

## **MINUTES**

### **MONTANA SENATE 52nd LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON JUDICIARY**

**Call to Order:** By Chairman Dick Pinsoneault, on January 25, 1991,  
at 10:00 a.m.

#### **ROLL CALL**

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

Dick Pinsoneault, Chairman (D)  
Bill Yellowtail, Vice Chairman (D)  
Robert Brown (R)  
Bruce Crippen (R)  
Steve Doherty (D)  
Mike Halligan (D)  
John Harp (R)  
David Rye (R)  
Paul Svrcek (D)  
Thomas Towe (D)

**Members Excused:** Lorents Grosfield (R) and Joseph Mazurek (D)

**Staff Present:** Valencia Lane (Legislative Council).

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

##### **Announcements/Discussion:**

#### **HEARING ON HOUSE BILL 113**

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

Representative Thomas Lee, District 49, told the Committee HB 113 defines the term "force" as it relates to sexual intercourse without consent and to deviate sexual conduct.

##### **Proponents' Testimony:**

John Connor, Montana County Attorneys, advised the Committee that the bill was requested by the County Attorneys to correct a problem in law regarding the term "force" which resulted from a case heard in 1989 in Judith Basin County. He said the Office of the Attorney General prosecuted the case as Judith Basin County Attorney Sarah Arnott had conflicting interests.

Mr. Connor said the case involved an alleged rape by a Hobson High School principal of a high school student, and that the

principal was charged with two counts of sexual intercourse without consent. He explained that the district court ruled against the student, and the case was appealed by the State to the Supreme Court, who agreed with district court.

Mr. Connor said the consent statute now means the victim is compelled by force but the definition of force in this bill would mean physical compulsion or bodily threat of injury. He said that in State vs. Thompson the Court determined that "threat" was not appropriate either and it could not be prosecuted.

Mr. Connor stated that the Court concluded its opinion with this language, "This case is one of considerable difficulty for us, as indeed as it must have been for the district court judge. The alleged facts, if true, show disgusting acts of taking advantage of a young person by an adult who occupied a position of authority over the young person. If we could rewrite the statutes to define the alleged acts here as sexual intercourse without consent, we would willingly do so. The business of courts, however, it not to interpret statutes, not to rewrite them nor insert words not put there by the Legislature. With a good deal of reluctance, with a strong condemnation of the alleged acts we affirm the district court."

Mr. Connor said language in the bill is based on Minnesota statute and some references to retaliatory threat in the Thompson case. He stated he believes this legislation needs to be dealt with.

K. Amy Pfeifer, Women's Law Section of the State Bar, provided the Committee with copies of the Thompson case (Exhibit #1). She said the courts made clear the fact that they were hamstrung by the definition of "force". Ms. Pfeifer explained that a number of states have broadened their definition of force - Virginia, New Hampshire, Rhode Island, New Mexico, California, and New York. She added that HB 113 offers the best of provisions from those states, and urged the Committee to pass the bill.

Diane Sands, Executive Director, Womens Lobby, said this is a needed change in sex crimes codes. On behalf of crime victims and support groups, she urged the Committee to pass the bill. Ms. Sands stated that one in three women are victims of sexual assault during their life and that number is one in five for men.

#### Opponents' Testimony:

There were no opponents of <sup>H</sup>SB 113.

#### Questions From Committee Members:

Senator Halligan asked about "significant or substantial" on page 2 of the bill. John Connor replied that language was not in the original bill and was inserted by the House. He said he believed the use of these terms gives rise to possible jury

confusion and can result in a hung jury situation, as a threat of retaliation may mean something different to one than to another. He agreed with Senator Halligan, and said he would rather the language were in the bill.

Senator Halligan asked who proposed this language. John Connor replied it was proposed by Representative Brooke.

Chairman Pinsoneault said he had the same concern, and asked if the victim has pursued civil action. K. Amy Pfeifer replied there are suits back and forth between the parties.

Closing by Sponsor:

Representative Lee said he would agree to deleting the language added by the House, and asked the Committee to support HB 113.

HEARING ON HOUSE BILL 11

Presentation and Opening Statement by Sponsor:

Representative Bob Pavlovich, District 70, explained that if the Legislature does not pass the veterans preference bill, Montana will be the only state in the U.S. without veterans preference.

Proponents' Testimony:

Mike Micone, Commissioner of Labor, Department of Labor and Industry, asked the Committee to give swift support of HB 11, especially in view of Operation Desert Storm.

Tom Pouliot, Commissioner, Veterans of Foreign Wars, said some veterans will be coming back to look for work and will have lost jobs. He stated he believes Montana should assist those veterans, and asked the Committee to support HB 11.

Rich Brown, State Administrator, Montana Board of Veterans Affairs, said there is a need to support all veterans in the state.

Hal Manson, American Legion, Department of Montana, told the Committee he felt strongly about this bill and appreciated their support.

Dick Baumberger, Disabled American Veterans, Department of Montana, urged the Committee to support the bill.

John Mahan, Commander, Veterans of Foreign Wars of the United States, urged support of HB 11.

Dan Antonietti, Director, Veterans Employment and Training, U.S. Department of Labor, told the Committee a similar situation

exists today, as in World War II. He asked the Committee to support HB 11.

George Poston, United Veterans Committee of Montana, stated there are already in excess of 1,000 persons from Montana in Saudi Arabia. He said he is sure more will follow, and asked the Committee to support HB 11.

Joe Brand, Helena, told the Committee he was a veteran, and said a lot of veterans have not taken advantage of benefits offered to them. He said he was one of those, but felt veterans preference should be in existence in every state in the nation. Mr. Brand commented that he believes Montana has put its feet in the sand in the past, and stated his whole-hearted support of HB 11.

Ed Sheehy, retired federal employee and World War II veterans, told the Committee he used this legislation to find employment back then.

#### Opponents' Testimony:

There were no opponents of HB 11.

#### Questions From Committee Members:

Senator Rye asked Joe Brand what he would do to strengthen the bill. Mr. Brand replied this bill is not as strong as the bill he introduced during the 1983 Special Session. He told the Committee that bill was defeated.

Senator Brown stated he did not understand the kind of preference being given. Mr. Antonietti replied that in initial hiring a veteran is given five points, and a disabled veteran is given ten points. He explained that a veteran is given preference over a non-veteran if their scores are equal, and that a veteran is not given preference in being RIF'd (reduction in force) unless he or she has seniority. Mr. Antonietti said veterans preference does not apply to promotion.

Senator Towe asked how the bill worked in the last two years. Mr. Antonietti replied the last census showed about 20 percent of the work force were veterans, but this information is no longer received from the Department of Administration. Mike Micone, Department of Labor and Industry, advised the Committee he had no problems in administration, and that individuals have claimed veterans preference.

Senator Towe asked what percent of employees claim veterans preference. Mr. Angoniette replied there had been no complaints in the past two years. He told the Committee an executive order from former Governor Schwinden that all state agencies list jobs with the Department of Labor is still in existence, and there have been no problems with veterans.

Closing by Sponsor:

Representative Pavlovich advised the Committee veterans preference started in the 1983 Special Session, and was brought back in 1989 and appears to be working very well now. He explained that the Governor put a sunset on the legislation, just to make sure it was working. Representative Pavlovich said he wanted to take the sunset date off the bill, and that Senator Nathe would carry it.

Chairman Pinsoneault commented that he heard on the news this date that Congress approved a cost-of-living allowance for disabled veterans.

HEARING ON SENATE BILL 140Presentation and Opening Statement by Sponsor:

Mignon Waterman, District 22, said SB 140 would include anabolic steroids on Schedule III and provide a misdemeanor for first offense, as well as a fine and imprisonment. Senator Waterman stated that page 10 of the bill lists compounds containing anabolic steroids. She said the bill was requested by people concerned with the growing use of anabolic steroids.

Senator Waterman commented that a letter received from a Montana attorney contained information from the Athletic Director for the National Athletic Conference, stating increased use of steroid in middle schools. She urged the Committee to support SB 140.

Proponents' Testimony:

John Connor, Montana County Attorneys, told the Committee SB 140 came from the Legislative Committee of the Montana County Attorneys Association. He said the issue is gaining more and more public attention lately, and that by mid-1990 38 states had adopted steroid legislation. He told the Committee the federal government passed the 1990 Anabolic Steroid Control Act.

Mr. Connor advised the Committee there are three categories of drugs: over-the-counter; legend or prescription; and controlled substances (defined in Title 50 as dangerous drugs). He stated that the laws in Montana are not very stiff, and that the bill would allow prosecution for the sale of anabolic steroids.

Mr. Connor explained that the bill is modeled on California Law, as is the first-time possession penalty. He said Schedule 3 is a medium schedule, and that criteria for that schedule is whether or not it has the potential for abuse and leads to moderate or low dependency or high physical dependency. Mr. Connor commented that Montana schedules are modeled on federal law.

Mr. Connor stated that SB 140 is timely and necessary to protect people subject to incredible peer pressure. He explained that there are exceptions to steroid use and these must be monitored by a physician.

Bill Sprinkle, Montana High School Association, told the Committee he spent 18 years in Montana high schools and colleges. He said use of steroids is of grave concern to him, and urged the Committee to support the bill.

Mr. Sprinkle explained there is a need to educate and to develop stronger laws. He said the procedural problem is documenting the use of steroids in Montana, and that a November 1990 student health survey by American Drug and Alcohol Survey, Inc., was taken in western Montana and showed two to four percent use. He added that experts feel this figure should be doubled.

Mr. Sprinkle said the substance problem refers to cheating in body-building and unfair levels of competition. He explained there is a need to be aware of short- and long-term dangers. Mr. Sprinkle said he concurred with the potential for violence among steroid users. He said of the 47 percent who use steroids, 27 percent use them to improve their appearance, 11 percent to treat injuries, and 15 percent use them for other appearances.

Mr. Sprinkle said the spirit of winning at all costs, the need to gain the competitive edge, or what he called the "microwave mentality" of putting dollars above health, all lead to steroid use. He stated these are all powerful messages, and that SB 140 is a step in a positive direction. He urged the Committee to pass the bill.

Jim Grant, Director of Athletics, Great Falls Public School System, urged committee support of SB 140.

Jerrie Loendorf, Montana Medical Association, told the Committee that the Lewis and Clark County Attorney asked them to look into SB 140 and to support it. He said the Medical Association found that steroids do more than add muscle, that a large number of young people are using them, and that there is a large non-prescription market.

John Eckert, health instructor, Helena High School, told the Committee he has taught for 20 years in Montana, and said he is very concerned with the use of steroids in high schools. He stated that 20 percent of his health classes have responded to using steroids, and that they now have a peculiar interest in steroids in health class.

Mr. Eckert showed the Committee a book which can be purchased over-the-counter, telling people how to take steroids. He said he was concerned that warning labels are not being read, and said 17 and 18-year-olds do not realize what blood cholesterol of 500 can

do. He stated that tougher laws may be the first step to recovery and change.

