MINUTES

MONTANA HOUSE OF REPRESENTATIVES
53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **RUSSELL FAGG, CHAIRMAN**, on January 27, 1993, at 8:00 a.m.

ROLL CALL

Members Present:

Rep. Russ Fagg, Chairman (R)
Rep. Dave Brown Vice Chairman(D)
Rep. Ellen Bergman (R)
Rep. Jody Bird (D)
Rep. Vivian Brooke (D)
Rep. Bob Clark (R)
Rep. Duane Grimes (R)
Rep. Scott McCulloch (D)
Rep. Jim Rice (R)
Rep. Angela Russell (D)
Rep. Tim Sayles (R)
Rep. Liz Smith (R)
Rep. Bill Tash (R)
Rep. Howard Toole (D)
Rep. Tim Whalen (D)
Rep. Karyl Winslow (R)
Rep. Diana Wyatt (D)

Members Excused: Rep. Randy Vogel, Vice Chairman

Members Absent: None.

Staff Present: John MacMaster, Legislative Council
Beth Miksche, Committee Secretary

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

Committee Business Summary:
Hearing: HB 257, HB 255, SB 19
Executive Action: SB 64, HB 187, SB 12

HEARING ON HB 255

Opening Statement by Sponsor:

REP. SHIELL ANDERSON, HD 81, Livingston. A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE CRITERIA APPLICABLE TO THE CONDITIONAL RELEASE OR DISCHARGE OF A PERSON WHO HAS RELIED UPON THE DEFENSE OF MENTAL DISEASE OR DEFECT; PROVIDING FOR A

DIAGNOSIS OF SERIOUSLY DEVELOPMENTALLY DISABLED IN EXAMINATION REPORTS; REVISING THE HEARING PROCEDURE; AMENDING SECTIONS 46-14-206, 46-14-301, 46-14-302, 46-14-303, 46-14-304, AND 46-14-312, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

REP. ANDERSON stated the purpose and intent of the bill is explained further in the proponent's testimony. **EXHIBITS 1, 2, and 3**

Proponents' Testimony:

Kimberly A. Kradolfer, Assistant Attorney General. EXHIBIT 4

Dan Anderson, Dept. of Corrections and Human Services, Mental Health Division. EXHIBIT 5

Opponents' Testimony: None.

Questions From Committee Members and Responses:

REP. HOWARD TOOLE asked **Ms. Kradolfer** if the judge makes the decision based on the person's condition. Whether acquitted or found not guilty by reason of insanity or mental disease or defect, the courts will establish two facts: 1) that the defendant committed a criminal offense, and 2) the act was committed because of mental illness.

REP. JIM RICE asked **Ms. Kradolfer** what happens to someone who is found guilty of a crime because of mental defect. Is there an annual treatment or review, and is anyone placed in Warm Springs? **Ms. Kradolfer** said we have created a massive procedure for each single person placed in Warm Springs. These procedures are required under Foucha vs. Louisiana.

REP. TOOLE referred to Section 46-14-312 and asked if this is supposed to happen. **Ms. Kradolfer** said that we are dealing with someone who committed a crime. The annual review is for the court to decide whether the person should be on probation or in prison. **REP. TOOLE** said the statute deals with a convicted person, not someone guilty by reason of mental defect. This section is different from the rest of the statute.

CHAIRMAN FAGG asked if it is necessary that we enact this legislation upon passage. As a general rule, the legislature does not like to do that because the codes are not printed until October, and there's no notice to people out in Montana as to the law changes. He asked if it is necessary in this case? **Ms. Kradolfer** said yes because there are nine people in the state hospital which should not be there. The state could be potentially liable for keeping them there when the Fusha decision has been handed down. Since it only affects these nine people, and since the hospital and the department would be aware of passage of this bill, it will allow them to leave with bill in hand, effective upon passage and to start having hearings

immediately. **CHAIRMAN FAGG** asked if the Attorney General's office represents the state in these proceedings. **Ms. Kradolfer** said that is the responsibility of the State Department of Correctionss' counsel.

REP. RICE said the bill is designating District Courts to hold these hearings. **Ms. Kradolfer** said that past practice has been that the person is taken across the state to where the defendant was charged. It seems more efficient to have the trial in the location where the patient is located.

Closing by Sponsor:

REP. ANDERSON stated HB 255 is a necessary bill to avoid lawsuits. It provides adequate safeguards to protect people from harm and also to protect the rights of the mentally ill.

HEARING ON SB 19

Opening Statement by Sponsor:

SENATOR CHET BLAYLOCK, Senate District 43, Laurel. A bill for an act entitled: ("AN ACT LIMITING THE EXEMPTIONS FROM THE WRONGFUL DISCHARGE FROM EMPLOYMENT ACT; AMENDING SECTION 39-2-912, MCA; AND PROVIDING AN EFFECTIVE DATE.")

SEN. BLAYLOCK said this bill is directed to those employees who feel they were wrongfully discharged. A collective bargaining agreement does not add a just cause in a grievance of arbitration. It is not intended to change the intent of the current law.

Proponents' Testimony:

Phil Campbell, Montana Education Association, said the bill should have a just cause resolution. If not in the contract, the employer can go to court. This does not affect teachers.

