MINUTES

MONTANA SENATE
52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Dick Pinsoneault, on February 21, 1991, at 10:00 a.m.

ROLL CALL

Members Present:

Dick Pinsoneault, Chairman (D)
Robert Brown (R)
Bruce Crippen (R)
Steve Doherty (D)
Lorents Grosfield (R)
Mike Halligan (D)
John Harp (R)
Joseph Mazurek (D)
David Rye (R)
Paul Svrcek (D)
Thomas Towe (D)

Members Excused: Bill Yellowtail (D)

Staff Present: Valencia Lane (Legislative Council).

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

Announcements/Discussion:

HEARING ON SENATE BILL 432

Presentation and Opening Statement by Sponsor:

Senator Dick Pinsoneault, District 27, said SB 432 is co-sponsored by Representative Strizich (a probation officer), and was requested by the Department of Family Services (DFS). He advised the Committee that the bill contains two changes in aftercare treatment, and tries to be more definitive. Senator Pinsoneault stated DFS and the probation officers participated in drafting this bill.

Proponents' Testimony:

Ann Gilkey, Attorney, Department of Family Services, said the bill addresses problems with juvenile corrections. She explained that section 1, page 8, line 14 addresses who supervises and when; section 2, page 10, lines 13-22 address inappropriate placements to facilities via aftercare agreements.

Ms. Gilkey told the Committee the bill doesn't solve all of the problems, but is a great step forward.

Russell Osenbach, Juvenile Probation Officers Association, Jefferson County, said he is very much in favor of the bill, and that he worked with DFS in its drafting.

Randi Hood, Public Defender, Lewis and Clark County, said she favors the bill.

Opponents' Testimony:

There were no opponents of SB 432.

Questions From Committee Members:

There were no questions from the Committee

Closing by Sponsor:

Senator Pinsoneault reminded the Committee that the Legislature knew DFS was underfunded and understaffed when it was formed. He said there are only seven aftercare people in the state who must often carry up to 40 kids in their caseloads.

HEARING ON SENATE BILL 344

Presentation and Opening Statement by Sponsor:

Senator Dick Pinsoneault, District 27, said SB 344 articulates in the law what is already there. He advised the Committee that education is torn between what it can and cannot teach in the classroom concerning religious education. Senator Pinsoneault stated the bill says in unequivocal and clear terms that a victim may repel the imminent threat of sexual intercourse without consent, or deviate sexual conduct without consent, with force likely to cause death.

Proponents' Testimony:

Diane Sands, Montana Women's Lobby and related services organizations, said she did not support violence, but believes deadly force has a justifiable cause.

Opponents' Testimony:

There were no opponents of the bill.

Questions From Committee Members:

There were no questions from committee members.

Closing by Sponsor:

Senator Pinsoneault told the Committee he hoped he had not portrayed himself as a promoter of violence, and said he believes this legislation should be put in law.

HEARING ON SENATE BILL 342

Presentation and Opening Statement by Sponsor:

Senator Dick Pinsoneault, District 27, said the bill would allow a plaintiff to choose the place of trial for a tort action when none of the defendants are state residents, allowing a change of venue in any action involving the Federal Employers' Liability Act (FELA). He stated that forum non conveniens situations where out-of-state parties and out-of-state attorneys are using courts in Great Falls is not correct.

Proponents' Testimony:

Leo Berry, private practice attorney in Helena, provided lists of lawsuits filed by Montana residents against Burlington Northern Railroad Company and of plaintiffs who have brought suit against Burlington Northern in Montana wherein the incidents occurred in states other than Montana (Exhibits #1 and #2). He explained that this testimony also relates to HB 132.

Mr. Berry advised the Committee of a case where William Anderson in South Dakota originally filed in Nebraska where his case was dismissed and was refiled in Great Falls where the court denied a motion to dismiss. He told the Committee this case has not relation to Montana, and that these cases take up court time and resources to the cost of the state.

Mr. Berry stated that the bill, as written, applies to the Montana list of FELA cases, and that an asterisk before the name indicates the case is filed in state courts. He said all other cases are filed in federal court. Mr. Berry explained that the only thing the bill does is to allow the court to decide if this is the proper forum. He said the bill does not restrict ability to file these cases, and that the principles should apply to in-state, as well as out-of-state cases.

Randy Cox, Missoula attorney, told the Committee he has handled a number of FELA cases for Burlington Northern during the past several years. He said the problem is significant for taxpayers and the courts, and that the bill says the law for forum non conveniences applies to FELA as well as other cases. Mr. Cox explained that the plaintiff's counsel can file now wherever they choose, even if there is no connection at all.

Mr. Cox referred to the Dale Pennecard case, an injury near Whitefish with an attorney from Minneapolis, which was tried in Great Falls. He advised the Committee that the only Great Falls people were the judge, the jurors, the court reporter and the bailiff, and that everyone else was from Minneapolis or Kalispell or Whitefish.

Mr. Cox said the reason for filing in Great Falls is that is where the conventional wisdom is, and that area brings the highest monetary judgments. Mr. Cox advised the Committee of an attorney handling a Colorado accident who was considering filing in Montana. He asked why FELA cases should be treated differently from other cases.

Larry Fasbender, Cascade County, said he supports SB 342, as the county has a difficult problem raising revenue to fund its courts. He said the courts need to be allowed to make these decisions, and that it is obvious the decisions won't be based on the economics of the case. Mr. Fasbender commented that even a small reduction in cost to Cascade County courts would be a step in the right direction.

Opponents' Testimony:

Zander Blewett, Great Falls attorney, stated he wanted to offer an amendment to the bill . He said Burlington Northern wants this legislation applied to FELA injuries in Montana. He said he believes this bill is solely a railroad protection bill. Mr. Blewett advised the Committee that railroad workers have no workers' compensation and must rely on contributions of the railroads when they are injured. He added that if settlement cannot be achieved, injured workers must sue the railroads.

Mr. Blewett referred to legislation presented by Senator Brown in the 1989 Session. He said that in Howe v. Burlington Northern and Lay v. Burlington Northern, the Supreme Court decided that FELA is so important in protecting injured workers that it recognized open forum policy. He said the railroad doesn't like this because they want these cases heard in a railroad area. Mr. Blewett added that this will cost even more money. He advised the Committee that these cases are tried quickly and that the vast majority are settled without a trial.

Mr. Blewett told the Committee he does not believe this is a drain on Cascade County. He said the proposed amendment would allow the court to determine out-of-state jurisdiction, and asked the Committee to give the bill a do not pass recommendation.

Mike Sherwood, Montana Trial Lawyers Association, said he was "not in unanimous agreement with the amendments", and asked that the Committee "either adopt the amendments or not pass the bill".

James Mular, Chairman, State Railway Legislative Council, told the Committee he represents four railroad unions. He said he

believes the bill is another go-around of two years ago. Mr. Mular reported that FELA has had amendments in Congress to allow participation in the state workers' compensation program, and said FELA is uniform throughout the U.S. and should remain so. He advised the Committee to look at the merits of FELA, and said he didn't believe the reported burden to the courts since 80 percent of cases are settled out of court.

John W. Larson, Missoula Attorney, said he served as local counsel in some Great Falls cases. He said the bill refers to 25-2-201, MCA, and that he believes there is a crucial difference between a change of venue and a forum non conveniens. Mr. Larson advised the Committee that Senator Mazurek amended the venue statutes in 1985. He said a 1984 commission went through the history of this legislation to make venue statutes more coherent, "and now Burlington Northern is tinkering with that statute, using forum non conveniens as a smokescreen".

Mr. Larson told the Committee Burlington Northern will always argue cost and has always lost. He said the Supreme Court is the one to judge when there are too many cases, and that there are no prohibitions on forum non conveniens now. He added that he disagreed with Mr. Blewett's amendment.

Questions From Committee Members:

Senator Mazurek, referring to the out-of-state case list, asked why it was not appropriate to give these cases to Cascade County. John Larson replied he argued forum non conveniens last year in front of Judge Roth who didn't "buy it". He added that he has done this work for ten years, and that was only the second case in those ten years which was not tried in court. Mr. Larson said the courts should have jurisdiction.

Senator Towe asked Leo Berry how he would respond to this argument, and why the Legislature should even get involved. Mr. Berry replied that the Montana courts have declined to apply forum non conveniens. He read from the Judge Roth decision which said Burlington Northern is correct, but the Supreme Court has ruled it is not applicable to FELA cases. Mr. Berry said he would like the courts to have independent judgement to make these decisions, and that he didn't see a reason to limit them to out-of-state cases. Mr. Berry commented that this would be up to the Committee to decide.