Ed Hall, Montana Board of Crime Control, urged the Committee to support SB 140.

Warren Bickford, Butte parent, told the Committee his son attends Montana State University. He explained the great amount of pressure and dollars available to athletes to compete in sports. He said athletes would weigh in at 140 and then at 180 the next year, and that his son speaks of people in school who are on steroids.

Mike McGrath, Lewis and Clark County Attorney, stated there are many youth in Montana using anabolic steroids, and endangering their health. He said the attitude is that they must be okay since they're not illegal. He stressed that this legislation needs to be passed, and said the Committee needs to be aware that the bill would make the sale of these compounds a felony.

#### Opponents' Testimony:

There were no opponents of SB 140.

#### Questions From Committee Members:

Senator Towe, referring to "criminal possession" in the bill, asked how possession versus "use" would be determined if the drug were administered by someone else via a needle. He said that doesn't help with control. John Connor replied that the person who used the needle to administer the steroids could be prosecuted. He commented that people who use the drug are usually pressured into it, and that the bill is trying to make people who make steroids available the criminals.

Senator Towe asked if proponents did not advocate adding the word "use" to language in the bill. John Connor replied it would be difficult to prove, as steroids are usually administered in private.

Senator Towe asked if a certain amount of steroids would apply. John Connor replied that is a question of fact now, based on totality of circumstances. He explained that marijuana and hashish are the only two drugs with limits for minimum amounts. He added that sale of drugs can include giving them away.

Senator Crippen, referring to legislation just passed by the Committee, asked if steroids would come under the same category as any other drug sold within 1,000 feet of a school. John Connor replied it would.

Senator Svrcek asked how steroids are made available to students now. Mr. Sprinkle replied that the black market is a true access to any athlete. He explained that a youth told him "all he

had to do was make one (clandestine) phone call". Mr. Sprinkle stated that most steroids come from Mexico and Eastern European countries.

Chairman Pinsoneault asked what steroids cost. Bill Sprinkle replied it is usually between \$20 and \$40, but can go up to \$170 per vial.

Senator Towe asked if any beneficial use would be limited by the bill. Senator Waterman replied that steroids are used for arthritis by prescription, and also to treat breast cancer and anemia.

Closing by Sponsor:

Senator Waterman told the Committee she appreciated their consideration of SB 140, and asked them to give the bill a do pass recommendation.

HEARING ON SENATE RESOLUTION 2

Presentation and Opening Statement by Sponsor:

Senator Harry Fritz, District 28, said SR 2 would exonerate Judge Charles liebert Crum from wrongful impeachment on March 22, 1918. He referred to the November/December issue of Montana Magazine and the December 2, 1990 issue of the Great Falls Tribune both of which contain stories about Judge Crum (Exhibits #2, #3).

Senator Fritz stated he was present to right a wrong and to present a constitutional defense not allowed in 1918. He explained that the impeachment charges were voted on by the House of Representatives during wartime fervor, and said Judge Crum was convicted for exercising his constitutional right of freedom of speech and expression.

Senator Fritz explained that Greg Petesch, Director of Legal Services, Legislative Council, determined that a senate resolution would be the proper vehicle to exonerate Judge Crum. He told the Committee the Resolution must be passed by a two-thirds majority.

Proponents' Testimony:

I am Richard Roeder, Professor Emeritus, at Montana State University. In these few minutes I wish to try to convey to the Committee how rancorous and rampant superpatriotism was in 1918. I can cite for you an article that describes this rampant, rancorous superpatriotism in the town of Lewistown, where by mob action, kangaroo courts were held in pool rooms. There was a very near lynching of a citizen who refused to buy war bonds. There was a public burning of German books on Main Street in Lewistown. If this is not enough to convey some idea of rampant and rancorous



superpatriotism, let me remind you that the Montana Legislature, in response to its fears of Germans patrons, passed a gun registration law.

Also, as part of this fear of all things German, it delegated impossible, it seems to me, legislative powers to a quasi-public body called the Montana Council of Defense which among its executive orders, outlawed the use of the German language. This put an end to the Fraternal Order of the Sons of Herman to which many, many Montanans of German descent belonged. It also put an end to our German language newspaper in the state, The Montana Staats-Zeitung.

Perhaps to give you some idea of this ban on the German language, I'll quote a letter to Governor Stewart from the Reverend J.E. Schatz, a Lutheran minister in Plevna. This is in response to the banning of the German language. He says, "I wish to write you, Mr. Stewart, of something which lies deep in my thoughts. Some time ago the State Council of Defense made an order preventing the use of the German language in schools and churches. To tell the truth, my churches are growing very weak on account of that order. We have many who are unable to understand the English language, and it is hard on these people not to be able to understand a word of what the Gospel of the Word of our Lord brings to them. Every Sunday when I preach in English to these true citizens of our dear country, my heart turns sad with tears, and their hearts are heavy because they cannot understand what I say. Governor Stewart, I would not have to plead considering this order, for I am able to preach in the English language, but for these poor stricken my thoughts bleed. My church here is a praying church, and what they miss more than anything else is their prayer meetings. If I am preaching something in English, cannot we hold a prayer meeting in German." The answer to that plea was a dramatic "no".

Dave Walter, practicing Montana historian for twenty-five years, read from prepared testimony in support of SR 2 (Exhibit #4).

Beth Baker, Office of the Attorney General, Department of Justice, read from a prepared statement in support of SR 2 (Exhibit #5).

I am John Connor, representing Montana County Attorneys. The County Attorneys strongly support this resolution, and would like to think that prosecuting stands for justice rather than convictions.

In reviewing the history of this situation, it appears to us that a professional brother of ours, whose name, I believe, is Felker Haynes or Hayes, (I'm not sure of the pronunciation) was the moving force behind much of the local paranoia over Judge Crum, and continued with that even after he had driven Judge Crum from the bench. Mr. Haynes, I know, was a member of a law association, but fortunately it was before our association was formed, as such. We

have absolutely no respect for the action he took in this matter. It would appear he did it to further his own personal political agenda, and in the process of doing that, he destroyed a very competent and very honorable man. And so, with sincere apologies for the misguided zealotry of one of our ancestors, we strongly urge support of this resolution.

Darwin Crum, Illinois, told the Committee he was Judge Crum's grandson, read from prepared testimony in support of SR 2 (Exhibit #6).

#### Opponents' Testimony:

There were no opponents of SR 2.

#### Questions From Committee Members:

Chairman Pinsoneault advised those present that verbatim testimony on SR 2 would be made available.

Senator Towe asked Darwin Crum if there were any other living relatives of Judge Crum. Mr. Crum introduced his sister, Patricia Crum Scott, Pleasanton, California, and said there was also another brother.

#### Closing by Sponsor:

Senator Fritz stated that our defense, in legal terms, boils down to the fact that he was denied his legal and constitutional rights on two occasions. First of all, he had already resigned his office when he was impeached and convicted by the Montana Senate. The Constitution of 1889 says that only civil officers are liable to impeachment and conviction. Once he had resigned his judgeship, he was no longer a civil officer, and the proceedings, as promised by the Governor (who reneged), should have been concluded. And, of course, as you heard the testimony, he was denied the right to defense counsel in the proceedings before the Senate. In the famous impeachment trials of American history, that of Samuel Chase in 1805, and Andrew Johnson in 1868, the best legal minds in the country were found on the defense team. Judge Crum, in 1918, was denied his right of defense.

I would like to read into the record a letter from a woman of 95 years in Forsyth, Montana, who knew the Crum family. She went to school with the Judge's son, Liebert, who is the father of Darwin and Patricia. Mignon Tagson apologizes to the Committee for not being able to be her today (Exhibit #7).

Chairman Pinsoneault asked Patricia Crum Scott to come to the podium and introduce herself for the record. Mrs. Scott stated that everything her brother, Darwin, said was what they both felt about the situation.

EXECUTIVE ACTION ON SENATE RESOLUTION 2

Motion:

Senator Towe made a motion that SR 2 DO PASS.

Discussion:

There was no discussion.

Amendments, Discussion, and Votes:

There were none.

Recommendation and Vote:

The motion carried unanimously, Senators Mazurek and Grosfield leaving proxy votes.

EXECUTIVE ACTION ON HOUSE BILL 43

Motion:

Discussion:

Chairman Pinsoneault told the Committee that Representative Cobb and Senator Mazurek are in agreement on the proposed amendment.

Valencia Lane explained that the amendment deletes the new subsection 3 and adds a new sentence on page 1, line 23 (Exhibit #8). She said she spoke with the attorney for the Department of Family Services who concurred with the amendments, as well as grandparent visitation rights.

Senator Towe asked if special proceedings were necessary in district court.

Amendments, Discussion, and Votes:

Senator Crippen made a motion that the amendments to HB 43 be approved. The motion carried unanimously.

Recommendation and Vote:

Senator Svrcek made a motion that HB 43 BE CONCURRED IN AS AMENDED. The motion carried unanimously, Senators Grosfield and Mazurek leaving proxy votes.

EXECUTIVE ACTION ON SENATE BILL 87

Motion:

Senator Brown made a motion that the amendments prepared by Valencia Lane be approved.

Discussion:

Valencia Lane explained that the amendment was, essentially, the substitute bill of Representative Rice which was canceled earlier in the Session.

Amendments, Discussion, and Votes:

Senator Brown's motion to amend SB 87 carried unanimously.

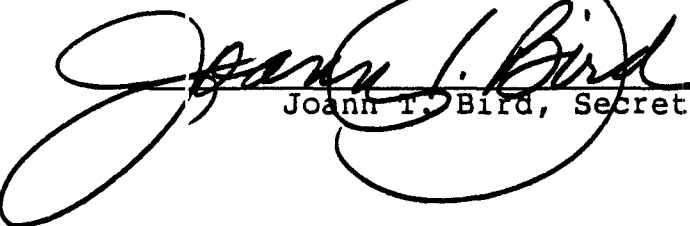
Recommendation and Vote:

Senator Halligan made a motion that SB 87 DO PASS AS AMENDED. The motion carried unanimously.

ADJOURNMENT

Adjournment At: 12:00 noon

  
\_\_\_\_\_  
Senator Dick Pinsonneault, Chairman

  
\_\_\_\_\_  
Joann R. Bird, Secretary

DP/jtb

ROLL CALL

SENATE JUDICIARY

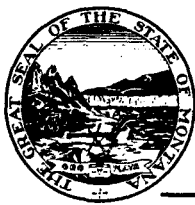
COMMITTEE

5290 LEGISLATIVE SESSION -- 1999

Date 25 Jan 91

NAME	PRESENT	ABSENT	EXCUSED
Sen. Pinsoneault	✓		
Sen. Yellowtail	✓		
Sen. Brown	✓		
Sen. Crippen	✓		
Sen. Doherty	✓		
Sen. Grosfield	✓		
Sen. Halligan	✓		
Sen. Harp	✓		
Sen. Mazurek	✓		
Sen. Rye	✓		
Sen. Svrcek	✓		
Sen. Towe	✓		

Each day attach to minutes.