Terry Minow, Montana Federation of Teachers, stated the bill mainly affects "classified" employees, i.e. kitchen help, janitorial help and administrative help. **Ms. Minow** believes that if legal help does not provide for just cause by arbitration, and without that remedy, they are wrongfully discharged.

Opponents' Testimony:

Bruce W. Moerer, Montana School Board Association, said he strongly opposes this bill and challenges the reason that classified school employees don't have any appeal from a school board attorney. That is incorrect. He said right now a classified school employee can appeal termination to the county superintendent of schools like other types of school controversies. This bill has been designed strictly to give them

leverage at the bargaining table; to include arbitration in their contracts. This would give them a second forum. It would not only give them the county superintendent's appeal, but it would also give them wrongful discharge forum.

Don Waldron, Montana Rural Education Association, asked the committee to leave the teachers' contracts alone.

Informational Testimony: None.

Questions From Committee Members and Responses:

REP. SCOTT MCCULLOCH said he wondered if this is just a tool for unions. **SEN. BLAYLOCK** said he disagrees with the MSTA's position, that the intent of this bill is to treat classified employees fairly.

REP. JODY BIRD asked for the definition of classified employees. **Mr. Campbell** said they are school employees other than teachers, i.e. secretaries, school bus drivers, janitorial. Classified employees don't have a specific statute to go to if they're terminated, teachers do. This bill gives them the avenue.

REP. DIANA WYATT asked **Mr. Campbell** if classified employees are not normally covered in a written contract, he replied no, because it is not covered in current law, but he believes that will change.

REP. LIZ SMITH asked if this bill only applies to education, and **Mr. Campbell** said teachers are covered by their own contract. They, too, are exempt from going to court if they have a bargaining contract.

CHAIRMAN FAGG said his basic concern is whether there should be bargaining arbitration. Just cause is really a local control decision, and that's being negotiated across the state in different school districts, and he believes it should be left to local control. **CHAIRMAN FAGG** asked **Mr. Campbell** to respond to **Mr. Waldron's** comments. This is not to take away the right to go to court. The individual does have the opportunity to go to court to solve a problem. If the school trustees decide their employees should go to court, they have that option. The employees and the school officials must decide what's best for them - to solve the problem in arbitration or allow the employees to go to court. Current law states that a person is exempt from going to court if there is a collective bargaining agreement, even if that collective bargaining agreement doesn't have arbitration to solve the problem. That was not the intent of the law. The intent was that the employee have a forum to go to resolve the problem, so it's a matter of local control. If they want to have it in their contract to resolve it at the local level, they can do that, if they don't want that option, the employee can go to court.

CHAIRMAN FAGG asked **Mr. Campbell** to explain what a collective bargaining agreement typically has in it. **CHAIRMAN FAGG** stated it is his understanding that all employees who are covered under this law already have a collective bargaining agreement, and those people right now are exempt from going to court under the Wrongful Discharge Act. **Mr. Campbell** replied that a collective bargaining agreement will cover all conditions of employment, i.e. grievance area, resolving disputes, and provision of termination. Most private sector companies have collective bargaining contracts. **CHAIRMAN FAGG** said he is concerned about someone having the benefits of the collective bargaining agreement which typically has some sort of grievance procedure. He asked if it would be the case if somebody would actually go through the terms of the collective bargaining agreement and take that to it's conclusion through the state superintendent and still not find an adequate remedy in their own mind. Hence, they decide to go through the Wrongful Discharge Act in district court because their collective bargaining agreement did not have these provisions? **Mr. Campbell** said it is possible now under the current law. If the challenge should come, it should be a successful challenge. The intent of the statute should give the employees some recourse to address these problems.

CHAIRMAN FAGG asked if a classified employee could go through normal procedure, talking to the superintendent, for example, and if the issue is not resolved through normal proceedings, can this employee go through arbitration if this law is passed. **Mr. Campbell** replied yes, the employee will be able to go directly to court. There would be no resolution.

REP. CLARK asked why there isn't any reason the employee should not be able to negotiate the contract now and keep the state out of it? **Mr. Campbell** said they have that option now, the problem is the intent of the Wrongful Discharge Act, which provides an employee a fair method of contract.

CHAIRMAN FAGG asked **Mr. Moerer** if this bill passes, could somebody who is under a collective bargaining agreement, which does not have an arbitration clause in it, go through the steps of grievance under a termination through the superintendent and then the state superintendent. If they do not find themselves taken care of, could that person then file under the Wrongful Discharge Act if this bill passes?

Mr. Moerer stated the statute doesn't provide a selection of remedies, and they can go to court if there's no resolution from the first proceeding. There really is no mandated resolution, employees always make the decision.

Closing by Sponsor:

SEN. BLAYLOCK closed by saying that one of issues heard today involves a conflict of contract. His school community had a bitter strike during the school year, and one of the major issues

was, would the school board recognize the classified employees. They did not want to formally recognize them. There is resistance to binding arbitration in the state of Montana. At the beginning of the strike, it was urged by the people of the community to have meetings urging the school board to submit to final arbitration so that they wouldn't have to strike. This bill does not demand final arbitration, but if employees do have it, then this bill will go into effect.