Senator Crippen asked John Larson why Montana courts should spend Montana taxpayer dollars when all the people involved in these cases live outside the state and the accidents have happened outside the state. He said he did not understand this waste. John Larson replied that Burlington Northern always forgets the Montana Constitution. He said it is a sound constitution. He explained that one reason is the federal government established FELA, and the other is that some Burlington Northern workers used to be residents of Montana but were transferred by Burlington Northern.

Senator Crippen stated that an individual from New York state could apply in Montana under the constitutional right to Montanans. He said the courts look to the Legislature to set guidelines on venue and this is not decided by rule. He added that to say the Supreme Court should make this decision is not right. John Larson replied that forum non conveniens is a completely different matter. He said he believes that if the court saw it as a problem they would say so.

Senator Crippen stated that the Legislature determines law and the courts decide jurisdiction under that law. John Larson replied that forum non conveniens is a matter of equity.

Senator Doherty asked Randy Cox about forum non conveniens. Mr. Cox replied he did not believe costs are driven up by filing in Great Falls. He said Burlington Northern will make whatever motions in court that are appropriate under the law.

Closing by Sponsor:

Senator Pinsoneault commented that if these cases are being settled they can be settled in their respective counties. He told the Committee it makes common sense, and asked them to adopt the bill without the amendments.

HEARING ON SENATE BILL 337

Presentation and Opening Statement by Sponsor:

Senator Dave Rye, District 47, said SB 337 requires judges to inform juries that they have the right to judge the law as well as the facts. He said he believes most jurors are intimidated by the judicial process.

Proponents' Testimony:

Larry Dodge, Helmville, told the Committee he has represented this legislation around the U.S. He said he just heard on the radio of the release of several women from prison who had murdered their abusive husbands. Mr. Dodge stated he believes that fully informed juries might not have convicted some of these women. He further stated he believes justice is not always being done, and that Hank Risley, former warden at Montana State Prison, told him about half of the prison population does not belong there.

Mr. Dodge reported that SB 337 deals with the rights of people, and would provide accurate feedback from the public concerning laws, with a net result of more respect for the law. He said a lot of case law gets used in the courts, and is different from legislation. Mr. Dodge stated that juries can only comment on the law and decide to use or not to use it. He told the Committee he "did not know how to count the effects of Congress on the states with larger populations".

Mr. Dodge commented that he discussed changing language on page 2, line 7 of the bill, by inserting "the motives and...." after "consider".

Don Doig, Helmville, National Coordinator for a Fully Informed Jury. He said he believes SB 337 is the way to "shore up" the Bill of Rights in the Constitutions, and reported that it has broad spectrum support over the states and from leaders of political organizations (Exhibit #4). He said it has gone beyond being a special interest concern, and that he believes it will sweep the nation.

Mr. Doig stated this legislation has academic support from law professors, and that a University of Montana professor of constitutional law helped to write it. He advised the Committee that former judges from Washington and Arkansas support the bill, and Democrats and Republicans support it. He stated this is a traditional function of juries, and has been under attack the last 100 years. Mr. Doig said Maryland requires instructions to its juries, and that it is addressed in Article 2, Section 7 of the Montana Constitution.

Martin Beckman, told the Committee that six weeks ago a decision was made in U.S. v. Cheek. He said the right of a jury to veto a bad law is in the Magna Carta (1215) in England. Mr. Beckman advised the Committee that 42 times the people of England had to force its government back to the law, and 23 times it used force. He stated that, historically, when governments infringe on the power of juries, chaos is found.

Mr. Beckman further advised the Committee that the head of the jury that refused to convict William Penn was imprisoned for this act, and was later released by higher court. He reported that John Jay said he presumed juries were the best judge of facts and that courts were better judges of law. He told the Committee that in 1972, the U.S. Court of Appeals in Washington, D.C., decided that the jury has irreversible power (U.S. v. Doherty). Mr. Beckman stated he hoped that Montana would be the first state to pass this legislation, as he believes the people should lead legislation and not vice versa.

Roger Koopman, Bozeman, representing Montana Shooting Sports, and the Montana Fish and Game Association, read from prepared testimony in support of the bill (Exhibit #5).

Bob Davies, real estate and personnel businessman, Bozeman, stated his support of the bill (Exhibit #6).

John McGregor, Helena restaurant manager, stated his support of the bill (Exhibit #7).

Joe Jindrich, Missoula, told the Committee he was Montana Coordinator for this legislation during the initiative process

which received 70 to 80 percent support. He provided a copy of a law review article on Martel v. Montana Power Company (Exhibit #8).

Dorean Steffensen, Livingston, stated her support of the bill (Exhibit #9).

Opponents' Testimony:

Judy Browning, Deputy Attorney General, said SB 337 would allow a jury to make law, as it only takes one person to hold up a decision. She advised the Committee that juries go through a very deliberate process, and said she has served on four juries where at least one person disagreed with the law. Ms. Browning said she believes this legislation would result in disintegration of the jury process.

John Connor, Montana County Attorneys, told the Committee that even with the well-intended motives of the proponents, this bill does an incredible disservice to Montana. He said he has been practicing law for 20 years and has learned that the jury is comprised of 12 individuals. He advised the Committee he has been involved in selecting jury panels and tries to address equal application of the law. He said that if application is not equally made, it does not present a fair picture with the state or the defendant.

Mr. Connor stated that under this legislation he believes people would say that someone could not be found guilty because those people did not like the law, or that someone would be found guilty because the people did not like the person. He told the Committee that juries are fully informed of the law now, and that this legislation would allow juries to make moral or prejudicial determinations.

Mr. Connor stated that justice and equality are in the law, and that it has nothing to do with individual determination of what the law ought to be. He said article 2, section 24 of the Constitution guarantees impartiality, and that this legislation would result in a hung jury in virtually every case.

Gene Phillips, representing Jacqueline Terrell, Montana Association of Independent Insurance Agents, said the practical effect would be to create six- and twelve-man legislatures. He said he believes it is a bad bill and urged that it do not pass.

Denny Moreen, State Bar of Montana, said the bill sets up different classes of cases, as if there is no jury it doesn't apply. He said defendants might be in the position of giving up having a jury.

Questions From Committee Members:

Chairman Pinsoneault gave an example of a deliberate homicide with no mental capacity and asked if the jury could ignore the

instructions of the judge concerning mental capacity. Senator Rye replied he did not believe that would be the case. He said juries are concerned with justice.

Senator Crippen gave an example of two trials in different ares of the state, with identical issues and facts and law, but one jury acquits and one jury convicts and adds more. He asked where the guarantee of equal protection would be. Larry Dodge replied that the question implies there is inconsistency in juries. He said he had information showing juries to be extremely consistent, and that judges were more prone to be inconsistent.

Senator Crippen said he was concerned that without consistency there would be no fairness to the citizens of the state. Larry Dodge replied that jury instructions were routine from the 1700s through the 1800s and into the early 1900s, even in Montana.

Senator Crippen provided an example of spousal abuse where a jury makes a wrong decision and lets a defendant go even though the violation of the law is clear. Larry Dodge replied that someone would interpret the law, and that the defendant would be protected by the judge who, if he or she feels there is evidence that does not support the jury's decision, can override the jury. He said the defendant could also appeal a decision. He said the first responsibility is to decide if the defendant is guilty of breaking the law.

Closing by Sponsor:

Senator Rye stated this is the classic attorney/non-attorney confrontation, and used the example of the Pharisees in the New Testament.

HEARING ON SENATE BILL 392

Presentation and Opening Statement by Sponsor:

Senator Tom Keating, District 44, said the bill deals with access to birth an death certificates on record in counties. He said title people try to determine ownership of property and if someone in the chain of title dies without probate, clues concerning remaining family can be gained from these certificates. He said right now Clerks of Court deny this access.

Senator Keating advised the Committee that copies of certificates can be made if a direct and tangible interest is found. He said tangible interests are defined in the bill, and section 2 allows issues to be decided by the court. Senator Keating stated confidentiality of records is primary and that there are very few exceptions. He said birth certificates of babies of unwed mothers and death by AIDs are court-sealed records, and that language in the bill provides protection against misuse. He further stated that misuse would mean fines or jail.