# MONTANA STATE SENATE

Jan 24, 1990

Senator Yellowtail —

As I will be absent from tomorrow's Judiciary Committee meeting because of a parcel presentation that I am involved in, I hereby offer these "proxy" votes on the three bills to have executive action tomorrow:

HB 43 - Cobb - Yes, with minor drafting amendments only.

SB 87 - Brown - Yes on amended version if no further amendments.

SB 125 - Brown - Yes if no amendments.


Sen Louis Fritz

SENATE STANDING COMMITTEE REPORT


Page 1 of 1  
January 25, 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration Senate Resolution No. 2 (first reading copy -- white), respectfully report that Senate Resolution No. 2 do pass.

Signed: 

Richard Pinsoneault, Chairman

 1/25/91  
Amd. Coord.

SP 1-25 1:10  
Sec. of Senate

171248SC.SBB

SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
January 25, 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 43 (third reading copy -- blue), respectfully report that House Bill No. 43 be amended and as so amended be concurred in:

1. Title, line 9

Strike: "JOINDER OF"

Insert: "NOTICE, IN CERTAIN CASES, TO"

2. Page 1, line 18.

Strike: "(6)"

Insert: "(5)"

3. Page 1, line 23.

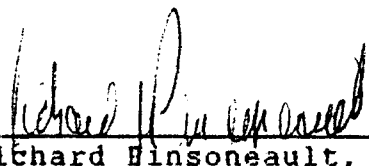
Following: "."

Insert: "The department of family services must be given notice of a petition for grandparent visitation regarding a child who is the subject of, or as to whom a disposition has been made during, an administrative or court proceeding under Title 41 or this title."

4. Page 2, lines 3 through 6.

Strike: subsection (3) in its entirety

Renumber: subsequent subsections.

Signed: 

Richard Pinsonneault, Chairman

 125-71  
Am. Coord.

SB 1-25 1:10  
Sec. of Senate



SENATE STANDING COMMITTEE REPORT

Page 1 of 6  
January 25, 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration Senate Bill No. 87 (first reading copy -- white), respectfully report that Senate Bill No. 87 be amended and as so amended do pass:

1. Title, lines 5 through 8.

Following: the second "AN ACT"

Strike: the remainder of line 5 through line 8 in their entirety

Insert: "CLARIFYING THE JURISDICTION OF THE SMALL CLAIMS DIVISION OF DISTRICT COURTS AND ALLOWING INTERPLEADER ACTIONS TO BE FILED IN JUSTICES' COURTS AND IN THE SMALL CLAIMS DIVISION OF JUSTICES' COURTS; AMENDING SECTIONS 25-34-106 AND 25-35-502, MCA; AND PROVIDING AN APPLICABILITY DATE."

2. Pages 1 through 4.

Strike: everything following the enacting clause

Insert: "Section 1. Section 25-34-106, MCA, is amended to read:

"25-34-106. Interpleader actions. (1) As used in this chapter, interpleader actions determine the rights of rival claimants to a fund held by a disinterested party and may be maintained in the small claims court when any person appears before a judge or clerk of court ~~or justice of the peace~~ and executes an affidavit setting forth the nature and basis of the claim.

(2) The person filing the interpleader affidavit shall deposit the funds with the clerk of court ~~or justice of the peace~~ at the same time the interpleader affidavit is filed.

(3) The interpleader must be substantially in the following form:

In the Small Claims Court of the ..... Judicial District in and for the County of ....., State of Montana.

.....,

Plaintiff

vs.

....., INTERPLEADER AFFIDAVIT

Defendant

and

.....,

Defendant

State of Montana )

) ss

)

....., being duly sworn, deposes and says:

That....., a defendant, resides at ....., ~~in the above named county.~~ That....., a defendant, resides at ....., ~~in the above named county.~~ That the plaintiff has custody or possession of money in the amount of \$....., held pursuant to the following:

.....  
.....  
.....  
.....

That the defendants claim or may claim to be entitled to the money. That the plaintiff deposits into the court \$....., which represents the amount of money in dispute.

That the plaintiff resides at the address shown in ~~the above caption.~~

.....  
Affiant

Subscribed and sworn to before me this .... day of .....,  
19....

.....  
~~Justice of the Peace~~  
District Judge

.....  
Clerk

#### ORDER

The State of Montana to the within named defendants,  
greeting:

You are hereby directed to appear and answer the within and foregoing claim at my office in ..... (name, building, or residence), in ....., County of ....., State of Montana, on the ..... day of ....., 19...., at the hour of .....(AM)(PM); and to have with you then and there, all books, papers, and witnesses needed by you to establish your claim to such money.

You are further notified that in case you do not so appear, judgment will be given against you as follows:

Determining or foreclosing your claim to the above-described money, as well as the disposition thereof; and, in addition, for costs of the action.

Dated this ..... day of ....., 19....

.....  
~~Justice of the Peace~~  
District Judge

.....  
Clerk

NEW SECTION. Section 2. Interpleader actions. (1) As used in this chapter, interpleader actions determine the rights of rival claimants to a fund held by a disinterested party and may be maintained in the justice's court when any person appears before a justice of the peace and executes an affidavit setting forth the nature and basis of the claim.

(2) The person filing the interpleader affidavit shall deposit the funds with the justice of the peace at the same time the interpleader affidavit is filed.

(3) The interpleader must be substantially in the following form:

In the Justice's Court of the State of Montana in and for the County of ....., before ....., Justice of the Peace.

Plaintiff

vs.

....., INTERPLEADER AFFIDAVIT

Defendant

and

Defendant

State of Montana )

) ss

)

..... being duly sworn, deposes and says:

That....., a defendant, resides at .....

That....., a defendant, resides at .....

That the plaintiff has custody or possession of money in the amount of \$....., held pursuant to the following:

.....

.....

.....

.....

That the defendants claim or may claim to be entitled to the money. That the plaintiff deposits into the court \$....., which represents the amount of money in dispute.

That the plaintiff resides at the address shown.

.....  
Affiant

Subscribed and sworn to before me this .... day of ....., 19....

.....  
Justice of the Peace

.....  
Clerk

#### ORDER

The State of Montana to the within named defendants, greeting:

You are hereby directed to appear and answer the within and foregoing claim at my office in ..... (name, building, or residence), in ....., County of ....., State of Montana, on the ..... day of ....., 19...., at the hour of .....(AM)(PM); and to have with you then and there, all books, papers, and witnesses needed by you to establish your claim to such money.

You are further notified that in case you do not so appear, judgment will be given against you as follows:

Determining or foreclosing your claim to the above-described money, as well as the disposition thereof; and, in addition, for costs of the action.

Dated this ..... day of ..... 19.....

.....  
Justice of the Peace

.....  
Clerk

Section 3. Section 25-35-502, MCA, is amended to read:

"25-35-502. Jurisdiction. (1) The small claims court has jurisdiction over all actions for the recovery of money or specific personal property when the amount claimed does not exceed \$2,500, exclusive of costs, and the defendant can be served within the county where the action is commenced.

(2) The small claims court has jurisdiction over an interpleader under [section 4] in which the amount claimed does not exceed \$2,500."

NEW SECTION. Section 4. Interpleader actions. (1) As used in this chapter, interpleader actions determine the rights of rival claimants to a fund held by a disinterested party and may be maintained in the small claims division of the justice's court when any person appears before a justice of the peace and executes an affidavit setting forth the nature and basis of the claim.

(2) The person filing the interpleader affidavit shall deposit the funds with the justice of the peace at the same time the interpleader affidavit is filed.

(3) The interpleader must be substantially in the following form:

In the Small Claims Division of the Justice's Court of  
..... County, Montana before ....., Justice of the Peace.

.....

Plaintiff

vs.

....., INTERPLEADER AFFIDAVIT

Defendant

and

.....

Defendant

State of Montana )

) ss

)

....., being duly sworn, deposes and says:

That....., a defendant, resides at .....  
That....., a defendant, resides at .....  
That the plaintiff has custody or possession of money in the  
amount of \$....., held pursuant to the following:

.....  
.....  
.....  
.....

That the defendants claim or may claim to be entitled to the  
money. That the plaintiff deposits into the court \$....., which  
represents the amount of money in dispute.

That the plaintiff resides at the address shown.

.....  
Affiant

Subscribed and sworn to before me this .... day of .....,  
19....

.....  
Justice of the Peace

.....  
Clerk

#### ORDER

The State of Montana to the within named defendants,  
greeting:

You are hereby directed to appear and answer the within and  
foregoing claim at my office in ..... (name, building,  
or residence), in ....., County of .....,  
State of Montana, on the ..... day of ....., 19...., at the  
hour of .....(AM)(PM); and to have with you then and there, all  
books, papers, and witnesses needed by you to establish your  
claim to such money.

You are further notified that in case you do not so appear,  
judgment will be given against you as follows:

Determining or foreclosing your claim to the above-described  
money, as well as the disposition thereof; and, in addition, for  
costs of the action.

Dated this ..... day of ....., 19....

.....  
Justice of the Peace

.....  
Clerk

**NEW SECTION.** Section 5. Codification instruction. (1)  
[Section 2] is intended to be codified as an integral part of  
Title 25, chapter 31, part 1, and the provisions of Title 25,  
chapter 31, part 1, apply to [section 2].

(2) [Section 4] is intended to be codified as an integral part of Title 25, chapter 35, part 5, and the provisions of Title 25, chapter 35, part 5, apply to [section 4].

NEW SECTION. Section 6. Applicability. [Sections 2 and 4] apply to actions arising on or after October 1, 1991."

Signed: *Richard P. Pinsoneault*  
Richard Pinsoneault, Chairman

*JP* 1-25-91  
And. Coord.

SP 1-25 1:10  
Sec. of Senate

Exhibit #1  
25 Jan 91  
HB 113

January 25, 1990

To: Senate Judiciary Committee

From: K. Amy Pfeifer, Secretary-Treasurer, Women's Law Section,  
State Bar of Montana on behalf of Women's Law Section

Re: House Bill 113 - An Act to Define the Term "Force" as it  
Relates to Sexual Intercourse Without Consent and to  
Deviate Sexual Conduct

At the outset I want to make clear that the following is not necessarily the position of the State Bar of Montana. I am speaking on behalf of the Women's Law Section of the State Bar of Montana.

The Women's Law Section supports HB 113.

The need for a definition of the term "force" was brought to the attention of the Women's Law Section of the State Bar and the public with the Montana Supreme Court's decision in State of Montana v. Gerald Roy Thompson, 47 St. Rptr. 1065, decided May 24, 1990.

The following information is presented when reviewing that case and its district court history. In May 1989 Gerald Roy Thompson was charged in Judith Basin County with two counts of sexual intercourse without consent and one count of sexual assault. Mr. Thompson was principal and boys basketball coach of Hobson High School. The charges stem from the allegations of a former high school student at Hobson High, since graduated, who alleged that on more than one occasion while she was a student, Mr. Thompson forced her to engage in oral sexual intercourse by threatening that she would not graduate from high school. The affidavits supporting the charges alleged that the threats caused the victim great psychological pain and fear.