HEARING ON HB 257

Opening Statement by Sponsor:

REP. HOWARD TOOLE, HD 60, Missoula. A BILL FOR AN ACT ENTITLED: "AN ACT MAKING LOCAL GOVERNMENTS LIABLE FOR CAUSING OR CONTRIBUTING TO PERSONAL INJURY BY FAILING TO DEVELOP METHODS FOR QUICKLY RESPONDING TO EMERGENCY MEDICAL SITUATIONS; AND AMENDING SECTION 2-9-111, MCA."

REP. TOOLE stated Emergency Medical Technicians provide adequate medical services, but they are limited to city boundaries. City lines are easily reached by its own EMT services. The intent of this bill is to find the quickest emergency response and essential medical service by two area boundaries - city and county. The purpose is to prevent victimization of failure of local government agencies to cooperate. **EXHIBIT 6**

Proponents' Testimony:

Paul Laisy, Missoula Rural Fire District. EXHIBIT 7

James Lofftus, Montana Fire District Association, said he would like to see the cities and counties cooperate in this legislation.

REP. TIM SAYLES, House District 61, Missoula, solicited support for HB 257.

Opponents' Testimony:

Bruce McCandless, City Assistant Administrator, City of Billings, said the City of Billings is opposed to this bill because there appears to be no particular regard to fiscal or political constraints. It may make local jurisdictions choose medical response as the highest priority over other local government needs in order to protect itself. He does not think the amendments clarify the language in the bill. **Mr. McCandless** asked several questions regarding this bill; what is the active plan, what is an adequate emergency, and who pays for the extra services to expand these medical services? He asked to meet with **REP. TOOLE** after the hearing to discuss the bill in detail.

Alec Hansen, Montana League of Cities and Towns, Helena. EXHIBIT 8

Jim Nugent, City Attorney, Missoula. EXHIBIT 9

Alan Sampson, City Council, Missoula, said there is a difference in the level of services in and out of the city. He asked what constitutes a medical emergency? In Missoula and in most rural areas, there are police staffed 24 hours for emergency calls. Emergency calls are handled by both Fire and medical. There are very different levels of services in and outside the city.

Tim Bergstrom, Billings Fire Fighters, said mutual aid agreements have been in place in many Montana areas for years and have worked quite well. He said this bill will provide an avenue for more litigation against cities. Citizens must support their own city services and should not be forced or become liable outside their area of responsibility. Citizens must subsidize emergency services outside their area.

Cliff Smith, Director, Montana Primary Care Association, said the MPCA represents the medically unserved in the state. The MPCA believes this bill does not encourage cooperation but promotes litigation.

Informational Testimony: None.

Questions From Committee Members and Responses:

REP. BILL TASH noticed there was nothing in the bill that defined volunteer responses and in the substance of liability, he asked if very rural areas have legal councel. **REP. TOOLE** said the main focus of this bill is on essential, equivalent of services being provided in a rural area outside a city.

REP. DAVE BROWN asked why the city council in Missoula did not direct the mayor to negotiate with the rural fire districts, or make it a priority item for the city. **REP. TOOLE** pointed out to **REP. BROWN** and the committee that negotiations have been pending for a long time, but they were not moving forward. There was a lot of indignation in news articles and among the citizens of Missoula that services couldn't get together on this issue. Missoula is now protected, but the rural areas are not.

REP. TIM SAYLES asked **Mr. Sampson** to explain what a mutual aid agreement and automatic aid agreement is. **Mr. Sampson** said a mutual aid agreement means that an agency will respond to another agency's territory upon their request. Automatic aid is the continuation in certain areas or situations that would be automatically responded to. There has been an automatic aid agreement for some time in some rural areas.

REP. RICE asked for clarification from **REP. TOOLE** if it was the intent of this bill to address fire services, and if they are providing the equivalent level of service. **REP. RICE** said although this is how the bill was introduced, it is not how he reads it. He doesn't like the proposed amendment because it appears to be a liability for a local government entity if it failed to negotiate with another local government entity providing a higher or better level of service. **REP. TOOLE** said this bill will not work without requiring the essential equivalency of services. It applies to a narrow band, the unification of two jurisdictions, both of which are similarly equipped and capable of providing equivalent services. But he does agree that the equivalency concept should be written in the bill more clearly.

REP. ELLEN BERGMAN asked **Mr. Laisy** if there are already agreements, why is this bill needed, and why should the state become involved? **Mr. Laisy** said it's mainly for political reasons. The city felt it could not provide services to people who don't pay city taxes, therefore, the legislation is needed to resolve this problem. It will encourage the cities and counties to work together. The state needs to get involved because the city and county are two political entities that sometimes don't agree and need to be protected by state legislation.

REP. CLARK asked **Mr. Laisy** who pays for the equipment and services. **Mr. Laisy** said it is paid for by property tax assessments and county taxes.

Closing by Sponsor:

REP. TOOLE closed by saying that citizens shouldn't be victimized because there isn't enough adequate equipment. This bill's intention is to save and protect citizens in life or death emergencies. This bill prompts the quickest emergency route.