Proponents' Testimony:

Steve Granzow, Pegasus Gold Corporation Resource Manager, said the bill would save time in searching for mineral heirs.

Opponents' Testimony:

Sam Sperry, Chief, Vital Statistics Bureau, Department of Health and Environmental Services, said the bill may jeopardize the right to privacy and that he believes there is an implied promise by the state to keep certain birth certificates confidential.

Questions From Committee Members:

Senator Mazurek said he was concerned about the bill as the law doesn't even allow an adopted youth to get a birth certificate without court approval. He asked if the language could be restricted to death certificates only. Senator Keating replied anyone can look at all but specially marked birth certificates now.

Senator Mazurek asked if the bill was designed to open up vital statistics for heirships. Senator Keating replied that death certificates are used most often and would accomplish about 80 percent of what the bill tries to do. He said he was willing to let go of birth certificate language.

Chairman Pinsoneault said he would be okay with death certificates being limited to title companies or attorneys.

Closing by Sponsor:

Senator Keating advised the Committee the bill was not designed to promote mischief, and asked for their support.

HEARING ON SENATE BILL 443

Presentation and Opening Statement by Sponsor:

Senator Tom Keating, District 44, said SB 443 was an attempt by the Department of Family Services (DFS) to treat families now and that the bill would revise laws relating to disposition of youth by the youth court. He explained there is an important amendment to correct drafting errors (Exhibit #10).

Proponents' Testimony:

Ann Gilkey, Attorney, DFS, read from a prepared statement in support of the bill (Exhibit #11). She said the amendments reinstate original language allowing DFS to continue to obtain federal money, and change "directed" to "recommended".

Opponents' Testimony:

Dick Meeker, Montana Juvenile Probation Officers, told the Committee that DFS would take over most of the activities of juvenile probation officers in its attempt to develop a community relationship, especially with regard to detention facilities. He said the bill appears to eliminate any community input, and that the judge has the authority to request that parents participate when a child requires treatment.

Mr. Meeker asked where the fiscal impact of the bill is explained. He advised the Committee that a house bill says DFS needs 100 social workers, and asked where the staff would come from to meet the requirements of this bill. Mr. Meeker said DFS staff are overworked and have large caseloads, and told the Committee that treatment is now sought for parents on a local level.

Mr. Meeker provided an example of a youth in need of treatment who sat from January 1, 1991 through February 12, 1991 in Riverdale in Butte, because decisions were not made in a timely manner by DFS.

Randi Hood, Public Defender, Lewis and Clark County, told the Committee she is in youth court two or three times each week. She said she believes appropriate decisions are made where the juvenile, the parents, and the attorney can be heard, and that this is not available through DFS. She stated that committees in Lewis and Clark County are advised by probation officers of facilities available which are usually pre-approved.

Randi Hood advised the Committee that they need to be aware that DFS is attempting to do away with youth placement facilities, and said she believes it is also an attempt to put youth placement with DFS where youths, their parents, and attorneys will not be heard. Ms. Hood said the youth courts and defense attorneys usually know a lot about these kids. She stated it is known that DFS is underfunded, but the issue is how to make the best placement for youths.

Ms. Hood said the state has an obligation to determine this process to carry it out, and said she strongly opposes the bill.

Russ Osenbach, Chief Juvenile Probation Officer, said he opposes the bill even with the amendments. He stated there is no way to make a solid recommendation when DFS does not know what is going on with youths.

Questions From Committee Members:

There were no questions from the Committee.

Closing by Sponsor:

Senator Keating stated DFS has reorganized somewhat and has established a mission of treatment of families. He said it seems were are some concerns, and that the problem is denial by parents as part of these situations. Senator Keating commented that he would leave the decision to the Committee.

EXECUTIVE ACTION ON SENATE BILL 442

Motion:

Senator Svrcek made a motion that SB 442 be TABLED. The motion carried unanimously.

EXECUTIVE ACTION ON SENATE BILL 410

Motion:

Senator Doherty made a motion that SB 410 be TABLED. The motion carried unanimously.

HEARING ON SENATE BILL 398

Presentation and Opening Statement by Sponsor:

Senator Towe said SB 398 provides that a minor convicted of unlawful possession of an intoxicating substance may be sentenced to perform court-ordered community service.

Proponents' Testimony:

Justice of the Peace Pedro Hernandez, Billings, representing the Montana Magistrates Association, stated his support of the bill.

Opponents' Testimony:

There were no opponents of SB 398.

Questions From Committee Members:

There were no questions from the Committee.

Closing by Sponsor:

Senator Towe made no closing comments.

EXECUTIVE ACTION ON SENATE BILL 398

Motion:

Senator Towe made a motion that SB 398 DO PASS. The motion carried unanimously.

ADJOURNMENT

Adjournment At: 12:30 p.m.

Senator Dick Pinsoneault, Chairman

Joann T. Bird, Secretary

DP/jtb

ROLL CALL

SENATE JUDICIARY COMMITTEE

52nd LEGISLATIVE SESSION -- 1991 Date 2/7/91

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.

SENATE STANDING COMMITTEE REPORT

February 21, 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration Senate Bill No. 398 (first reading copy -- white), respectfully report that Senate Bill No. 398 do pass.

Signed: Richard Pinsoneault

Richard Pinsoneault, Chairman

2-21-91
Amd. Coord.

2-21 1:25
Sec. of Senate

Exhibit 19
2-21-91
SB 432

DEPARTMENT OF FAMILY SERVICES

STAN STEPHENS, GOVERNOR

(406) 444-5900

STATE OF MONTANA

P.O. BOX 8005
HELENA, MONTANA 59604

February 20, 1991

TESTIMONY IN SUPPORT OF SB 432
"AN ACT TO CLARIFY THE RESPONSIBILITY OF DFS AND OF YOUTH PROBATION OFFICERS REGARDING THE SUPERVISION OF YOUTH IN PLACEMENT FACILITIES . . ."

Submitted by Ann Gilkey, Legal Counsel
Department of Family Services

The Department of Family Services requested SB 432 to address some specific problems that have haunted the juvenile corrections system for, at least, the past few years.

Section 1 of SB 432 addresses an apparent confusion in some judicial districts regarding who has supervisory responsibility for youth in need of supervision and delinquent youth who are placed in residential care other than Pine Hills or Mountain View Schools.

Existing law provides that the department supervise youth placed in either of the youth correctional facilities. Probation is to supervise youth placed in any other placement. Although this sounds clear, in practice this law is less than clear to all who attempt to interpret it. Section 1 will clarify that probation shall supervise all youth in need of supervision and delinquent youth who are not placed in either Mountain View or Pine Hills, regardless of who has custody of the youth or where the youth is placed. This section also clarifies what "supervision" entails.

(Briefly explain juvenile corrections system/roles responsibilities, etc.)

Section 2 addresses a second and possibly even more frustrating problem that the agency has encountered over the years. As the population at youth correctional facilities (specifically Pine Hills) continues to grow unchecked and there continues to be no alternative placements for youth who are having difficulty remaining in their communities, there also continues to be inappropriate placements of youth at the correctional facilities.

Many of the inappropriate placements are of youth who are primarily mentally ill, not primarily delinquent. When a youth in this population exhibits behaviors so outrageous as to require a mental health commitment, the institutions have been petitioning the court for a mental health commitment order and then discharging the youth from the correctional facility.

Ex 1a
2-21-91
SB 432

The problem of who is responsible for the mentally ill youth then arises. Probation is equipped to supervise youth in need of supervision (status offenders) and delinquent youth prior to their commitment to a youth correctional facility. Pine Hills and Mountain View staff supervise the youth while they reside in the correctional facilities. Aftercare is designed to supervise youth who have improved to the point where they can be returned to the community with minimal supervision and are consequently released from the correctional facility.

Mentally ill delinquent youth returning to their communities from a mental health facility via a youth correctional facility are not addressed by law. These kids fall into one of the proverbial "gaps in the system".

SB 432 takes the first step in addressing who will supervise these youth upon initial release from the correctional facility. The temporary aftercare agreement will ensure that if the youth runs from the mental health facility or is discharged directly into the community, DFS aftercare workers will have the legal authority to supervise the youth until the youth is returned to the committing court for further disposition, as is already provided by law. (Section 41-5-523 (1)(j), MCA)

The judge can then make a determination of whether the youth has been "cured" at the mental health facility and can return to the correctional facility, return to his community, or requires additional, alternative treatment.