Mr. Thompson moved in the district court to dismiss the two charges of sexual intercourse without consent, arguing that the state had failed to state an offense. This argument was based upon reference to the definition of "without consent" which, in pertinent part, provides that the term means the victim is compelled to submit by force or threat of imminent death, bodily injury, or kidnapping to be inflicted on anyone. The word "force" is not defined in MCA §§ 45-5-501, 45-5-503, or 45-5-505, but the district court adopted as a definition, by stating that it is used in its ordinary and normal connotation, "physical compulsion, the use or immediate threat of bodily harm, injury."

The district court agreed with the defendant and dismissed the two counts of sexual intercourse without consent. In so dismissing, the district court stated that the threat must be a threat of death

Ex. 1  
1-25-91  
HB 113

or imminent bodily injury; that psychological impact is not sufficient, although it commented that "maybe it should be."

The state appealed the dismissal of these two counts of sexual intercourse without consent. The Montana Supreme Court affirmed, again looking to the specific definition of "without consent", and adopting the district court's definition of "force" as requiring physical compulsion, or use or threat of bodily harm; injury. The court stated that it agreed that Mr. Thompson intimidated the victim, and that "until the legislature adopts a definition of the word 'force', we must adopt the ordinary and normal definition of the word 'force' as set forth by the District Court."

The court also sent a message to the legislature to take a look at this problem when it stated,

The alleged facts, if true, show disgusting acts of taking advantage of a young person by an adult who occupied a position of authority over the young person. If we could rewrite the statutes to define the alleged acts here as sexual intercourse without consent, we would willingly do so. The business of the courts, however, is to interpret statutes, not to rewrite them, nor to insert words not put there by the legislature.

A copy of the Montana Supreme Court opinion is attached.

A number of states have broadened their definitions of force or coercion to include a threat of retaliatory action, a threat to harm a third person, or to commit a criminal act against the victim in the future. Included within this list are the states of Virginia, New Hampshire, New Mexico, Rhode Island, California, Minnesota and New York.

The Women's Law Section of the State Bar of Montana believes that HB 113 offers to Montana's citizens the best of the criminal law protections offered by all these states. We hope you agree, as we believe the citizens of this state do, that the type of behavior alleged in the Thompson case is rape, sexual intercourse without consent. The Women's Section of the State Bar of Montana wholeheartedly urges the passage of HB 113.



STATE REPORTER  
Box 749  
Helena, Montana 59624

VOLUME 47

No. 89-533

Ex 1  
1-25-91  
HB113

STATE OF MONTANA,

Plaintiff & Appellant,

v.

Submitted: Feb. 22, 1990  
Decided: May 24, 1990

GERALD ROY THOMPSON,

Defendant & Respondent.

CRIMINAL LAW, Sexual Intercourse Without Consent and Sexual Assault, Appeal by State from dismissal of Counts I and II for lack of probable cause in the supporting affidavit. The Supreme Court held:

1. The element of "without consent" is satisfied if submission of the victim is obtained either by force or by threat of imminent death, bodily injury, or kidnapping. No other circumstances relating to force or threat eliminate consent under the statute.

2. A threat that eventually leads to psychological impairment is not sufficient under the statute.

Appeal from the Tenth Judicial District Court, Judith Basin County, Hon. Peter J. Rapkoch, Judge

For Appellant: Mark Murphy, Assistant Attorney General, Helena  
Patti Powell, Assistant Attorney General, Helena  
Sarah Arnott, Judith Basin County Atty., Stanford

For Respondent: Torger Oaas, Attorney at Law, Lewistown

Submitted on briefs.

Opinion by Justice Sheehy; Chief Justice Turnage and Justices Harrison, Hunt and McDonough concur.

Affirmed.

\_\_\_\_ Mont. \_\_\_\_

\_\_\_\_ P.2d \_\_\_\_

State of Montana, Plaintiff and Appellant, v.  
Thompson, Defendant and Respondent  
47 St.Rep. 1065

Justice Sheehy delivered the Opinion of the Court.

On May 25, 1989, the defendant Gerald Roy Thompson was charged with two counts of sexual intercourse without consent and one count of sexual assault. Subsequently, Thompson moved to dismiss Counts I and II of the information, those counts charging defendant with sexual intercourse without consent. Thompson moved to dismiss Counts I and II of the information on the specific ground that the probable cause affidavit was insufficient. On September 1, 1989, the District Court, Tenth Judicial District, Judith Basin County, granted Thompson's motion and dismissed Counts I and II of the information for lack of probable cause in the supporting affidavit. The State now appeals the District Court. We affirm.

The State raised the following issue on appeal: Did the District Court err when it granted defendant's motion to dismiss Counts I and II of the information charging defendant with sexual intercourse without consent for failure to state offenses?

The defendant, Gerald Roy Thompson, the principal and boys basketball coach at Hobson High School, was accused of two counts of sexual intercourse without consent, and one count of sexual assault. This appeal only concerns the two counts of sexual intercourse without consent. The information, filed with the District Court, alleged the defendant committed the crime of sexual intercourse without consent, and stated the following:

"Count I

On or between September, 1986 and January, 1987 in Judith Basin County, Montana the defendant knowingly had sexual intercourse without consent with a person of the opposite sex; namely Jane Doe, by threatening Jane Doe that she would not graduate from high school and forced Jane Doe to engage in an act of oral sexual intercourse.

"Count II

On or between February, 1987 and June, 1987 in Judith Basin County, Montana the defendant knowingly had sexual intercourse without consent with a person of the opposite sex; namely Jane Doe, by threatening Jane Doe that she would not graduate from high school and forced Jane Doe to engage in act of oral sexual intercourse."

The affidavits filed in support of this information contained facts and allegations supporting the two counts of sexual intercourse without consent. In essence, they alleged that the threats "caused Jane Doe great psychological pain and fear."

The State contended that fear of the power of Thompson and his authority to keep her from graduating forced Jane Doe into silence until after she graduated from high school in June of 1987. On November 25, 1988, Jane Doe filed a letter with the Hobson School Board describing the activities against her by Thompson. After investigations by both the school board and the Judith Basin County prosecutor's office, the prosecutor filed an information on May 25, 1989. The information charged Thompson with two counts of sexual

1-25-91  
HB 113

State of Montana, Plaintiff and Appellant, v.  
Thompson, Defendant and Respondent  
47 St.Rep. 1065

intercourse without consent, both felonies in violation of sec. 45- 5-503, MCA, and with one count of attempted sexual assault, a felony.

Defendant filed a number of motions, requesting, among other things, a motion to dismiss Counts I and II of the information for lack of probable cause in the supporting affidavit. The District Court granted Thompson's motion, due to the fact the State failed to meet the element of "without consent" under sec. 45-5-501, MCA.

I

Did the District Court err when it granted defendant's motion to dismiss Counts I and II of the information charging defendant with sexual intercourse without consent for failure to state offenses?

We agree with the District Court that the facts in the information, in regards to Counts I and II, fail to state offenses. The code of criminal procedures requires that an affidavit be filed for application for leave to file an information. State v. Renz (Mont. 1981), 628 P.2d 644, 645. The affidavit must include sufficient facts to convince a judge that there is probable cause to believe the named defendant may have committed the crime described in the information. Section 46-11-201, MCA. If there is no probable cause, the District Court lacks jurisdiction to try the offense. State v. Davis (1984), 210 Mont. 28, 30, 681 P.2d 42, 43. This Court has held that a showing of mere probability that defendant committed the crime charged is sufficient for establishing probable cause to file a criminal charge. Judges, when receiving probable cause affidavits, should use their common sense in determining whether probable cause exists. Renz, 628 P.2d at 645; State v. Hamilton (1980), 185 Mont. 522, 532, 605 P.2d 1121, 1127, cert. denied 447 U.S. 924 (1980); State v. Miner (1976), 169 Mont. 260, 264, 546 P.2d 252, 255.

The allegations in the affidavit, however, do not indicate a probability that Thompson committed the crime of sexual intercourse without consent.

Thompson was charged with two counts of alleged sexual intercourse without consent under sec. 45-5-503, MCA. Section 45-5-503, MCA, states the following:

"A person who knowingly has sexual intercourse without consent with a person of the opposite sex commits the offense of sexual intercourse without consent . . ."

The phrase "without consent"--the key element of the crime--has a very specific definition in Montana's criminal code. This phrase is defined in sec. 45-5-501, MCA, which states in pertinent part:

"As used in 45-5-503 and 45-5-505, the term 'without consent' means:

"(i) the victim is compelled to submit by force or by threat of imminent death, bodily injury, or kidnapping to be inflicted on anyone; . . ."

State of Montana, Plaintiff and Appellant, v.  
Thompson, Defendant and Respondent  
47 St.Rep. 1065

[1] Section 45-5-501, MCA, makes it clear that the element of "without consent" is satisfied if submission of the victim is obtained either by force or by threat of imminent death, bodily injury, or kidnapping. No other circumstances relating to force or threat eliminate consent under the statute.

Thompson challenged the probable cause affidavit in the District Court, contending it failed to state any fact or circumstance showing that Jane Doe's submission to an alleged act of sexual intercourse was obtained by force or by any of the threats listed in sec. 45-5-501, MCA. In contrast, the State argues that Thompson's actions constitute sexual intercourse through force or threats. The District Court, in its opinion and order, agreed with Thompson's contentions, and found that the facts in the affidavit supporting the information failed to show the element of "without consent." In reaching this conclusion, the District Court first considered whether or not there were facts or circumstances in the probable cause affidavit to indicate that submission to the alleged act of sexual intercourse without consent was obtained "by force." In order to determine whether Thompson forced Jane Doe to submit to the sexual act, the District Court had to define the phrase "by force" since there is no definition contained in the Montana Criminal Code. The District Court in its order defined force as follows:

"The word 'force' is used in its ordinary and normal connotation: physical compulsion, the use or immediate threat of bodily harm, injury."

Next, the District Court examined the information and probable cause affidavit to determine if there were any facts or circumstances constituting force. The District Court found that "force was not alleged in the information nor in the affidavit in support of it."

In contrast, the State argues the District Court's definition of force is too limited. The State, relying on *Raines v. State* (Ga. 1989), 382 S.E.2d 738, 739, argues that intimidation and fear may constitute force. The State also contends that Thompson, in his position of authority as the principal, intimidated Jane Doe into the alleged acts. Furthermore, the State argues the fear and apprehension of Jane Doe show Thompson used force against her. We agree with the State that Thompson intimidated Jane Doe; however, we cannot stretch the definition of force to include intimidation, fear, or apprehension. Rather, we adopt the District Court's definition of force.