EXECUTIVE ACTION ON HB 187

Motion: **REP. BROWN MOVED HB 187 DO PASS.**

Discussion:

CHAIRMAN FAGG introduced two amendments. The first amendment was to remove the effective date. The second amendment is to strike Section 2, page 4 from the bill.

Motion: **REP. BROWN** moved the amendment to change the effective date.

Motion/Vote: Amendment passed unanimously.

Further discussion on **CHAIRMAN FAGG's** second amendment.

The second amendment was recommended by **Mr. MacMaster.** He said section 2 is redundant because it is found on line 1, page 3 in Title 52. Title 52 is the reference in Section 2 of the bill.

Motion: **CHAIRMAN FAGG** moved to remove Section 2 from the bill.

Discussion:

REP. BROWN referred to page 4, line 11, "guilty of theft as provided in 45-6-301," and asked if that application is that different from the application in Section 1? He wondered if 45-6-301 is more stringent. **CHAIRMAN FAGG** said the reason it's in the bill is because it's referenced in Title 52 and referenced back to Title 46.

REP. RICE suggested changing Section 3 also. **Mr. MacMaster** said Section 3 would be stricken from the bill if the amendment passes.

Motion/Vote: Question was called to strike Sections 2 and 3 from the bill.

Vote: Motion to strike Sections 2 and 3 carried 17-1 with **REP. BROWN** voting no.

Further discussion on the bill as amended.

Motion: **REP. BROWN MOVED HB 187 DO PASS AS AMENDED.**

Discussion:

MR. MacMASTER asked **CHAIRMAN FAGG** for blanket approval to amend the title accordingly any time the bill is amended. It was approved by **CHAIRMAN FAGG** and the committee.

Motion/Vote: Question was called do pass as amended.

Vote: **MOTION DO PASS AS AMENDED CARRIED UNANIMOUSLY 18-0.**

EXECUTIVE ACTION ON SB 64

Motion: **REP. WHALEN MOVED TO TABLE SB 64.**

Discussion:

REP. WHALEN believes that serving papers is not just a technical hurdle, and the only consideration involved is the cost of doing it. He said the reason we have process servers is to guarantee the due process rights of individuals that are being served, and it was significant to **REP. WHALEN** that nobody, with respect to the district courts or the judges in Montana, presented any testimony, although they may not have been aware of this bill. If there has been a dispute whether or not there has been proper

due process on a party, whether a person is named in a lawsuit, or whether a person is named in a subpoena, an individual is going to have the testimony of that person within the law firm who has an interest in showing the service of process. **REP. WHALEN** stated he believes we should preserve the rights of those individuals being served, and he thinks it also preserves the system. He believes that this is just being treated as a technicality, and that using secretaries or paralegals to serve papers is misguiding and doesn't protect the legal system.

REP. BROWN resisted the motion for several reasons. In 1987, when process servers came before the legislature to set up a license instruction, there was a lot of concern at that time that the legislature was creating another protected class. **REP. BROWN** also addressed **REP. WHALEN'S** concerns regarding sending attorney's employees to serve papers. The liability is going to be retained by the attorney who sends his employee out, and if that service of process is not done properly, it destroy's his own case and probably makes the attorney liable for suit by his client. There was also a lot of concern that the passage of this bill would put attorneys out of business. It would have very little impact because it costs very little in comparison to the time of their own employees to hire a process server. Process servers will still be used 90 percent of the time.

REP. WHALEN closed on his motion. He said we cannot be sensitive on the impact of this bill unless we can be involved in the types of situations that this occurs. The liability situation was argued in the case of large firms, but there are a lot of small offices that don't have any resources and don't have any liability insurance in those cases. **REP. WHALEN** focused on the types of situations that will be seen in court when there's a dispute over jurisdiction, and people must understand that service of process is a necessary element conferring jurisdiction in a court over a person or over a case in controversy.

Motion/Vote: Question was called to table SB 64.

Vote: **SB 64 BE TABLED.** Motion carried 14-3 with **CHAIRMAN FAGG,** and **REPS. BROOKE** and **BROWN** voting no.

EXECUTIVE ACTION ON SB 12

Motion: **REP. WYATT MOVED SB 12 BE CONCURRED IN.**

Discussion:

REP. BROOKE had amendments that struck the language on page 2, line 7-9 which passed. **Mr. MacMaster** researched the amendment for the committee. He found three law review comments from law review articles from 1990. As of 1990, three states had laws requiring that not a convicted person, but an arrested person,

had to submit to HIV testing. The law has not been challenged since then. The three law review comments that he did research, addressed the issues both ways, one commentator agreed that the person should be tested, and the other two disagreed and believed that it should not be required.

CHAIRMAN FAGG asked **Mr. MacMaster** if the committee chose to make that amendment, would it be within the title of the bill. **Mr. MacMaster** replied yes, a broad view of what the subject of the bill is, is expressed in the title. The real subject is addressing AIDS testing of criminals in order to protect the victim.

REP. SAYLES noted that the state already has a bill that parallels SB 12 in Human Services and Aging. It deals with the petition of law enforcement and ambulance type people that upon notification could require others to be tested of AIDS. He inquired as to whether the two bills could be combined in the interest of better legislation. He stated he would discuss this with **Mr. MacMaster.**

REP. WYATT said the reality of AIDS is that once the virus is discovered, there's virtually nothing we can do to stop it. We need to start thinking about long-time security rather than immediate.