SB 432 is a great, positive step toward addressing concerns that confront the Department of Family Services and the youth court on a regular basis. The Department encourages your careful consideration of SB 432 and solicits your support in making it law.

Ex. 1b
SB 344
2-21-91

WITNESS STATEMENT

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

Dated this 21 day of Feb, 1991.

Name: Stan Jones

Address: Women's Place

531 N. Orange

Telephone Number: 543-2606

Representing whom?

Women's Place

Appearing on which proposal?

SB 344

Do you: Support? X Amend?____ Oppose?____

Comments:

attached

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

Ex 1b
SB 344
2-21-91

WOMEN'S PLACE

Women working together to end domestic and sexual violence

February 20, 1991

TO: Senator Dick Pinsoneault

FROM: Star Jameson, Coordinator
Rape Prevention Services

Star Jameson

RE: Senate Bill 344

On behalf of thousands of rape victims who have survived, and hundreds who have not survived the violation of rape, I commend your efforts to decriminalize deadly force as a reasonable response to rape.

I am reminded of a crisis call I received at our agency 3 years ago from a truck driver who was frozen in anxiety in a phonebooth outside a truck stop in another state. He had been raped by three other truck drivers in a parking lot two months previous and was terrified that he might meet them again. They had used a knife and a chain to subdue him. Had he defended himself aggressively and used deadly force, most citizens and juries would have applauded his action. As it is, the offenders continue to offend.

Unfortunately a woman's aggressive response might not have been applauded. Femininity and self defense are mutually exclusive to most of our citizens. As I have learned during presentations to high school and university women, the idea of fighting back is very foreign. However, it should not also be a crime, in the event that it happens. Defense in the face of violation of one's body is a primal right. This must be acknowledged by law so that victims defending themselves are not revictimized by our judicial system.

Our society has placed a double bind on rape victims. Rape is the only crime of violence in which a victim is expected to resist, women who have not resisted have sometimes been criticized and have found their right to prosecution was jeopardized. Particularly in instances involving dangerous weapons or groups of men, most women believe they are confronting the realistic possibility of death, or at least the probability of serious physical injury. If aggressive self defense is effective in this scenario, it must be supported by the law.

Finally, the number of incidents of deadly force being used in a case of rape are very very few in this State. Considering that one rape occurs every 2 days, 22 hours in Montana (according to the Board of Crime Control), we can imagine this defense being used very rarely. Nonetheless, it must remain an option.

If I may be of further support regarding this bill, please contact me.

521 N. Orange Street • Missoula, Montana 59802 • 543-7606

SB344
2-21-91

WITNESS STATEMENT

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

Dated this 21 day of Feb, 1991.

Name: Diane Sands

Address: MT Women Lobby
PO Box 1099, Helena MT 59624

Telephone Number: 449-7917

Representing whom?
MT Women Lobby

Appearing on which proposal?
SB 344

Do you: Support? X Amend?____ Oppose?____

Comments:
Support ~~bill~~
allowable use of deadly force to repel rape

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

Exhibit #1
SB342
21 Feb 91

LAWSUITS FILED BY MONTANA RESIDENTS

AGAINST BURLINGTON NORTHERN RAILROAD COMPANY

FROM 1986 TO JANUARY 25, 1991

NOTE: * indicates filed in state court

PLAINTIFF & LAST KNOWN ADDRESS	ACC CITY	PLTF ATTY & ADDRESS	CITY FILED
OPEN			
Adsit, Douglas K. Glendive, MT	Glendive	Morrisard Firm Aurora, CO	Billings
*Amsk, David Livingston, MT	Laurel	Regnier Firm Great Falls, MT	Great Falls
*Anderson, Daniel J. Great Falls, MT	Great Falls	Regnier Firm Great Falls, MT	Great Falls
*Birch, Robert C. Columbia Falls, MT	Malta	Morrison Firm Havre, MT	Havre
*Blanchette, Jean Unknown	Nichols	Eckman Firm Minneapolis, MN	Great Falls
*Borst, Jerry L. Havre, MT	Havre	Yaeger Firm Minneapolis, MN	Great Falls
*Brakstad, John T. Great Falls, MT	Lewistown	Hoyt Firm Great Falls, MT	Great Falls
*Comer, Lloyd Glendive, MT	Glendive	Eckman Firm Minneapolis, MN	Great Falls
*Comer, Lloyd Glendive, MT	Glendive	Hoyt Firm Great Falls, MT	Great Falls
Cosgrove, Patrick Livingston, MT	Laurel	Herr Firm Lancaster, PA	Billings

Exhibit - 2
SB 342
2-21-91

LIST BY COURT

FOLLOWING IS A LIST OF PLAINTIFFS WHO HAVE BROUGHT SUIT AGAINST BURLINGTON NORTHERN IN THE STATE OF MONTANA WHEREIN THE INCIDENTS OCCURRED IN STATES OTHER THAN MONTANA. THIS LIST IS FOR ALL SUITS PENDING EFFECTIVE 12/4/90, AS WELL AS THOSE CLOSED 1/1/86 THROUGH 12/4/90.

CT = Court Filed In
C = State District Court
E = United States District Court
OP/CLS - Open or Closed
C/86 Closed in 1986, etc...

PLAINTIFF	ATTORNEYS	ACCIDENT LOCATION	SUIT CITY	CT	OP/CLS
William J. Anderson Star Route Hot Springs, SD 57747	Yaeger Firm Minneapolis, MN	Edgemont, SD	Great Falls	C	O
Dennis L. Belden 724 E. Loucks St. Sheridan, WY 82801	Eckman Firm Minneapolis, MN	Bill, WY	Great Falls	C	O
James D. Belden 515 King St. Sheridan, WY 82801	Eckman Firm Minneapolis, MN	Sheridan, WY	Great Falls	C	O
Wayne A. Berumen 711 West 51st St. Casper, WY 82601	Doshan Firm Minneapolis, MN	Nacco Junction, WY	Great Falls	C	O
Lloyd A. Brown 14 Timm Drive Sheridan, WY 82801	Doshan Firm Minneapolis, MN	Sheridan, WY	Great Falls	C	O
Patrick J. Cardinal 6924 N. Jefferson Spokane, WA 99208	Hoyt Firm Great Falls, MT	Kettle Falls, WA	Great Falls	C	C/89
Lloyd F. Comer Box 1075 Glendive, MT 59330	Hoyt Firm Great Falls, MT	Mandan, ND	Great Falls	C	O
Floyd H. Counts P.O. Box 896 Hemingford, NE 69348	Eckman Firm Minneapolis, MN	Alliance, NE	Great Falls	C	O
Ralph & Mary Jane Crisman Williston, ND	Bjella Firm Williston, ND	Fort Buford, ND	Great Falls	E	O
Randall K. Dickerson 547 Morehead St. Chadron, NE 69337	Eckman Firm Minneapolis, MN	Bill, WY	Great Falls	C	O

SB 342
2-21-91

WITNESS STATEMENT

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

Dated this 21st day of Feb, 1991.

Name: Zander Blewett

Address: 501 2nd Ave N. G F MT 59401

Telephone Number: 406 761-1960

Representing whom?

Self & Railroad Workers

Appearing on which proposal?

Senate Bill 342

Do you: Support?____ Amend? ✓ Oppose?____

Comments:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

SB 342
2-21-91

Proposed Amendments to SB 342
[redacted]

At Page 1, at line 6, after "RESIDENTS;",

STRIKE: "ALLOWING A CHANGE OF VENUE IN ANY ACTION INVOLVING THE FEDERAL EMPLOYERS LIABILITY ACT;"

Page 1, at line 9, after "CONVENIENS",

INSERT: "IN FEDERAL EMPLOYERS' LIABILITY ACT CASES WHEN THE PLAINTIFF IS A NON-RESIDENT AND THE TORT DID NOT OCCUR IN THE STATE OF MONTANA"

At Page 1, line 17, after "jurisdiction",

INSERT: "in Federal Employers' liability act cases when the plaintiff is a non-resident and the tort did not occur in the State of Montana"

and

STRIKE: "This section applies to all civil actions brought pursuant to state or federal common or statutory law, including the Federal Employers' Liability Act.

At Page 2, line 8,

STRIKE: All of lines 8 thru 19.

At Page 2, line 20, after **"Section"**

STRIKE: "4"
and
INSERT: "3"

SB 342
2-21-91

WITNESS STATEMENT

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

Dated this 21 day of FEB, 1991.