Other jurisdictions, such as California, have expanded the definition of force, beyond its physical connotation. *People v. Cicero* (1984), 157 Cal.App.3d 465, 204 Cal.Rptr. 582. The California Supreme Court adopted the following reasoning to expand the word force:

". . . the fundamental wrong at which the law of rape is aimed is not the application of physical force that causes physical harm. Rather, the law of rape primarily guards the integrity of a woman's

State of Montana, Plaintiff and Appellant, v.  
Thompson, Defendant and Respondent  
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will and the privacy of her sexuality from an act of intercourse undertaken without her consent. Because the fundamental wrong is the violation of a woman's will and sexuality, the law of rape does not require that 'force' cause physical harm. Rather, in this scenario, 'force' plays merely a supporting evidentiary role, as necessary only to ensure an act of intercourse has been undertaken against a victim's will."

Cicero, 204 Cal.Rptr. at 590.

The California Supreme Court's definition of the word force is too broad under Montana's definition of the crime. Until the legislature adopts a definition for the word "force", we must adopt the ordinary and normal definition of the word "force" as set forth by the District Court.

[2] The State in its information and accompanying affidavit complain that Thompson deprived Jane Doe of consent to the sexual act by threatening that he would prevent her from graduating from high school. The threat required in sec. 45-5-501, MCA, is a "threat of imminent death, bodily injury, or kidnapping to be inflicted on anyone . . ." The District Court found that something more than a threat is necessary to satisfy the statutory requirement. A threat one will not graduate from high school is not one of the threats listed under sec. 45-5-501, MCA. The State argues that the definition "threat of bodily injury" includes psychological impairment. Unfortunately, the statute sets forth bodily injury, not psychological impairment. A threat that eventually leads to psychological impairment is not sufficient under the statute. The statute only addresses the results of three specific kinds of threats, and psychological impairment is not one of them.

The State urges this Court to adopt the definitions of threat set forth in sec. 45-2-101(68), MCA. Section 45-2-101(68), MCA, has no application in regard to the crime of sexual intercourse without consent. Section 45-5-501, MCA, plainly and succinctly lays out the types of threats necessary to make the victim act "without consent."

Under sec. 45-5-501, MCA, the threat also must be of "imminent death, bodily injury, or kidnapping." Thompson's threats cannot be considered imminent. The alleged sexual act and threat occurred in December of 1986. Jane Doe graduated from Hobson High School in June of 1987. Clearly, Thompson's alleged threats were not imminent.

Peppered throughout the State's brief is the contention that "under Montana law the issue of consent is a fact question, and therefore a question for the jury to decide." The State is correct, the jury is the proper trier of facts in regard to issues such as consent. However, in this case, the State's information and probable cause affidavit have failed to set forth any facts or circumstance to show that the alleged act of sexual intercourse were within the statute defining the elements of the crime. So, the issue in this case is not whether the jury was denied its role as trier of the facts, but whether the State sufficiently set forth facts or circumstances to show the element of "without consent." The court properly granted

State of Montana, Plaintiff and Appellant, v.  
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defendant's motion to dismiss for lack of probable cause.

This case is one of considerable difficulty for us, as indeed it must have been for the District Court judge. The alleged facts, if true, show disgusting acts of taking advantage of a young person by an adult who occupied a position of authority over the young person. If we could rewrite the statutes to define the alleged acts here as sexual intercourse without consent, we would willingly do so. The business of courts, however, is to interpret statutes, not to rewrite them, nor to insert words not put there by the legislature. With a good deal of reluctance, and with strong condemnation of the alleged acts, we affirm the District Court.

# MONTANA WOMEN'S LOBBY

P.O. Box 1099

Helena, MT 59624

406/449-7917

EX. 1A

1/25/91

HB 113

HOUSE BILL 113

RECOMMEND: DO PASS

1/25/91

Mr. Chairman, members of the Committee, my name is Diane Sands, Executive Director of the Montana Women's Lobby. We rise in support of HB 113.

The technical provisions of this bill have been addressed by those who have gone before me. This needed addition to the definition of "force" is one of several changes in the Sexual Crimes section of MCA that the Montana Women's Lobby will be supporting this session. We urge adoption of HB113 on behalf of 2 of our constituencies. First, the rape crisis programs across the state that provide services to victims. Secondly, we urge adoption on behalf of the victims of sexual crimes. One in three women and one in five men are victims of a sexual assault during their lifetime. I wish I could tell you that passing this law will change those statistics, but it will not. What it will do, however, is expand the likelihood that a few more perpetrators will be brought to justice. That end result is a worthy one. We urge your support of HB 113.

EX 1B  
1-25-91  
SB 14D

### Worth the Risk? Not on your life!

Do abusers take steroids in the face of such danger because they work? Are they effective? Strangely enough there is little medical evidence to support such a notion. Much of the increase in overall mass may be merely water and salt retention, a direct result of steroid abuse. Most medical studies conclude that steroids increase mass and strength only in persons who are already weight-trained and who continue intensive training while maintaining high protein, high calorie diets. Very possibly, the physical edge that the athlete may enjoy might have been achieved without any drugs at all.

**One thing is certain, the positive effects steroids *might* provide don't begin to measure up to the negative effects they produce.**

It must be admitted that steroid users have successfully enhanced their outer image or the drugs would not be selling. But few of these egotists would ever admit to side effects such as sexual dysfunction and other personal problems. Male users of steroids find that use of the drug often shuts down glandular production of testosterone resulting in the development of female characteristics. Steroids are also known to stunt bone growth in younger users. Psychological addiction is also a major problem. The insecurity that motivates someone to use steroids won't let them stop. The end result? A user becomes a loser.



AIM HIGHER  
MONTANA HIGH SCHOOL ASSOCIATION  
1 South Dakota  
Helena, MT 59601  
442-6010

TANE PRODUCTIONS  
TEXAS ALCOHOL, NARCOTICS EDUCATION, INC.  
1000 Broadway Street • Dallas, Texas 75210 • 214-752-7575

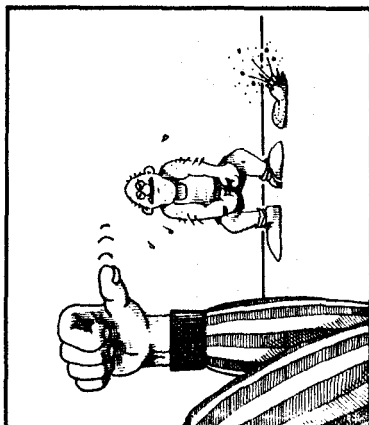
# SUBSTANCE ABUSE

### Steroid Abuse Prevention

- Educate all young people concerning the long-term dangers of steroid abuse. Use factual and explicit materials to communicate the dangers. Let youth know that you are aware of the signs of abuse.
- Emphasize the uniqueness and talents of every individual. Offset media emphases on physical perfection and strength as the main criteria for acceptance or success with high praise for non-physical achievements.
- Inform athletes of school and civil penalties for steroid use or sale and the effectiveness of drug testing procedures in detection.
- Establish parent information groups to share information with parents of athletes. Coaches must clearly state their no-use position on steroids to parents and athletes.
- Provide alternative methods of strengthening the body and mind for competition. Consider the nutritional, psychological and mechanical areas of training along with the physical.
- Watch for signs of obsession with strength or a feeling of inadequacy due to physical weakness in children and teens.
- Consider medical attention for late-maturing males to avoid self-treatment by steroids.
- Encourage the de-emphasis of a "winning at all costs" attitude in all little league sports and a renewed emphasis on the joy of play and the pleasure of healthy competition.

### Place Your Praise Carefully

No arena in our society receives the level of praise and acclaim that sports figures experience. From the grade school to the professional levels the adoration bestowed upon successful athletes is unrivaled. Our society must give attention to the impact of such selective praise. Concerned educators and parents must actively pursue equal praise and acknowledgement of youth for mental as well as physical accomplishments. Steroid abuse begins with a distorted concept of acceptance that can be controlled by parents and leaders of youth.



**Roid Rage**

Many a steroid abuser has spent a portion of a game in the locker room after being ejected because of unsportsmanlike conduct. Reports of users physically abusing someone for the slightest reason are not uncommon. Smashing windshields, breaking windows, threatening all who inadvertently cross them — what's happening? It's called **'Roid Rage'**. Increased aggressiveness associated with steroid use often becomes uncontrollable. These explosions of rage often reduce the athlete's ability to function in contest situations or cause the fair-haired body builder to behave like the "Incredible Hulk."

**Steroids are better known for the destruction of relationships and weird behavior than for their positive contributions to athletics or health.**

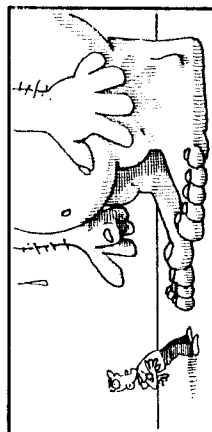
It is not surprising that the National Football League has introduced stiffer penalties for steroid abuse than for other illicit drugs such as cocaine and marijuana. The tragedy is that the athletes using steroids are not cheating others so much as they are cheating themselves.



There are a few legitimate uses for steroids in the medical field and they are administered under careful medical supervision. Of great concern is the fact that dosages for legitimate treatment are far less than the massive doses (up to 100 times the normal) administered by abusers. Additionally, abusers are known to "stack" their doses, by mixing steroids, in order to avoid detection and maximize effects. What are the side effects? Who knows?

**Medical authorities prohibit research to be done on a human at the levels many are using every day!**

Steroids come in elixir, tablet and injectable forms. While tablet form is the most used by young athletes, injection of steroids is a common method of major users. They are manufactured in the U.S. by dozens of pharmaceutical and veterinary drug companies. Due to recent tighter restrictions on distribution, most steroids being used today are black market varieties smuggled into the country or manufactured in illegal, clandestine labs. Most of these are marketed through mail-order schemes to targeted groups or, ironically, dispensed through fitness centers and health clubs which clearly focus on physical image rather than physical health. Availability is widespread to youth and adults.



### Human Growth Hormone (hGH) (Even Bigger Problems)

This relatively new phenomenon of introducing human growth hormone into the body to enhance size is extremely dangerous. At present the high cost and inaccessibility of these drugs has precluded any major risk. Illicit GH can be expected. Severe deformity (such as gigantism) and other physical problems are almost certain with abuse.

### Winner...Champion...Best...Greatest...

What athletes wouldn't like to know that those words apply to them? Some would do anything to see that they do...and "anything" often means anabolic steroids. The tragic stories of men, women, teens and even children whose lives have been wrecked by steroid abuse are beginning to multiply. The prospect of short-term "gain without pain" obscures the imminent probability of long-term health problems for those deceived. Seeking to expand their physical bodies, some blow their minds instead. Others who saw no immediate physical side effects are awakening to horrors of cancer, tumors and liver and heart trouble just a few years later. For still others, this hormonal manipulation leaves them with unsightly body spots, sexual dysfunction, genital abnormalities, baldness or picking up the pieces of a life destroyed by a temper out of control. Today's users are destined to be tomorrow's losers.

