval to this amendment.

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Representative Howard Toole  
January 10, 1991  
Page 2

Ex. 2

2-4-91

SB 6

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Again, thank you.

Sincerely,

E. EDWIN ECK  
Professor  
Uniform Law Commissioner

cc:

Sen. Joseph P. Mazurek  
P.O. Box 1715  
Helena, MT 59624

Dean Robert E. Sullivan  
112 Hillcrest Loop  
Missoula, MT 59803

Mr. James E. Vidal  
P.O. Box 728  
Kalispell, MT 59901

*Greg - Here is another way  
to restate the USRAP Amendment*

If a trust termination clause calls for ending the trust at the expiration of (i) a period of years exceeding 21 or (ii) specified lives in being (plus 21 years if the drafter chooses), whichever is later, the first alternative termination date (a period of years) will be disregarded and the clause will operate to terminate the trust only on the expiration of the latter event.

HOUSE OF  
VISITORS

House Judiciary

DATE 7-4-91 SPONSOR (S)

BILL NO. 413-#310

DATE 2-4-91 SPONSOR(S) Rep Hoffman

**PLEASE PRINT**

[illegible]

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS  
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES  
VISITOR'S REGISTER

House Judiciary COMMITTEE BILL NO. HB#311  
 DATE 2-4-91 SPONSOR(S) Rep. Hoffman  
 PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Bill FLEINER	Mont SHERIFFS & Peace OFFICERS ASSOC	✓	
PAT BRADLEY	MMA	✓	
John Connor	MT County Attys Assn	✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS  
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HOUSE OF REPRESENTATIVES  
VISITOR'S REGISTER

House Judiciary COMMITTEE HB# 381 BILL NO.  
DATE 2-4-91 SPONSOR(S) Rep. Hoffman  
PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Re			
John Connor	Mt County Atty's Assoc	✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS  
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