REP. CLARK agreed and also said that are other serious STDs that show up immediately after being tested that also need to be dealt with.

Motion/Vote: Question was called on the **BE CONCURRED IN** motion on SB 12 of **REP. WYATT.** Motion carried unanimously. **REP. MARY LOU PETERSON** will carry the bill to the House floor.

ADJOURNMENT

Adjournment: 11:00 a.m.

RUSSELL FAGG, Chair

BETH MIKSCHE, Secretary

RF/bcm

HOUSE OF REPRESENTATIVES

Judiciary COMMITTEE

ROLL CALL DATE 1-27-93

NAME	PRESENT	ABSENT	EXCUSED
Rep. Russ Fagg, Chairman	✓		
Rep. Randy Vogel, Vice-Chair			✓
Rep. Dave Brown, Vice-Chair	✓		
Rep. Jodi Bird	✓		
Rep. Ellen Bergman	✓		
Rep. Vivian Brooke	✓		
Rep. Bob Clark	✓		
Rep. Duane Grimes	✓		
Rep. Scott McCulloch	✓		
Rep. Jim Rice	✓		
Rep. Angela Russell	✓		
Rep. Tim Sayles	✓		
Rep. Liz Smith	✓		
Rep. Bill Tash	✓		
Rep. Howard Toole	✓		
Rep. Tim Whalen	✓		
Rep. Karyl Winslow	✓		
Rep. Diana Wyatt	✓		

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HOUSE STANDING COMMITTEE REPORT

January 28, 1993

Mr. Speaker: We, the committee on Judiciary report that House Bill 187 (first reading copy -- white) do pass as amended .

Signed: Russ Fagg

Russ ~~Fagg,~~ Chair

And, that such amendments read:

1. Title, lines 9 and 10.
Following: "ANNOTATED;" on line 9
Insert: "AND"
Strike: "; AND" on line 9 through "DATE" on line 10

2. Page 4, lines 6 through 17.
Strike: sections 2 through 4 in their entirety

Committee Vote:
Yes 15, No 2.

SENATE AMENDING COMMITTEE REPORT

January 29, 1993

Mr. Speaker: We, the committee on Judiciary report that Senate Bill 12 (third reading copy -- blue) be concurred in as amended .

Signed: _____
Russ Fagg, Chair

And, that such amendments read: Carried by: Rep. Peterson

1. Page 2, lines 7 through 9.
Strike: "Because" on line 7 through end of line 9
Insert: "Upon the request of the victim or the victim's representatives, testing and the test results must be made available for the victim's information. Testing information may or may not reveal exposure to the HIV virus. If exposed, the victim can"

Committee Vote:
Yes 13, No 8.

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HOUSE OF REPRESENTATIVES

Judiciary **COMMITTEE**

ROLL CALL VOTE

DATE 1-27-93 **BILL NO.** HB187 **NUMBER** 18

MOTION: Motion to pass carried unanimously 18-0

NAME	AYE	NO
Rep. Russ Fagg, Chairman	✓	
Rep. Randy Vogel, Vice-Chair	✓	
Rep. Dave Brown, Vice-Chair	✓	
Rep. Jodi Bird	✓	
Rep. Ellen Bergman	✓	
Rep. Vivian Brooke	✓	
Rep. Bob Clark	✓	
Rep. Duane Grimes	✓	
Rep. Scott McCulloch	✓	
Rep. Jim Rice	✓	
Rep. Angela Russell	✓	
Rep. Tim Sayles	✓	
Rep. Liz Smith	✓	
Rep. Bill Tash	✓	
Rep. Howard Toole	✓	
Rep. Tim Whalen	✓	
Rep. Karyl Winslow	✓	
Rep. Diana Wyatt	✓	
	18	0

HOUSE OF REPRESENTATIVES

Judiciary **COMMITTEE**

ROLL CALL VOTE

DATE 1-27-93 **BILL NO.** SB64 **NUMBER** 18

MOTION: Motion to Table carried 15-3

NAME	AYE	NO
Rep. Russ Fagg, Chairman Proxy for Vogel		✓
Rep. Randy Vogel, Vice-Chair	✓	
Rep. Dave Brown, Vice-Chair		✓
Rep. Jodi Bird	✓	
Rep. Ellen Bergman	✓	
Rep. Vivian Brooke		✓
Rep. Bob Clark	✓	
Rep. Duane Grimes	✓	
Rep. Scott McCulloch	✓	
Rep. Jim Rice	✓	
Rep. Angela Russell	✓	
Rep. Tim Sayles	✓	
Rep. Liz Smith	✓	
Rep. Bill Tash	✓	
Rep. Howard Toole	✓	
Rep. Tim Whalen	✓	
Rep. Karyl Winslow	✓	
Rep. Diana Wyatt	✓	
	15	3