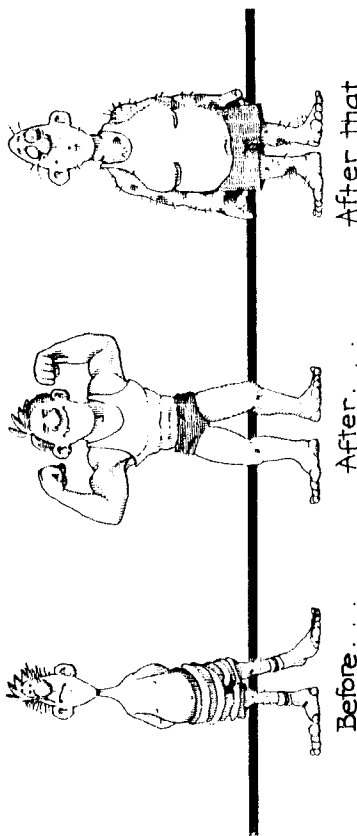
The focus of steroid abuse has been upon the athlete pressured to enhance his or her physical ability to maintain competitiveness. However, the pressure to be physically appealing has become another major factor encouraging steroid abuse. The picture of the bulky kicking sand in the wrestler's face sends the physically inferior of today to the medicine cabinet instead of the gym.

### Understanding Steroids

Androgenic-anabolic steroids are basically synthetic varieties of testosterone, a male sex hormone and a steroid. Androgenic refers to their masculinizing effect and anabolic to their ability to add muscular bulk. Attempts to reduce the androgenic effects and retain the anabolic have proven ineffective. The word steroid is now a metaphor for something that enhances mass and improved short-term performance at the expense of long-term improvement.

## Steroid Side Effects

Side effects from steroid abuse vary with the type of drug used, individual body chemistry, secondary chemicals involved (especially black market drugs) and amount consumed. The use of steroids will result in some combination of these side effects. Some side effects are reversible when early intervention occurs and use is completely stopped.



### General Side Effects

- Male pattern baldness (irreversible in women)
- Excessive body hair growth (irreversible in women)
- Stunted growth (especially in teen abusers)
- Blurred vision and light-headedness
- Muscle cramps and bone pain
- Stomach and abdominal cramps, chills, fever
- Diarrhea or other bowel problems
- Urinary problems (dark, frequent or difficult urination)
- Gall stones, kidney stones and disease
- Unusual weight changes (up or down)
- Eating compulsions, nausea or vomiting
- Skin disorders (acne, yellowing, edema, oily skin [females], rashes, hives)
- Calcium build up
- Chronic headache
- Breath odor or sore throat
- Purple or red spots on body, inside mouth or nose
- Inability to sleep or rest
- Unusual bleeding
- Swelling of lower limbs, feet

### Liver Side Effects

- Liver cancer, jaundice and tumors
- Polioes hepatitis (disease)

### Reproductive System Side Effects

- Genital atrophy (men)
- Genital swelling or pain
- Breast growth in men
- Breast cancer and atrophy in women
- Sexual dysfunction, sterility or impotence
- Prostate enlargement
- Menstrual problems
- Female fetal genital alteration

### Psychological Side Effects

- Hypoactivity, depression, listlessness
- Aggressive, combative behavior
- Hyperactivity
- Psychological dependence on drug
- Personality changes

### Cardiovascular Side Effects

- Adverse changes in cholesterol count and type
- Heart disease, high blood pressure
- Septic and anaphylactic shock (needle related)
- Cardiovascular failure (death)

Ex. 1 B.  
1-25-91  
SB 140

SB 140  
STERIODS

FACTS:

\*\* STEROIDS ARE SYNTHETIC DRUGS SIMILAR TO THE MALE HORMONE TESTOSTERONE.

- THEY BOTH BUILD TISSUE AND MASCULINZINE

\*\* DESPITE TENDING TO MAKE MUSCLE GROW, THEY DO NOT EQUALLY INCREASE CONNECTIVE TENDONS AND LIGAMENTS RESULTING IN GREATER RISK OF INJURY.

- FOR ADOLESCENTS THIS IS ESPECIALLY HARMFUL SINCE THEY MAY CAUSE CLOSING OF THE GROWTH PLATE AT THE ENDS OF THE LONG BONES RESULTING IN PREMATURE STUNTING OF GROWTH.

- THEY RETARD THE HEALING PROCESS.

\*\* STEROIDS ARE ADDICTIVE AND CAUSE DEPENDENCY.

\*\* THERE ARE OVER 70 SIDE EFFECTS ASSOCIATED RANGING FROM LIVER CANCER TO ACNE. THEY ALSO CAUSE:

- MIND ALTERING AND MOOD ELEVATION OR DEPRESSION  
- DECREASE OR INCREASE SEX DRIVE  
- INCREASE AGGRESSIVE BEHAVIOR, EVEN PSYCHOTIC EPISODES  
- EFFECTS MAY NOT BE REVERSIBLE AFTER USE STOPS

\*\* SOME EFFECTS:

- EARLY BALDNESS  
- LIVER CANCER  
- CHRONIC HEPATITIS  
- HEART ATTACK  
- CARDIOVASCULAR DISORDER  
- STROKE  
- ENLARGED HEART  
- DAMAGED KIDNEY FUNCTION  
- STERILITY IN MALES  
- IRREGULAR OR CEASED MENSTRUATION

\*\* STEROIDS ARE A TARGET DRUG UNDER THE DRUG FREE SCHOOLS AND COMMUNITIES ACT

Exhibit #2  
SA 2  
1-25-91



Great Falls Tribune  
Sunday, December 2, 1990

# Metro/Montana

## Will Crum finally be vindicated?

HELENA — Montana lawmakers will soon be asked to right a 72-year-old wrong.

The man who was wronged was Charles L. Crum. He was known as a good lawyer and district judge in southeastern Montana, but his professional and personal life was destroyed when he was impeached by the Montana Senate in 1918.

Crum's sin? He defended Germany during World War I.

The case represents a dark chapter in Montana history. But relatives and others hope to give the story a happier ending by persuading the Senate to wipe the impeachment from state records.

"It's kind of a thought that he'd sleep better knowing this happened," said Darwin Crum, the judge's grandson and an electrical engineer in Schaumburg, Ill. "He certainly was a victim of the times."

Indeed, Montana was gripped in those days by a "peculiar kind of war hysteria," according to Dave Walter, the Montana Historical Society research director who recently told Crum's tale in a fascinating "Montana" magazine article.

"The fervor with which many Montanans supported German-bashing on the home front, in the name of the American war effort, remains difficult to believe," Walter said.

Councils of defense were created to harass citizens considered pro-German or slackers in the war effort. German

books were burned. A German Mennonite minister was almost hanged for his pacifist beliefs. And many Montanans were forced to go before public meetings to document their patriotism by reciting the Pledge of Allegiance or kissing the flag, Walter said.

Crum, who lived in Forsyth, was elected a judge in 1912 and 1916. Besides being active in political circles, he had to raise five young children on his own because his wife died in 1910.

He had a good reputation. The Forsyth newspaper once said no judge had attained a "more enviable record." But Crum's reputation became tarnished as the war fervor built.

With his German ancestry, Crum angered some folks by speaking out against the war. He also made enemies by releasing from jail three reputed members of the radical Industrial Workers of the World. Rosebud County Attorney Felkner Haynes had no evidence that the three had broken any laws but just felt they were "bad actors," according to Walter.



**Steve Shirley**  
Shirley is a Tribune  
Capitol Bureau  
reporter.

Even some of Crum's neighbors wanted him to resign. But they had to postpone delivering their demand in person because Crum was at a Miles City hospital with a son who was dying of cancer.

Haynes campaigned to remove Crum from office, and at one point they met unexpectedly at the state Capitol. Crum drew a pistol. He said he did so to stop Haynes from assaulting him.

Later, Haynes presented then-Gov. Sam Stewart with affidavits alleging Crum had made pro-German statements. Stewart sent the documents to the House, which prepared articles of impeachment.

With the political pressure growing and his son's illness, Crum suffered a nervous breakdown.

Three lawyers volunteered to defend him. After measuring the mood of the Senate and considering Crum's health, they suggested he resign to head off the proceedings. Stewart had promised to recommend suspension of the Senate trial, so Crum stepped down.

Thinking the issue was dead, Crum left Montana on his doctor's advice to get some rest.

But Stewart reneged on his promise and the impeachment process went ahead. The House declared a trial would "exert a wholesome effect in stamping out German propagandists."

There was no one to defend Crum against the charges, and the senators refused to appoint anyone to quiz witnesses on his behalf.

"What followed was a charade, a litany of hearsay and circumstantial evidence, interspersed with posturing by the interrogating House managers and by some vehement senators," Walter said.

Crum was found guilty. This, combined with passage of the Montana Sedition Act the same year, served notice that Montanans' free-speech rights were suspended "until further notice," Walter said.

Crum never recovered. "The balance of his life (almost 30 years) constituted a long, slow slide into bitterness and alcoholism," Walter said.

Soon after the impeachment, Crum started to build a law practice and run for public office in North Dakota, but American Legion members found out about his impeachment and forced him to leave town. He lived with family members for several years, and died in 1948 in Kansas of diabetes.

Darwin Crum always knew there was some black mark on his grandfather's record but never knew quite what it was until recently. Darwin's father never had a chance to explain it before he died, and his mother had little good to say about the former judge because of his drinking problems.

But several years ago, one of Darwin Crum's nieces came across the judge's story while doing research for a school project in North Dakota. She sent Darwin the information, and he tried to dig up more by writing the Historical Society.

Walter, who ended up with the letter, had wanted to write about Crum's case for 20 years. But he couldn't trace Crum after he left Montana. By comparing notes with Darwin Crum, he was able to piece together the full story.

Darwin then wondered if it would be possible to get the impeachment action reversed, and Walter got the ball rolling by asking Sen. Harry Fritz, D-Missoula, to sponsor the effort.

Fritz, a history professor at the University of Montana who was familiar with the Crum case, was happy to help. "I think it's an opportunity to raise the issue of civil liberties in war time," he said.

For Darwin Crum, who hopes to visit the legislative session when the issue is debated, the resolution is a chance to fulfill his grandfather's dream.

The year after he was impeached, Crum said in an interview that the passage of time would vindicate his position. "I feel sure that, at some future time, the right-thinking people of the state of Montana will undo the wrong that has been inflicted upon me," he said.

After 72 years, it seems the time has finally come.