Name: JAMES T MULAR CHAIRMAN MONT JOINT RAIL

Address: LABOR LEGIS. COUNCIL - 440 ROOSEVELT DR.
BUTTE MT 59701

Telephone Number: (406) 494-2316

Representing whom?
BLE - BMWE - TCU - UTU

Appearing on which proposal?
SB-342

Do you: Support?____ Amend?____ Oppose?X

Comments: To Sue in Court in MT

1. It Should be Allowed Because IS A Uniform fault System for RR WORKERS in this Country - forum Non Conviens Ought To be Applicable to Non Resident RR WORKERS.
2. It's a fault System that has To be Tried in Court - 90% of The Cases are Settled out of Court
3. Cases - Down many other Personal Injury Cases Backlog our Courts.
4. It Seems Proponents - (BAIRD) is Trying To get There Way Again

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

SB337
2-21-91

WITNESS STATEMENT

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

Dated this 21 day of February, 1991.

Name: DON DOIG

Address: PO BOX 59
HELMVILLE, MT 59843

Telephone Number: 793-5550

Representing whom?
FULLY INFORMED JURY ASSOCIATION

Appearing on which proposal?
SB 337

Do you: Support? ✓ Amend? ✓ Oppose? ____

Comments:

I AM THE NATIONAL COORDINATOR FOR THE FULLY INFORMED JURY ASSOCIATION. SB 337 would require judges to properly inform jurors of their true and rightful power to judge the merits of the law, and to vote according to conscience.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

SB 337
2-21-91

WITNESS STATEMENT

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

Dated this 21st day of February, 1991.

Name: Lawrence B. Dolan

Address: P.O. Box 60
Helmville, MT 59843

Telephone Number: 793-5703

Representing whom?
Fully Informed Jury Association

Appearing on which proposal?
An Act Requiring a Fully Informed Jury S-337

Do you: Support? ✓ Amend?____ Oppose?____

Comments:
This bill is essential for maximizing justice in our courtrooms, for ensuring a fair trial for defendants, and for increasing respect for the law by providing regular, non-political feedback from the jury box to the legislature about the public acceptability of a given law.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

SB 337
2-21-91

WITNESS STATEMENT

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

Dated this 2nd day of February, 1991.

Name: Rick G. Idrey

Address: 53 So Rodney Helena MT 59601

Telephone Number: 442-4705

Representing whom?

Self

Appearing on which proposal?

SB 337

Do you: Support? ✓ Amend?____ Oppose?____

Comments:

SB 337 is about returning to the people the ~~the~~ intended (by the founding fathers) check of the legislature, executive and judicial branch - the jury veto.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

SB 337
2-21-91

WITNESS STATEMENT

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

Dated this 21 day of February, 1991.

Name: Grace Lois Hess

Address: Box 1264, Livingston, MT 59047

Telephone Number: (406) 222-2369

Representing whom?

Fully Informed Jury Association

Appearing on which proposal?

SB 337

Do you: Support? Yes Amend?_____ Oppose?_____

Comments:

This is the most important legislation that can possibly be passed this session. We need to restore full power to the jury so that the laws can be judged as well as the facts in each case - Also the motives of the defendants must be considered. There would be fewer innocent people convicted if judges were not refusing full rights to the jurors.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

Ex. 4d
SB 337
2-21-91

WITNESS STATEMENT

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

Dated this 21st day of Feb, 1991.

Name: M.J. 'Red' Beckman

Address: 2711 N Frontage Rd - Billings MT 59101

Telephone Number: 252-9509

Representing whom?

Fully Informed Jury Association

Appearing on which proposal?

SB 337

Do you: Support? ✓ Amend?____ Oppose?____

Comments:

The Montana Legislature is one of three branches of our State government. Each branch was to be a check against the other. This process is well known as Checks & Balances. Senate Bill 337 is a check against the Judicial branch. Under SB337 Judges would be required to properly inform Jurys of rights they have always had but may not have known about.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

Exhibit #5
21 Feb 91
SB 337

TESTIMONY OF ROGER E. KOOPMAN
In Support of SB 337
Senate Judiciary Committee
February 21, 1991

MR. CHAIRMAN: It has always struck me as curiously incompatible with a free society, that the average citizen is so intimidated by the inside of a courtroom. Although our courts were designed as a fortress in defense of individual rights and liberties, the individual citizen feels distinctly out of place there -- overwhelmed by a sense of alienation and powerlessness. To most of us, it is a foreboding place, run by professionals, for professionals. This ought not to be.

I would submit that the fundamental reason citizens feel like outsiders in their own court system is because of the systematic erosion of the power of the jury. Juries in recent years have been reduced to little more than well-heeled robots, routinely instructed to leave their consciences home and to apply no moral judgement to their decisions. Their only role, they are told, is to assemble the evidence and apply it mechanistically to the law, as the judge has explained the law. By this process, juries have been essentially stripped of their constitutional powers and responsibilities. It is any wonder why the average citizen feels so helpless?

Our Founding Fathers, of course, had a very different idea in mind, and to the extent that we have strayed from their original pattern, American has placed her freedoms in great peril. Our forefathers understood far better than we do today, that for a nation to remain free, sovereign power must rest in the people themselves -- in the individual. And so, they designed a jury system that acted as a constant check on the excesses of government

and the abuses of unjust law. Individual jurors understood that they had not only the authority, but the moral responsibility to acquit just men who ran afoul of unjust law.

These manifestations of conscience -- known as jury nullification -- were in once sense confined to the cases being tried, but if repeated in case after case, could ultimately result in the general repeal of bad law. American history is rich with examples of juries that time and again, stood up for justice in the face of illegitimate law and refused to enforce, for example, the British Navigation Acts against the colonists and later, the Fugitive Slave Laws against the abolitionists.

Sadly, American history would have been written much differently if the juries of the past were like the juries of the present. A modern day jury would hang those abolitionists on the end of a rope, not because we today believe any less in the justness of their cause, but because we are consistently misinformed from the bench about the essential role of the jury in securing justice.

It is for this reason that I enthusiastically support SB 337, commonly referred to as the "Fully Informed Jury Bill." Indeed, this is landmark legislation that will not only return our courts to the people, but will doubtless act as a model for other progressive states as well.

It is important to recognize that this measure does not create any "new" powers, rights or privileges. Instead, it merely asserts those jury powers and rights that already exist, as evidenced by the historical record and the statements of our Founding Fathers. The bill would simply require that juries once again be accurately informed of their inherent right to judge not only the facts of a case, but the law itself as it relates to that case.

Time does not permit me to speculate on the practical results

of such a law here in Montana. More than likely, there would be no dramatic overnight changes. But as people become more accustomed to their long-lost rights and responsibilities as jurors, I believe there will be a general uplifting of the quality and seriousness of jury service. And at critical times in our state's history, the positive impact of informed juries will become very clear.

An example that comes to mind, though, is the potential reaction of Montana juries to the enforcement of sweeping federal gun controls -- unjust laws that would violate our Second Amendment rights and disarm our people. With fully informed juries, could federal prosecutors get a conviction anywhere in this state? It is easy to understand why local organizations like the Montana Shooting Sports Association, the Big Sky Practical Shooting Club and the Western Montana Fish and Game Association have given their hearty endorsement to SB 337. Nationally, Gun Owners of America and the National Rifle Association officially support the fully informed jury concept as well.

Indeed, there is an enormous groundswell, both in Montana and across the nation, calling upon lawmakers to pass legislation like SB 337. Supporters come from every walk of life and every part of the political spectrum. They ask the same question that I would pose now: what possible purpose is served by keeping people ignorant of their legal rights and responsibilities? It is time to turn on the light, and shine a beam of truth into every jury box in this state. Not only will today's citizens benefit, but tomorrow's citizens will benefit even more.

Exhibit # 5
SB 337 2/21/91

pinion

January 12, 1991

Bozeman
Daily Chronicle

Jury nullification is a sacred tradition

Roger Koopman

Chronicle Columnist

With the hundreds of spending and regulatory bills already in the hopper, most of them meant to satiate the appetites of organized special interests, there is one piece of legislation that stands apart. It spends no money and it serves all Montanans equally. It may be the most important measure this, or any legislature, will have the privilege to enact.

Called the "fully informed jury law," the bill will be introduced by Sen. Dave Rye, R-Billings, through the combined efforts of jury rights activists Don Doig and Larry Dodge of Helmville. It is part of a home-grown, national campaign to restore the role of juries to their constitutional pre-eminence, by requiring judges to inform jurors of their inherent right to judge the law as well as the facts.