HOUSE OF REPRESENTATIVES

Judiciary **COMMITTEE**

ROLL CALL VOTE

DATE 1-27-93 **BILL NO.** SB12 **NUMBER** 18

MOTION: Motion to pass carried unanimously 18-0

NAME	AYE	NO
Rep. Russ Fagg, Chairman	✓	
Rep. Randy Vogel, Vice-Chair	✓	
Rep. Dave Brown, Vice-Chair	✓	
Rep. Jodi Bird	✓	
Rep. Ellen Bergman	✓	
Rep. Vivian Brooke	✓	
Rep. Bob Clark	✓	
Rep. Duane Grimes	✓	
Rep. Scott McCulloch	✓	
Rep. Jim Rice	✓	
Rep. Angela Russell	✓	
Rep. Tim Sayles	✓	
Rep. Liz Smith	✓	
Rep. Bill Tash	✓	
Rep. Howard Toole	✓	
Rep. Tim Whalen	✓	
Rep. Karyl Winslow	✓	
Rep. Diana Wyatt	✓	
	18	0

The United States Law Week

Supreme Court Opinions

May 19, 1992 • THE BUREAU OF NATIONAL AFFAIRS, INC., WASHINGTON, D.C. • Volume 60, No. 45

OPINIONS ANNOUNCED MAY 18, 1992

The Supreme Court decided:

CIVIL RIGHTS—Immunity

Qualified immunity from suit applicable to government officials is unavailable to private defendants charged with 42 USC 1983 liability for invoking state replevin, garnishment, and attachment statutes later found unconstitutional. (*Wyatt v. Cole*, No. 91-126) ..... Page 4383

CRIMINAL LAW AND PROCEDURE—Insanity

State statute permitting insanity acquittee who no longer suffers from mental disease or illness to be indefinitely committed to mental institution until he is able to demonstrate that he is not dangerous to himself or others violates Fourteenth Amendment's Due Process Clause. (*Foucha v. Louisiana*, No. 90-5844) ..... Page 4359

CRIMINAL LAW AND PROCEDURE—Insanity

Involuntary administration of anti-psychotic medication to defendant during his murder trial, in absence of findings by district court as to need for particular course of treatment and medical appropriateness of drug administered as required by *Washington v. Harper*, 494 U.S. 210, 58 LW 4249 (1990), created unacceptably high risk that defendant's constitutionally protected trial rights were prejudiced and therefore requires reversal of his conviction. (*Riggins v. Nevada*, No. 90-8466) ..... Page 4374

CRIMINAL LAW AND PROCEDURE—Sentencing

Federal sentencing court may review prosecutor's refusal to file government motion required by 18 USC 3553(e) and Section 5K1.1 of federal Sentencing Guidelines to permit court to depart downward below minimum authorized sentence to reflect defendant's "substantial assistance" to authorities, and may grant remedy if refusal was based on unconstitutional motive; defendant who claimed merely that government's failure to make substantial-assistance motion was improper in light of his cooperation did not make sufficiently substantial threshold showing to entitle him to discovery or evidentiary hearing. (*Wade v. U.S.*, No. 91-5771) ..... Page 4389

Full Text of Opinions

No. 90-5844

TERRY FOUCHA, PETITIONER *v.* LOUISIANA

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA

Syllabus

No. 90-5844. Argued November 4, 1991—Decided May 18, 1992

Under Louisiana law, a criminal defendant found not guilty by reason of insanity may be committed to a psychiatric hospital. If a hospital review committee thereafter recommends that the acquittee be released, the trial court must hold a hearing to determine whether he is dangerous to himself or others. If he is found to be dangerous, he may be returned to the hospital whether or not he is then mentally ill. Pursuant to this statutory scheme, a state court ordered petitioner Foucha, an insanity acquittee, returned to the mental institution to which he had been committed, ruling that he was dangerous on the basis of, *inter alia*, a doctor's testimony that he had recovered from the drug induced psychosis from which he suffered upon commitment and was "in good shape" mentally; that he has, however, an antisocial personality, a condition that is not a mental disease and is untreatable; that he had been involved in several altercations at the institution; and that, accordingly, the doctor would not "feel comfortable in certifying that he would not be a danger to himself or to other people." The State Court of Appeals refused supervisory writs, and the State Supreme Court affirmed, holding, among other things, that *Jones* v. *United States*, 463 U. S. 354, did not require Foucha's release and that the Due Process Clause of the Fourteenth Amendment was not violated by the statutory provision permitting confinement of an insanity acquittee based on dangerousness alone.

Held: The judgment is reversed.