Exhib. #3  
SR-2  
1-25-91

CHARLES L. CRUM CHRONOLOGY

INTERNATIONAL, NATIONAL, STATE, LOCAL EVENTS

PERSONAL/FAMILY EVENTS

January 9, 1874: CLC born in Underwood, Indiana

1884: Crum family moves to Wilmot, Kansas; CLC attends local schools

1894: CLC becomes court reporter in El Reno, Oklahoma; reads law; admitted to bar

1896: CLC marries Jessie Mitts

1897: C. Liebert Crum (II) born in Oklahoma

1901: CLC elected to Oklahoma judgeship

1902: CLC files on Oklahoma homestead; relinquishes it

1902: Claude ("C.T.") born in Oklahoma

1905: Maurice J. born in Oklahoma

August 6, 1906: family moves to Montana; CLC files on homestead in Rosebud County, near Sanders

October, 1906: Dorothy J. born

1908: CLC receives patent for homestead

1909: family moves to Forsyth

February, 1909: Frank J. born

May, 1910: Jessie dies

November, 1910: CLC elected (R) Rosebud County Attorney

November, 1912: CLC elected (R) judge of 13th Judicial District

August 1, 1914: European war engaged

August 4, 1914: U.S. declares neutrality

May 7, 1915: Lusitania sinks after German attack

March 15, 1916: Pershing on Mexican campaign vs. Villa

November, 1916: CLC runs unopposed (R); is reelected judge of the 15th Judicial District

April 6, 1917: U.S. declares war on Germany

September 13, 1917: CLC comforts 3 Red Lodge IWWs (Childs, Parsons, Bennett) held on charges in the Rosebud County Jail

September 17, 1917: CLC makes "Americanism" speech in Holtz trial

January 30, 1918: Ves Hall case heard by Judge Bourquin in Helena; incident with Felkner Haynes

February/March, 1918: Claude in Miles City hospital with cancer

February 2, 1918: "Committee of 100" meets in Forsyth; CLC interrogated

February 9, 1918: group supporting CLC meets in Roundup

February 14-25, 1918: Extraordinary session of the 15th Legislature meets to handle war issues

February 21, 1918: Haynes delivers impeachment affidavits to Governor Stewart, who forwards them to the House

February 25, 1918: House produces Articles of Impeachment against CLC; Haynes leaves Montana

February 28, 1918: Articles of Impeachment served on CLC at Claude's bedside in Miles City

March 3, 1918: CLC suffers nervous breakdown; confined  
to Miles City hospital

March 10, 1918: CLC's resignation from the bench  
received by Governor Stewart; CLC leaves Montana

March 20-22, 1918: Impeachment trial of CLC in Senate; CLC impeached

April 18, 1918: Claude dies of cancer in Forsyth; CLC  
returns to Montana temporarily

November 11, 1918: World War I ends

January, 1919: CLC returns to Forsyth temporarily

August, 1919: CLC relocates family in Center, North Dakota

July, 1920: CLC runs as a Non-Partisan League candidate  
for the N.D. Legislature

September, 1920: CLC withdraws from politics and relocates  
family in Mandan, N.D.

ca. 1940/1942: CLC retires from law practice in N.D. and  
moves to California

1945: CLC moves to his sister's place in Wilmot, Kansas

March 21, 1948: CLC dies in Wilmot, Kansas

Exhibit #4  
SR2  
25 Jan 91

David A. Walter, Montana Historical Society

TESTIMONY before the Senate Judiciary Committee, January 25, 1991

Re.: SR2--A Resolution to Exonerate Judge Charles Liebert Crum

Mr. Chairman, Members of the Committee:

My name is Dave Walter. I have been a practicing Montana historian for 25 years and have been employed as a historian by the Montana Historical Society for the past 12 years. For the last 15 years, I have published Montana-history articles in a number of periodicals, including an 8-year series of Montana-history pieces <sup>in</sup> ~~the~~ MONTANA MAGAZINE.

With the indispensable help of Judge Charles Crum's grandchildren, I have researched the case and authored the Crum article that appears in the November/December issue of MONTANA MAGAZINE--copies of which you have received. The specifics of the issue you are considering are contained in that article--and summarized in the excellent column written by Steve Shirley in the December 2, 1990, issue of the GREAT FALLS TRIBUNE. For that reason, I would like only to summarize the circumstances under which Judge Crum was impeached by the Senate of the 15th Legislative Assembly in March of 1918.

Charles Liebert Crum arrived in Montana in 1906 to homestead near Sanders, in what was then Rosebud County. He was 32 years old and the father of three small children. Crum had left a judgeship in Oklahoma to come to Montana because of his young wife Jessie's ill health. Although he received patent for his homestead in 1908, Jessie's health deteriorated

Ex. 4  
JR 2  
1-25-91

TESTIMONY: 2

Dave Walter

further, and he moved the family to Forsyth, where he opened a law office. Because of Crum's intellect and abilities, he rapidly developed a successful practice, and he was elected Rosebud County Attorney in 1910.

After Jessie's death in 1910, Charles Crum raised his four surviving sons and one daughter with only the help of his housekeeper. His reputation as an astute attorney grew. Crum clearly was a man on the rise in the Yellowstone Valley. In 1912 he was elected to the bench of the 13th Judicial District—where he continued to establish an enviable record for dignity, integrity, and equity. That reputation was demonstrated in November, 1916, when Judge Crum ran for reelection, and no one would oppose him.

Charles Crum did develop, however, an obsessive interest in the war that had begun in Europe in 1914. He read vociferously on the subject and outspokenly argued the legalistic points involved in the entry of the United States into that conflict. He spoke loudly against U.S. entry, right up to the U.S. declaration of war on April 6, 1917. He then argued strongly the illegality of sending American draftees overseas.

As war hysteria and paranoia built in Montana during 1917, Judge Crum repeatedly took the unpopular position of protecting the Constitutional rights of those persons in his district charged with vague, "unAmerican" activities. For this reason he was branded "potentially pro-German" by the local Montana Council of Defense chapter and was brought before Forsyth's extra-legal "Committee of 100" to answer for his perceived sins. When Crum ignored the recommendation of this ad hoc proceeding to resign from the bench,



EX 4  
SR 2  
1-25-91

TESTIMONY: 3

Dave Walter

the Rosebud County Attorney solicited affidavits to document Judge Crum's alleged anti-American words and deeds. These affidavits he carried to Governor Samuel V. Stewart, who forwarded them to the House of the 15th Legislature, then sitting in extraordinary session in Helena. The House transmitted articles for the impeachment of Judge Crum to the Senate on February 25, 1918, and the trial was set for March 20.

Already under the pressure created by the war hysteria, Judge Crum then faced a personal crisis. His second son, 16-year-old Claude, had been stricken with cancer and hospitalized in Miles City. The judge spent every spare moment between court sessions at Claude's bedside. It was there that the Articles of Impeachment were served on him.

Under this stress, Crum suffered a nervous breakdown and was confined to a bed in the same Miles City hospital. Here he conferred with his volunteer defense team--consisting of Judge O. Fletcher Goddard of Billings, and Judge Charles H. Loud and Sharpless Walker of Miles City. After much argument, they convinced Crum that only his resignation from the bench would preserve his health, so he could comfort Claude. Judge Goddard arranged the resignation with Governor Stewart, who agreed to halt the impeachment process. On the advice of his doctor, Crum then left Montana to escape the pressure of publicity.

But the impeachment was not quashed, and the Senate began the trial on March 20, 1918. Charles Crum was not present to defend himself; Crum's defense team was not present to defend him. The Senate defeated a motion

Ex. 4  
SP2  
1-25-91

TESTIMONY: 4

Dave Walter

by Flathead County's eminent ~~Don't~~ Fred Whiteside to appoint some attorneys to cross-examine the witnesses in Crum's behalf. What followed was a three-day charade, in which witnesses levelled unsubstantiated charges against Crum, and the House managers badgered anyone who tried to speak in Crum's favor. Fred Whiteside commented, for the record: "Certainly 90 per cent of the testimony that has been introduced here has been hearsay and irrelevant testimony." Yet, the outcome never was in doubt. On March 22, 1918, the Senate found Judge Crum guilty of all six articles of impeachment, removed him from the bench, and banned him from thereafter holding public office in Montana. Charles Liebert Crum was 44 years old at the time of his impeachment.

Crum returned to Forsyth in April of 1918 to bury his son Claude. In 1919 he moved his family to North Dakota and attempted to rebuild his life and career. But, when he ran for the North Dakota legislature in 1920, Crum's Forsyth enemies sent his opponent a copy of the Senate <sup>impeachment</sup> proceedings, and Crum withdrew from the race. Thereafter Charles Crum retreated to a low-profile, undistinguished law career in Mandan and Bismarck. He died in Kansas in 1948--a man whose spirit had been broken and whose life had been ruined by the Montana impeachment 30 years earlier.

In conclusion, I believe that the impeachment of Judge Charles Liebert Crum represents one of the darkest episodes in Montana's political history. Research into the historical record reveals that Charles Crum was a scapegoat--the victim of paranoia and intense war hysteria. It cost him his career, and his reputation, and his dreams. I encourage you to restore his honor.

EXHIBIT F  
25 Jan 91  
3R2

EXONERATION OF JUDGE CRUM, SR 2  
Senate Judiciary Committee  
January 25, 1991, 10 a.m.  
Comments of Beth Baker, Department of Justice

It is with some irony that this matter is being considered when we again are stirred by the passions of war. We may at times find it difficult to reconcile our own feelings between patriotism and loyalty to our country on the one hand, and fear of war and suffering on the other. Judge Crum was not afraid to express his apprehension of war, his questioning of government policy. As an individualist, he stood for the values on which we as Montanans pride ourselves-- independence, freedom, liberty-- yet he was castigated for bringing these values to life.

Judge Crum, led to believe his resignation would satisfy his accusers and that the impeachment charges would be withdrawn, stepped down from the bench and left the state on advice of his doctor. Yet the Senate held the trial in his absence and refused to afford him even a modicum of due process. Judge Crum was unrepresented during the entire trial and no witnesses were questioned on his behalf. This tragic story illustrates the danger of acting on a wave of pure emotion instead of pursuing the search for truth, and reminds us that opportunity for personal gain should never overshadow the simple dignity and respect we owe to each other as fellow human beings.

I would like to quote a former United States Supreme Court justice who was a champion of the right of freedom of speech:

Free speech has occupied an exalted position because of the high service it has given our society. Its protection is essential to the very existence of a

Ex. 5  
1-25-91  
SR2

democracy. The airing of ideas releases pressures which otherwise might become destructive. When ideas compete in the market for acceptance, full and free discussion exposes the false and they gain few adherents. Full and free discussion even of ideas we hate encourages the testing of our own prejudices and preconceptions. Full and free discussion keeps a society from becoming stagnant and unprepared for the stresses and strains that work to tear all civilizations apart. Full and free discussion has indeed been the first article of our faith.

The exoneration of Judge Crum is long overdue, and I urge the committee to give its strong support to this resolution.

Exhibit #6  
25 Jan 91  
SR 2

MR. CHAIRMAN. HONORABLE STATES ATTORNEY. DISTINGUISHED SENATORS, PROFESSOR RUADER, LADIES AND GENTLEMEN. THANK YOU FOR ALLOWING ME TO SPEAK. I WILL BE BRIEF.

I MUST CONFESS THAT UNTIL MR. WALTER'S RESEARCH ON MY GRANDFATHER, THE OLD MAN WAS A RATHER SHADOWY FIGURE IN OUR FAMILY'S HISTORY. I WAS QUITE YOUNG WHEN I LAST SAW HIM ... AT MY FATHERS FUNERAL.