Nowhere is the sovereignty of the people over government more clearly established, and the powers of the individual citizen more solidly rooted than in the American jury system. The founding fathers designed the jury to function as an impenetrable fortress against tyranny, an ever-present check on the powers of government manifested not in democratic majorities and legislative lobbyists, but in the authority of a single individual, sitting on a jury anywhere in this country, to say "this law is unjust — the defendant is guilty of no crime."

Truly, this is "power to the people" — the continual opportunity of the little guy to triumph over all the force that big government can muster against him. To fight back against government confiscation of his property, government banning of his firearms, government interference with his family, government control of his childrens' education, and so on.

This sacred tradition of American justice, by which jurors have the right and responsibility to stand in judgement, both of the court evidence and of the law, is referred to as jury nullification. If it sounds a bit strange to you, it is only because Americans in the last century have allowed this crucial right to fall into disrepair through lack of use and lack of understanding. Yet jury nullification is designed precisely for this day and age, where government has grown out of control and regularly disregards the rights of the people.

The concept of jury nullification is magnificent in its simplicity. It is the recognition that, in criminal trials (i.e., where the state is a party in the action) juries have not only the right but the responsibility to examine the law itself, its constitutionality and the justness of its application in the particular case being tried. If the law violates the moral conscience of the juror, either generally or in relationship to the specific circumstances of the case, that juror has both the authority and the duty to acquit the defendant. What such a juror, in essence, is saying is that the defendant might be guilty of breaking the law, but he is innocent of committing a punishable crime.

By this procedure, juries can effectively "nullify" the authority of a given law on a case by case basis. Jury nullification does not establish "case law" or legal precedent (mischievous concepts in any case). The nullification relates only to the specific case involved and does not impact, directly at least, on any other case.

Yet jury nullification, in the long term, can have an enormous cumulative effect on society in reestablishing constitutional government and the sovereignty of the individual. Nullification represents, on the local level, a very direct and decisive rejection by the people, of bad law. When juries all across the country vote time and again not to convict because the law is unconscionable, an extremely powerful message is sent to the Congress and state legislatures. If enforcement of an oppressive law is rendered almost impossible the law has been effectively repealed by direct intervention of the people. Legislative bodies will begin to understand what they have for years forgotten — that in the United States of America, the people are still in charge.

More and more, juries will begin to assert themselves as essential institutions in defense of a free society. As this process continues to cleanse the system of unpopular and repressive statutes, at least two significant changes will take place among the people themselves. First, there will be a tremendous rejuvenation of our respect for law itself — something the liberals have worked hard to destroy these many years. Second, the moral senses of the people will be gradually sharpened as we begin to recognize our individual responsibility in the maintenance of our fragile liberties. We will become, once again, a vigilant people, more keenly aware of the abuse of government power, more jealous of our liberties, more sensitive to the moral and philosophical prerequisites of freedom.

The Fully Informed Jury Association is now organized in 35 states, and as a movement, is spreading like wildfire, having evolved into an incredible amalgamation of enthusiasts from every point on the political spectrum. Many state legislatures will be considering bills like Sen. Rye's in the coming year. Hopefully Montana, as the place where it all started 18 months ago, will lead the way in passage of this landmark legislation.

Roger Koopman is a Bozeman businessman who writes a regular column for the Chronicle.

EXHIBIT #3
SB 337 2/21/91

pinion

January 12, 1990

Bozeman Daily Chronicle

Our juries are being misinformed

Roger Koopman

Chronicle Columnist

If you were to make a list of your least favorite places to be, I would imagine that rating right up there with the dentist's office, the Bronx and the line at the Motor Vehicle Bureau, would be the courtroom — any courtroom, at any time for any reason. The obvious exceptions to this are the judge, lawyers and other legal professionals who make their living in court. But for the rest of us, the courtroom is ominous and foreboding, and no matter what the circumstances, we always feel uncomfortable there, and distinctly out of place. Have you ever wondered why that is?

I suspect that, in part, it has to do with our general attitude about the law and legal proceedings. Americans have been subjected to such a deluge of intrusive busybody legislation in recent years, invading every facet of their lives, that they have grown fearful and cynical. They see the law not as a friend that protects, but as a foe poised to pounce — a continual threat to their tranquility. Most of us wonder if there is anything we can do anymore that doesn't violate at least two or three laws.

The other reason the courtoom repels us is because the average citizen feels so utterly powerless in the place. It is the epitome of irony that the very institution most designed to preserve the rights of the individual has become a system where the individual feels alienated and shut out. It is no longer *our* judicial system, it is *theirs*. It is run by the professionals, for the professionals, and we just go along for the ride.

Nowhere is this more evident than in the systematic weakening of the jury system and with it, the fundamental right to be tried by ones' peers. As we move into an age of "imperial courts" and advocacy judges, it becomes increasingly more necessary for our judicial system to see to it that juries not "get in the way" of social agenda and governmental prerogative. To accomplish this, the courts have defined the role of the jury in the narrowest of terms, where jurors function as little more than official scorekeepers who add up the points at the end of the match.

Have you ever served on a jury, or watched a jury trial firsthand? The instructions that the judge gives the jurors just prior to their deliberation is always extremely revealing. Essentially, they are told that they are to function as machines — not as rational individuals, capable of making sound moral judgments — and that their only purpose is to, one, accept without question, the judge's explanation of the law, two, determine the facts in the case and, three, apply the law to the facts to establish guilt or innocence. With robots for jurors, the verdicts will be all too predictable.

The question is this: Is our goal uniformity of verdicts or is our goal justice? In the first case, all we need to ask is whether the person violated the law. In the second case, we need to establish if the person was morally guilty of a punishable crime? If pursuing the higher goal of justice, jurors must examine not only the "facts," but also the defendant's motives, and the justness of the law as applied — or not applied — in the particular case. Moreover, the good conscience of each jury member is an essential ingredient in arriving at a just verdict. If jurors are not allowed to apply righteousness and moral conscience to the case, then there is really no reason to have a human jury — a computer could suffice just as well as a dozen servile, mechanical jurors.

Does this mean that in some cases juries might find defendants technically "guilty" of violating a law but enter a verdict of not guilty to the commission of a crime? Absolutely. And the truth is, juries in America not only have the authority but they also have the responsibility to enter such verdicts when conscience and circumstance dictate it. Sad to say, this fundamental principle is not taught in our public schools and law colleges anymore, but it is deeply rooted in the history and foundational writings of our nation. (It is even written into a number of our state constitutions.)

Listen to the words of President John Adams: "It is not only his (the juror's) right, but his duty to find the verdict according to his own best understanding, judgment and conscience, though in direct opposition to the direction of the court." And the first Supreme Court Chief Justice John Jay: "The jury has the right to judge both the law as well as the fact in controversy." And Alexander Hamilton: Jurors should acquit even against the judge's instruction "if exercising their judgment with discretion and honesty they have a clear conviction that the charge of the court is wrong."

Actually, the authority of juries to, in specific cases, veto or "nullify" unjust law is a principle with roots going as far back as the Magna Carta in 1215. What it is saying, in essence, is that people, not govenment, are sovereign and that through the jury, the citizenry has an ultimate check on bad law and oppressive government. By refusing to convict their fellow citizens, a free people can render tyrannical law unenforcible and eventually require the legislative branch to make sweeping changes. As Thomas Jefferson wrote, "I consider trial by jury as the only anchor ever yet imagined by man by which the government can be held to the principles of its constitution."

American history offers many examples where widespread jury nullification (refusal to convict) established justice and ultimately, purged bad law. Space doesn't permit much discussion of this, but cases that immediately come to mind include the colonists' refusal to enforce forfeitures under the English Navigation Acts, northern states' juries' veto of the Fugitive Slave Law, and in the 20th century, jury nullification of the prohibition law.

Despite a misguided Supreme Court opinion in 1895, American juries have as much right as ever to judge both law and fact, and to rule on the basis of conscience. This veto power is a cornerstone of our liberties and is an essential element of government by the people. The problem, of course, is that almost no jury is ever informed of its rightful role and authority, but rather, are shamefully misinformed, as mentioned earlier.

Happily, Libertarian activists Larry Dodge and Don Doig have come to the rescue! These folks have drafted what they call the "Fully Informed Jury Amendment," which is now being organized as a ballot initiative in 23 states, including Montana. If passed and enacted, "FIJA"would require that every jury be properly instructed on its power and responsibility to judge whether a law is unjust or misapplied, on being allowed to hear evidence about a defendant's motives, and on having the authority to acquit or convict according to the dictates of conscience.