563 So. 2d 1138, reversed.

JUSTICE WHITE delivered the opinion of the Court with respect to Parts I and II, concluding that the Louisiana statute violates the Due Process Clause because it allows an insanity acquittee to be committed to a mental institution until he is able to demonstrate that he is not dangerous to himself and others, even though he does not suffer from any mental illness. Although *Jones*, *supra*, acknowledged that an insanity acquittee could be committed, the Court also held, as a matter of due process, that he is entitled to release when he has recovered his sanity or is no longer dangerous, *id.*, at 368, *i. e.*, he may be held as long as he is both mentally ill and dangerous, but no longer. Here, since the State does not contend that Foucha was

NOTE: Where it is deemed desirable, a syllabus (headnote) will be released • • • at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Lumber Co.*, 200 U.S. 321, 337.

mentally ill at the time of the trial court's hearing, the basis for holding him in a psychiatric facility as an insanity acquittee has disappeared, and the State is no longer entitled to hold him on that basis. There are at least three difficulties with the State's attempt to perpetuate his confinement on the basis of his antisocial personality. First, even if his continued confinement were constitutionally permissible, keeping him against his will in a mental institution is improper absent a determination in civil commitment proceedings of current mental illness and dangerousness. *Vitek* v. *Jones*, 445 U. S. 480, 492. Due process requires that the nature of commitment bear some reasonable relation to the purpose for which the individual is committed. See, e. g., *Jones* v. *United States*, *supra*, at 368. Second, if he can no longer be held as an insanity acquittee in a mental hospital, he is entitled to constitutionally adequate procedures to establish the grounds for his confinement. *Jackson* v. *Indiana*, 406 U. S. 715. Third, the substantive component of the Due Process Clause bars certain arbitrary, wrongful government actions regardless of the fairness of the procedures used to implement them. *Zinermon* v. *Burch*, 494 U. S. 113, 125. Although a State may imprison convicted criminals for the purposes of deterrence and retribution, Louisiana has no such interest here, since Foucha was not convicted and may not be punished. *Jones*, 463 U. S., at 369. Moreover, although the State may confine a person if it shows by clear and convincing evidence that he is mentally ill and dangerous, *id.*, at 362, Louisiana has not carried that burden here. Furthermore, *United States* v. *Salerno*, 481 U. S. 739—which held that in certain narrow circumstances pretrial detainees who pose a danger to others or the community may be subject to limited confinement—does not save the state statute. Unlike the sharply focused statutory scheme at issue in *Salerno*, the Louisiana scheme is not carefully limited.

WHITE, J., announced the judgment of the Court and delivered the opinion of the Court with respect to Parts I and II, in which BLACKMUN, STEVENS, O'CONNOR, and SOUTER, JJ., joined, and an opinion with respect to Part III, in which BLACKMUN, STEVENS, and SOUTER, JJ., joined. O'CONNOR, J., filed an opinion concurring in part and concurring in the judgment. KENNEDY, J., filed a dissenting opinion, in which REHNQUIST, C. J., joined. THOMAS, J., filed a dissenting opinion, in which REHNQUIST, C. J., and SCALIA, J., joined.

JUSTICE WHITE delivered the opinion of the Court, except as to Part III.

When a defendant in a criminal case pending in Louisiana is found not guilty by reason of insanity, he is committed to a psychiatric hospital unless he proves that he is not dangerous. This is so whether or not he is then insane. After commitment, if the acquittee or the superintendent begins release proceedings, a review panel at the hospital makes a written report on the patient's mental condition and whether he can be released without danger to himself or others. If release is recommended, the court must hold a hearing to determine dangerousness; the acquittee has the burden of proving that he is not dangerous. If found to be dangerous, the acquittee may be returned to the mental institution whether or not he is then mentally ill. Petitioner contends that this scheme denies him due process and equal protection because it allows a person acquitted by reason of insanity to be committed to a mental institution until he is able to demonstrate that he is not dangerous to himself and others, even though he does not suffer from any mental illness.

I

Petitioner Terry Foucha was charged by Louisiana authorities with aggravated burglary and illegal discharge of a firearm. Two medical doctors were appointed to conduct a pretrial examination of Foucha. The doctors initially reported, and the trial court initially found, that Foucha lacked mental capacity to proceed, App. 8–9, but four months later the trial court found Foucha competent to stand trial. *Id.*, at 4–5. The doctors reported that Foucha was unable to distinguish right from wrong and was insane at the time of the offense.[1] On October 12, 1984, the trial court ruled that Foucha was not guilty by reason of insanity, finding that he "is unable to appreciate the usual, natural and probable consequences of his acts; that he is unable to distinguish right from wrong; that he is a menace to himself and others; and that he was insane at the time of the commission of the above crimes and that he is presently insane." *Id.*, at 6. He was committed to the East Feliciana Forensic Facility until such time as doctors recommend that he be released, and until further order of the court. In 1988, the superintendent of Feliciana recommended that Foucha be discharged or released. A three-member panel was convened at the institution to determine Foucha's current condition and whether he could be released or placed on probation without being a danger to others or himself. On March 21, 1988, the panel reported that there had been no evidence of mental illness since admission and recommended that Foucha be conditionally discharged.[2] The trial judge appointed a two-member sanity commission made up of the same two doctors who had conducted the pretrial examination. Their written report stated that Foucha "is presently in remission from mental illness [but] [w]e cannot certify that he would not constitute a menace to himself or others if released." *Id.*, at 12. One of the doctors testified at a hearing that upon commitment Foucha probably suffered from a drug induced psychosis but that he had recovered from that temporary condition; that he evidenced no signs of psychosis or neurosis and was in "good shape" mentally; that he has, however, an antisocial personality, a condition that is not a mental disease and that is untreatable. The doctor also testified that Foucha had been involved in several altercations at Feliciana and that he, the doctor, would not "feel comfortable in certifying that [Foucha] would not be a danger to himself or to other people." *Id.*, at 18.