MY MOTHER, WHO APPARENTLY KNEW SOMETHING OF THE JUDGES IMPEACHMENT, WAS A VERY PROUD WOMAN. I'M SURE THAT TO HER...THE DISGRACE THAT HER FATHER IN-LAW HAD ENDURED WAS A SHADOW ON THE FAMILY. AS A RESULT, SHE NEVER SPOKE OF HIM. I GREW UP KNOWING THAT THERE WAS SOME SORT OF A CLOUD OVER MY GRANDFATHER, BUT WHAT IT WAS WAS A MYSTERY.

HAVING A JUDGE ON THE FAMILY TREE IS A NICE THING. HAVING A JUDGE WHO WAS IMPEACHED AND ESSENTIALLY RUN OUT OF A STATE IS NOT SOMETHING ONE BRAGS ABOUT.

I CONFESS. I CARRIED ON THE PRACTICE OF MY MOTHER BY RARELY MENTIONING THE JUDGE TO MY CHILDREN. I DIDN'T KNOW WHAT HAD HAPPENED TO HIM. BUT I KNEW THAT IT WAS SOMETHING BAD.

I HAVE NOW CHANGED THAT. SINCE THE BEGINNING OF MY WORK WITH MR. WALTER. I HAVE SENT COPIES OF MUCH OF THE RECORD TO MY KIDS. THEY ARE FASCINATED. AND I AM HAPPY TO SAY A BIT PROUD. IT HAS BEEN A PLEASANT EXPERIENCE FOR ME.

IN HIS FINAL DAYS. THE JUDGE WAS AN ALCOHOLIC. I CAN REMEMBER HIM BEING HELPED TO HIS ROOM BY MY GRIM FACED FATHER WHO WOULD MAKE THE EXCUSE THAT THE OLD MAN WAS "SICK". IN RETROSPECT, I BELIEVE HE WAS SICK. I BELIEVE HE WAS SICK IN HEART AND SOUL ABOUT A LIFE DESTROYED, AND A DREAM DENIED.

THERE IS NO DOUBT IN MY MIND THAT THE IMPEACHMENT DESTROYED THE MAN. JUDGE CRUM WENT FROM A PROMINENT AND RESPECTED JUDGE TO A DISGRACED OUTCAST ALMOST OVERNIGHT, WITHOUT HIS KNOWLEDGE, AND WITHOUT AN OPPORTUNITY TO DEFEND HIMSELF.

AFTER READING THE MANY REFERENCES THAT MR. WALTER SENT TO ME DURING HIS WORK ON THE ARTICLE, I BEGAN TO FORM A DIFFERENT, AND CLEARER PICTURE OF JUDGE CRUM. INSTEAD OF THE RATHER CANTANKEROUS OLD DRUNK, HE BEGAN TO EMERGE AS A MAN OF CONSIDERABLE INTELLECT, AMBITION, COMPASSION, AND GREAT TRAGEDY. HE WAS A MAN WHO HAD PROBABLY ASPIRED TO HIGHER OFFICE AND HONOR ... HE WAS INSTEAD CONDEMNED TO SHAME AND ISOLATION.

AS A PASSING THOUGHT. PLEASE CONSIDER THAT IF THE IMPEACHMENT WHICH TOOK PLACE SEVENTY-TWO YEARS AGO IN THIS BUILDING HAD NOT OCCURRED. THE JUDGE WOULD HAVE REMAINED IN YOUR FAIR STATE AND PROSPERED, AND TODAY, MY SISTER AND I WOULD PROBABLY BE MONTANANS. I CAN'T SPEAK FOR HER ABOUT CALIFORNIA. BUT I WOULD MUCH PREFER MONTANA OVER ILLINOIS.

TO CONCLUDE, THE JUDGE EXPRESSED THE THOUGHT IN ONE OF HIS LAST PUBLIC STATEMENTS THAT HE WAS CONFIDENT THAT THE GOODNESS OF THE PEOPLE OF MONTANA WOULD SOMEDAY UNDO THE INJUSTICE HE HAD BEEN DEALT. I HOPE THAT TIME IS HERE.

MONTANA IS THE LAND OF THE BIG SKY. LET IT ~~BE~~ <sup>ALSO</sup> BE THE LAND OF THE BIG HEART, AND LET JUDGE CRUM SLEEP ~~HERE~~ WITH HIS HONOR RESTORED.

THANK YOU.



Jorseth, Mont  
Dec. 10, 1990

Sen. Harry Fritz  
Missoula, MT

Dear Senator Fritz:

Having personally known the  
Cum family & the injustices  
done to Judge Cum the article  
in Mont. Magazine for Nov. & Dec.  
will be placed in my keeps.

I'm interested in the resolution  
to be presented in Senate that  
will set aside the judgment  
against Judge Cum and secretly it  
will pass; and I hope a proper  
instrument will be filed in our  
Clerk of Courts office. Judge Cum  
was an honorable man.

I'm thankful to have lived to see  
this injustice taken care of and  
it will mean a great deal to the  
living Cum's. Should you write  
them - tell there is still one person  
in Jorseth that has cared all these  
years. Leiberband & I were in H S  
at same time.

Yours truly

Mignon Jansen

EXHIBIT "C"  
25 Jan 91  
HB 43

Amendments to House Bill No. 43  
Third Reading Copy (Blue)

Requested by Senator Mazurek  
For the Committee on Judiciary

Prepared by Valencia Lane  
January 24, 1991

1. Title, line 9.

Strike: "JOINDER OF"

Insert: "NOTICE, IN CERTAIN CASES, TO"

2. Page 1, line 18.

Strike: "(6)"

Insert: "(5)"

3. Page 1, line 23.

Following: "."

Insert: "The department of family services must be given notice of a petition for grandparent visitation regarding a child who is the subject of, or as to whom a disposition has been made during, an administrative or court proceeding under Title 41 or this title."

4. Page 2, lines 3 through 6.

Strike: subsection (3) in its entirety

Renumber: subsequent subsections

# WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Dated this 25 day of JANUARY, 1991.

Name: Darwin R. Crum

Address: 130 BRAINTREE CT  
SCHAUMBURG IL 60193

Telephone Number: (708) 529-0843

Representing whom?

Self

Appearing on which proposal?

SRZ

Do you: Support? ✓ Amend? \_\_\_\_\_ Oppose? \_\_\_\_\_

Comments:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY



DATE 25 January 91

COMMITTEE ON Senato Judiciary

# VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppos
REP Pavlovich	HD # 70	11	X	
DAN ANTONIETTI	USDL VETS	11	X	
TOM Pouliot	Veterans of Foreign Wars	11	X	
JOE BRAND	Self	11	X	
Wanda Buckford	Self	SB 140	X	
Ed Sheehy	Retired Fireman	11	X	
Dick Bauminger	DAV Dept of Mont.	11	X	
John MacKinnon	American Legion	11	X	
George O. Poston	United Veterans Com. of MT.	11	X	
John M. DENHERDER	Dept of MT Disabled American Veteran	11	X	
K. Ann Pfeiffer	State Women's Law Section, Bar	HB 113	X	
RICK BROWN	MT Board Vets Affairs	11	X	
Phyllis Sarks	MT. Women's Lobby	113	X	
Holly Franz	Women's Law Section of State Bar	113	X	
Beth Baker	Dept of Justice	SB 22	✓	
Jennie T. Landrum	Nat. Med. Assn	SB 140	✓	
Arnette C. C. C.	Self	113	✓	
Rich. M. C.	Dept Labor & Industry	HB 11	✓	
David A. H. H.	SB 7 -	SB 22	X	

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4. Page 2, lines 3 through 6.

Strike: subsection (3) in its entirety

Renumber: subsequent subsections

1 HOUSE BILL NO. 43  
2 INTRODUCED BY COBB

3 A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING--DISTRICT  
4 COURTS--TO--GRANT--VISITATION--RIGHTS--TO--THE--GRANDPARENTS--OF  
5 YOUTH--IN--NEED--OF--CARE--OR--SUPERVISION--BEHIND--YOUTH--AND  
6 YOUTH--WHOSE--PARENTS--PARENTAL--RIGHTS--HAVE--BEEN--TERMINATED--"  
7 TO CLARIFY THE EXTENT OF A GRANDPARENT'S RIGHT TO VISIT  
8 NOTICE, IN CERTAIN CASES, TO  
9 GRANDCHILDREN; TO PROVIDE FOR JOINER OF THE DEPARTMENT OF  
10 FAMILY SERVICES IN A PROCEEDING TO ESTABLISH VISITATION  
11 RIGHTS; AND AMENDING SECTION 40-9-102, MCA."

12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13 (Refer to Introduced Bill)

14 Strike everything after the enacting clause and insert:

15 Section 1. Section 40-9-102, MCA, is amended to read:

16 "40-9-102. Grandparent visitation rights. (1) Except as  
17 provided in subsection (5) <sup>(S)</sup>, the district court may grant  
18 to a grandparent of a child reasonable visitation rights,  
19 including but not limited to visitation rights regarding a  
20 child who is the subject of, or as to whom a disposition has  
21 been made during, an administrative or court proceeding  
22 under Title 41 or this title.<sup>5</sup>

23 (2) Visitation rights granted under this section may be  
24 granted only upon a finding by the court, after a hearing,  
25 the department of family services must be given

notice of a petition for  
grandparent visitation regarding a child who is the  
subject of, or as to whom a disposition has been made during,

1 that the visitation would be in the best interest of the  
2 child.

3 (3) If the department of family services has become  
4 involved with the child under any law of this state, it must  
5 be joined as a party under Rule 19(a), Montana Rules of  
6 Civil Procedure.

7 (4) No person may petition the court under this  
8 section more often than once every 2 years unless there has  
9 been a significant change in the circumstances of the child;  
10 the child's parent, guardian, or custodian; or the child's  
11 grandparent.

12 (5) The court may appoint an attorney to represent  
13 the interests of a child with respect to visitation when  
14 such interests are not adequately represented by the parties  
15 to the proceeding.

16 (6) This section does not apply if the child has  
17 been adopted by a person other than a stepparent or a  
18 grandparent. Visitation rights granted under this section  
19 terminate upon the adoption of the child by a person other  
20 than a stepparent or a grandparent."

-End-

THIRD READING

HB 43

-2-

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Dated this 25 day of JANUARY, 1991.

Name: Darwin R. Cruz

Address: 130 BRAINTREE CT  
SCITUAUMBURG IL 60193

Telephone Number: (708) 529-0843

## Representing whom?

SELF

Appearing on which proposal?

SR 2

Do you: Support?   i   Amend?            Oppose?           

Comments:

This image shows a single sheet of white paper with horizontal blue or grey ruling lines, typical of notebook paper. The lines are evenly spaced and run across the width of the page. There is a small dark speck near the top center of the page.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

Support	Oppos
---------	-------

(Please leave prepared statement with Secretary)