FIJA has already received broad and enthusiastic support from a wide range of divergent groups and philosophies (gun owners, for example, can see how with FIJA on the books, it would be virtually impossible to enforce strict gun control in Montana. As Larry puts it, juries would "just say no"). The initiative looks to have an excellent chance of success. We should all get behind it, for freedom's sake.

Exhibit # 6
SB 337 2/21/91

TESTIMONY OF ROBERT DAVIES ON SB 337

If one reads the minutes of the Constitutional Convention held in Philadelphia in 1787, or many of the other writings of our founding fathers, it is evident that their overriding concern was to assure that the government they were creating would never become oppressive. Toward that end, they tried to devise as many checks and balances of power as they could. Thus, government was divided into three branches. Each of these had specific powers and functions, and were thus limited by law as to what they could do.

But our founding fathers clearly recognized that this still might not be enough to assure our continued freedom. So, one of the final checks they came up with was the right to a trial by a jury of our peers. That the jury was to be made up of "peers" of the accused is the important feature of this idea. If government exceeded its authority and attempted to legislate away our freedoms by passing unConstitutional laws, anyone accused of breaking these laws would have to be convicted, not by a panel of judges which is a part of the same government as had already violated the basic law, that is, the Constitution, but by a jury of citizens just like the accused. And this jury would have the power to judge the law as well as the guilt of the accused.

That the jury was to have this power is evident from the fact that the decision of the jury is final and may not be overturned. Thus, if a law is seen as wrong by the jury, they can simply acquit the accused, and if that happens frequently in subsequent trials on the same law, the jury effectively has repealed the bad law, since the government cannot gain convictions under the law.

Our present judiciary has effectively nullified this additional check on the abuse of power by the government by holding exactly the opposite to be true. In virtually every case, the judge tells the jury that they <u>don't</u> have the power to judge the law. They tell the jury they must only determine guilt or innocence under the law in question. Thus, they make the jury enforce all laws, whether just or not, and in so doing, they eliminate the advantage of our being judged by our peers. Also, in most cases, the judge will not allow a defense based upon the Constitutionality of the law under which the accused is being tried.

SB 337 would correct this abuse of power by requiring the judge to inform the jury of their right to judge both the law and the facts of the case, and thus restore this very important check on the power of government our founding fathers intended.

Many quotes could be presented to prove that our founders intended the juries to have this power. I shall just present one. Thomas Jefferson, in a letter to Thomas Paine in 1789 said, "I consider trial by jury as the only anchor ever yet imagined by man by which a government can be held to the principles of its constitution." Please vote for SB 337.

2-21-91
SB 337

WITNESS STATEMENT

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

Dated this 21 day of February, 1991.

Name: John McGregor

Address: 1455 Placer Dr
Helena, MT 59601

Telephone Number: 458-6034

Representing whom?

Appearing on which proposal?

SB 337

Do you: Support? ✓ Amend? ____ Oppose? ____

Comments:

My name is John McGregor and I manage a restaurant here in Helena. John Jay, who was the first Chief Justice of the U.S. Supreme Court, said - "The jury has the right and the duty to judge both the law and the fact of the case" This duty of the juror to judge both the law and the facts has been consistently upheld to the present day yet jurors remain ignorant of their duty. Therefore, I support SB 337 and I also urge your support. Thank you.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

Mt. L. Rev.
221 (1990)

Exhibit #8
21. Feb 91
SB 337

MARTEL V. MONTANA POWER COMPANY: LIBERATING AND ENLIGHTENING THE MONTANA COMPARATIVE-NEGLIGENCE JURY

John Rayburn Velk*

I. INTRODUCTION

Basing its decision on the bold proclamation that "Montana juries can and should be trusted with the information about the consequences of their verdicts,"[1] the Montana Supreme Court in *Martel v. Montana Power Co.*[2] ruled that a jury could compare "all forms of conduct amounting to negligence" and should be "informed of the effect of its verdict."[3] The court specifically overruled the holding in *Derenberger v. Lutey*[4] that conduct amounting to ordinary negligence could not be compared to willful or wanton conduct under Montana's comparative-negligence statute.[5] The court also reversed its long-standing tradition of not informing juries of the effect of comparative negligence. This decision to inform juries of the effect of comparative negligence brings Montana in line with a developing national trend favoring informed juries.[6]

This note first traces the development of comparative negligence in Wisconsin, the jurisdiction from which Montana borrowed its statute. Second, the note discusses the historical development of comparative negligence in Montana and evaluates the court's rationale in allowing comparison of all kinds of conduct.[7] Third, the note analyzes the Montana Supreme Court's decision to instruct juries as to the effect of comparative negligence. Finally, the note

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* The author would like to thank Greg Munro, Professor, School of Law, University of Montana, Missoula, Montana, for his assistance and insightful commentary. This paper also benefitted from a paper authored by Carol Donaldson, student, School of Law, University of Montana, Missoula, Montana. Any errors or omissions, however, are strictly the author's.

1. Martel v. Montana Power Co., 231 Mont. 96, 752 P.2d 140 (1988).
2. *Id.* at 100, 752 P.2d at 143.
3. *Id.* at 106, 752 P.2d at 146.
4. 207 Mont. 1, 674 P.2d 485 (1983).
5. MONT. CODE ANN. § 27-1-702 (1989).
6. H. WOODS, COMPARATIVE FAULT, § 18:2 (2d ed. 1987).
7. For the purpose of this paper, "kinds of conduct" refer to "all forms of conduct amounting to negligence in any form including but not limited to ordinary negligence, gross negligence, willful negligence, wanton misconduct, reckless conduct, and heedless conduct." *Martel*, 231 Mont. at 100, 752 P.2d at 143. Some jurisdictions outside Montana have developed "degrees of negligence" in lieu of "kinds of negligence." *See* Draney v. Bachman, 138 N.J. Super. 503, 351 A.2d 409 (1976). "The thought is that the difference between willful and wanton misconduct and ordinary negligence is one of kind rather than degree in that the former involves conduct of an entirely different order . . . ." *Derenberger*, 207 Mont. at 13, 674 P.2d at 491.

Exhibit # 9
SB 337 2/21/91

WITNESS STATEMENT

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

Dated this 21 day of Feb., 1991.

Name: DOREAN STEFFESEN

Address: RR 35 Box 2222A

LIVINGSTON MT 59047

Telephone Number: 406 222-6626

Representing whom?

FIJA and the People Action Coalition

Appearing on which proposal?

SB 337

Do you: Support? ✓ Amend?_____ Oppose?_____

Comments:

~~FIF~~ Fully Informed Jury Amendment would bring justice to the Courts:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

Exhibit 99
SB 337
2-21-91

Connor

Testimony on Behalf of the State Bar of Montana in Opposition to SB 337
Senate Judiciary Committee

The State Bar of Montana opposes SB 337, the so-called Fully Informed Jury Act and urges that the Committee do not pass the bill.

Our system of civil and criminal justice operates on the basis of well-defined roles for the legislative and judicial branches of government. Very simply, the legislature declares the statutory law of the State. When there is litigation the court instructs the jury on the law, and the jury the determines the facts and applies the law to those facts to decide the case.

SB 337 purports to change this well-established system to provide that jurors must in certain instances be informed by the court that they are empowered to ignore the law of the state and to decide the case before them on whatever basis they may choose among themselves. This is not only bad law, it is bad policy. It would create havoc in the courts and would make Montana a laughing stock among the states. It seeks to eleminate the rule of law and replace it with case-by-case anarchy. SB 337 seek to impose this new system in all criminal cases and in any civil case in which any governmental entity is a party.

We urge the Committee to consider the following deficiencies in this proposal:

1. Under our system, which is the rule of law, each citizen has both the obligation to conform to the law as well as the right to rely upon its protections. The fully informed jury concept would destroy this. For example, any person charged with a crime is entitled to not be convicted unless the government proves beyond a reasonable doubt each element of that crime as established by the Legislature. The fully informed jury, however, would be expressly empowered to return a conviction even if the government failed to prove an element of the crime, or even if the government failed to prove any crime at all. Likewise, the fully informed jury would be empowered to acquit even if the government proved every element beyond a reasonable doubt.

This is nothing less than judicial anarchy and the probability of abuse, inconsistency and fundamental unfairness is high. No one who looks different, who acts different, or who holds different points of view would be safe. Ideology, fear, intolerance, racial prejudice and religious bigotry could freely substitute for the rule of law in our judicial system.

2. SB 337 would set up a class of cases in which this fully informed jury would be free to wield its power, but all other cases would be handled according to our established system. For example, the fully informed jury can operate only if there is a jury sitting on the case, and juries do not decide every case that goes therough the courts. If SB 337 were enacted, any criminal defendant who has any defense to the crime charged would be crazy to not wiave a jury trial and to be tried by the court sitting without a jury. The court sitting without a jury would be obligated to decide the case according to the law established by the Legislature, not according to some individualized sense of what the right result ought to be.

Similarly, under SB 337 any civil case in which any governmental entity is a party would be decided by a fully informed jury, while any other case with no governmental entity as a party would be decided by a not-fully-informed jury. For example, it is not uncommon for personal injury suits to involve several defendants, one of whom is a governmental entity. A person injured in a car wreck may sue the driver who hit him and may sue the state, a county or a municipality alleging that some road defect also contributed to the accident. In that instance, the case would be decided by a fully-informed jury. However, if the governmental entity were not named as a party by the plaintiff, or if the governmental entity were dismissed from the case or settled out, then the case would be decided by a not-fully-informed jury.

Clearly these distinctions defy any kind of logical explanation. Why should one car wreck case be decided on whatever basis the jury wants to use while another is decided on the established law? If SB 337 were enacted, it would likely be stricken as unconstitutional on equal protection and due process grounds for these reasons.

3. If SB 337 were enacted it could lead to both higher insurance premiums for any type of liability coverage, and could lead to some insurers declining to issue policies in Montana. Insurance companies set their rates in part based upon experience and upon their prediction of what the future will likely bring. When any area of the law of liability is changed, it can lead to an increase in premiums to the extent that insurers perceive that the change might increase their risk. Predictability, therefore, is very important.

A fully-informed jury concept, however, is the very anthesis of predictability. It replaces the predictability of the law with a jury empowered to do anything it wants to do in any given case. Insurance premiums, especially for such things as auto insurance and medical malpractice, could increase dramatically under this proposal.

4. Enactment of SB 337 would likely greatly erode Montana's business climate. Business are sensitive to what they percieve to be the fairness of a State's laws and judicial system. Any business considering locating in or expanding to Montana would have to consider the fully informed jury concept to be a negative aspect of this State's governmental system.

For all these reasons, the State Bar urges the Committee to no pass SB 337.

Exhibit #9b

SB 337
2-21-91

WITNESS STATEMENT

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

Dated this 21 day of FEBRUARY, 1991.

Name: PRUDENCE GILDROY

Address: P.O. BOX 1055

HELENA, MT 59624

Telephone Number: 443-7169

Representing whom?

FIJA

Appearing on which proposal?

SB337

Do you: Support? YES Amend?_____ Oppose?_____

Comments:

This week there was a case in the news where a woman was released from prison after serving five years by action of a governor in one of the western states. She was convicted of murdering her husband according to the facts — she killed him & the jury had to convict her on the instructions they recieved. They were not allowed to consider that the woman lived in the insanity of a severely physically abusive relationship. I believe this to be an example of the injustice that occurs when the process does not include a fully informed jury. Rather than being convicted and imprisoned, this woman needed treatment for her part in the insanity which culminated in the final incident of killing.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

Exhibit 10a
SB 392
2-21-91

WITNESS STATEMENT

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

Dated this 21 day of Feb, 1991.

Name: Steve Granzow

Address: 3045 Meadowlark Dr

East Helena

Telephone Number: 227-5613

Representing whom?

Pegasus Gold Corporation

Appearing on which proposal?

SB 392

Do you: Support? X Amend?____ Oppose?____

Comments:

The change needs to be done. This would allow title search to determine heirship in mineral ownership searches.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

Exhibit 10
21 Feb 91
SB 443

AMENDMENT TO SB 443 AS INTRODUCED

February 20, 1991

1. Page 5, line 22.
Strike ":"

2. Page 5, line 23.
Strike: "(A) the department determine that"

3. Page 5, line 24.
Following "youth"
Strike ";"

4. Page 5, line 25.
Following "~~whether~~"
Insert "whether"

6-1 strike (B)

5. Page 6, lines 3 and line 4.
Following : "~~The court shall include such determination in the order committing the youth to the department.~~"
Insert: "The court shall include such determination in the order committing the youth to the department."

6. Page 6, line 17.
Following "as"
Strike: "directed"
Insert: "recommended"

Exhibit 1
21 Feb 91

DEPARTMENT OF FAMILY SERVICES

STAN STEPHENS, GOVERNOR

(406) 444-5900

STATE OF MONTANA

P.O. BOX 8005
HELENA, MONTANA 59604

February 21, 1991

TESTIMONY IN SUPPORT OF SB 443
"AN ACT TO REVISE THE LAWS RELATING TO DISPOSITION OF YOUTH BY THE YOUTH COURT . . ."

Submitted by Ann Gilkey, Legal Counsel
Department of Family Services

The Department of Family Services supports SB 443 with the amendments as proposed by Sen. Keating.

The bill will tighten up and clarify the existing statutes to specify the department's authority to make placement decisions for youth in need of supervision and delinquent youth.

In particular, the department requests passage of the amendments in Section 1, page 7, lines 4-5 and 7. This amendment clarifies that the youth court may not order a specific placement of a YINS or delinquent youth -- only the department may do so. This makes the department accountable for it own budget and helps monitor which youth are going into which placements and for how long.

Page 7, lines 12-16, allow the court to order parental involvement in their child's treatment, if such involvement is allowed or encouraged at the particular facility into which their child has been placed. This is a useful tool, as parents often refuse to participate in treatment and refuse to accept any responsibility for their child's behavior. Parental participation into treatment can only help families work out their problems and facilitate successful reunification of the youth with his or her family.

With the amendments as proposed, the Department of Family Services urges your careful consideration and support of SB 443.

DATE 2-21-91 1 of 2

COMMITTEE ON Sen. Judiciary

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Check One: Oppose
John McGregor		337	✓	
Big Red Beckman		337	✓	
Larry Dodge	Fully Informed Jury Assn	337	✓	
Gene Erdman	" " "	337	✓	
Zander Blewett	Self and Railroad	342		✓
Joe Jindrich	Fully Informed Workers Juries	337	✓	
Dan Edwards	OCF&W	342		X
Steve Grancon	Pegasus Gold Corporation	392	✓	
Judy Browning	Attorney General	337		X
Rick Goldroy	Fully " "	337	✓	
John Conlon	MT County Attys Assn	337		X
Sam Sperry	MT. Dept. of Health	392		X
Ann Gilkey	DFS	433 443	X	
Don Doig	Fully Informed Jury Assoc	337	X	
Roger Koopman	Western Montana Fish & Game Assn. Big Sky Practical Shooting Club Montana Shooting Sports Assn	337	X	
Randy Cox	Self and Burlington Northern	342	X	
Larry Jasbender	Cascade County	342	X	
Jacqueline N Terrill	Am. Insurance Assoc.	337		X
Jacqueline N. Terrill	Am. Insurance Assoc.	342	X	
Bob Davies	SELF	337	X	
Denny Morgan	MT. BAR Assn	337		X
Lee		337		
Thea Berry		342	X	
Victor R. Hernandez	Mexican-American Assoc.	337		
" " "	"	398	X	
Diane Sands	MT Women Lobby	344	X	

DATE 2-21-91 2 of 7

COMMITTEE ON Senate Judiciary

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
James T. Mular	MONT. JOINT RAIL LABOR Legis Council BLE BMWE TCU UTU	SB 342		X
Grace Lois Hess	F I J A	SB 337	YES	
Dorrean Steffesen	FIJA	SB 337	YES	
Michael Sherwood	MTLA	SB 342		X
Russ Ogenbach	Asst. Prob. Officer	SB #32	YES	
Rudi Hood	Public defender	443		X
Troy W. McLean	Self	392	yes	
Dick Meehan	Asst. Prob. Offi	443		X
Gene Phillips	NAT. ASSOC IND. INS ALLIANCE AMER. INS	337		X
Gene Phillips	"	342	X	X
John W Larson	FELA Plaintiffs	342		X
Prudence Gildroy	FIJA	SB 337	YES	
Ray Hoffman	DHFS	SB 392		X