After it was stipulated that the other doctor, if he were present, would give essentially the same testimony, the court ruled that Foucha was dangerous to himself and others and ordered him returned to the mental institution. The Court of Appeals refused supervisory writs, and the State Supreme Court affirmed, holding that Foucha had not carried the burden placed upon him by statute to prove that he was not dangerous, that our decision in *Jones* v. *United States*, 463 U. S. 354 (1983), did not require Foucha's release, and that neither the Due Process Clause nor the Equal Protection Clause was violated by the statutory provision permitting confinement of an insanity acquittee based on dangerousness alone.

Because the case presents an important issue and was decided by the court below in a manner arguably at odds with prior decisions of this Court, we granted certiorari. 499 U. S. ___ (1991).

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[1] Louisiana law provides: "If the circumstances indicate that because of a mental disease or mental defect the offender was incapable of distinguishing between right and wrong with reference to the conduct in question, the offender shall be exempt from criminal responsibility." La. Rev. Stat. Ann. § 14:14 (West 1986). JUSTICE KENNEDY disregards the fact that the State makes no claim that Foucha was criminally responsible or that it is entitled to punish Foucha as a criminal.

[2] The panel unanimously recommended that petitioner be conditionally discharged with recommendations that he (1) be placed on probation; (2) remain free from intoxicating and mind-altering substances; (3) attend a Substance Abuse clinic on a regular basis; (4) submit to regular and random urine drug screening; and (5) be actively employed or seeking employment. (App. 10–11)

Although the panel recited that it was charged with determining dangerousness, its report did not expressly make a finding in that regard.

II

Addington v. *Texas*, 441 U.S. 418 (1979), held that to commit an individual to a mental institution in a civil proceeding, the State is required by the Due Process Clause to prove by clear and convincing evidence the two statutory preconditions to commitment: that the person sought to be committed is mentally ill and that he requires hospitalization for his own welfare and protection of others. Proof beyond reasonable doubt was not required, but proof by preponderance of the evidence fell short of satisfying due process.[3]

When a person charged with having committed a crime is found not guilty by reason of insanity, however, a State may commit that person without satisfying the *Addington* burden with respect to mental illness and dangerousness. *Jones* v. *United States*, *supra*. Such a verdict, we observed in *Jones*, "establishes two facts: (i) the defendant committed an act that constitutes a criminal offense, and (ii) he committed the act because of mental illness," *id.*, at 363, an illness that the defendant adequately proved in this context by a preponderance of the evidence. From these two facts, it could be properly inferred that at the time of the verdict the defendant was still mentally ill and dangerous and hence could be committed.[4]

We held, however, that "[t]he committed acquittee is entitled to release when he has recovered his sanity or is no longer dangerous," *id.*, at 368; *i. e.* the acquittee may be held as long as he is both mentally ill and dangerous, but no longer. We relied on *O'Connor* v. *Donaldson*, 422 U.S. 563 (1975), which held as a matter of due process that it was unconstitutional for a State to continue to confine a harmless, mentally ill person. Even if the initial commitment was permissible, "it could not constitutionally continue after that basis no longer existed." *Id.*, at 575. In the summary of our holdings in our opinion we stated that "the Constitution permits the Government, on the basis of the insanity judgment, to confine him to a mental institution until such time as he has regained his sanity or is no longer a danger to himself or society." *Jones*, 463 U.S., at 368, 370.[5] The court below was in error in characterizing the above language from *Jones* as merely an interpretation of the pertinent statutory law in the District of Columbia and as having no constitutional significance. In this case, Louisiana does not contend that Foucha was mentally ill at the time of the trial court's hearing. Thus, the basis for holding Foucha in a psychiatric facility as an insanity acquittee has disappeared and the State is no longer entitled to hold him on that basis. *O'Connor*, *supra*, at 574–575.

The State, however, seeks to perpetuate Foucha's confinement at Feliciana on the basis of his antisocial personality which, as evidenced by his conduct at the facility, the court found rendered him a danger to himself or others. There are at least three difficulties with this position. First, even if his continued confinement were constitutionally permissible, keeping Foucha against his will in a mental institution is improper absent a determination in civil commitment proceedings of current mental illness and dangerousness. In *Vitek* v. *Jones*, 445 U.S. 480 (1980), we held that a convicted felon serving his sentence has a liberty interest, not extinguished by his confinement as a criminal, in not being transferred to a mental institution and hence classified as mentally ill without appropriate procedures to prove that he was mentally ill. "The loss of liberty produced by an involuntary commitment is more than a loss of freedom from confinement." *Id.* at 492. Due process requires that the nature of commitment bear some reasonable relation to the purpose for which the individual is committed. *Jones*, *supra*, at 368; *Jackson* v. *Indiana*, 406 U.S. 715, 738 (1972). Here, according to the testimony given at the hearing in the trial court, Foucha is not suffering from a mental disease or illness. If he is to be held, he should not be held as a mentally ill person. See *Jones*, *supra*, at 368; *Jackson*, *supra*, at 738. Cf. *United States* v. *Salerno*, 481 U.S. 739, 747–748 (1987); *Schall* v. *Martin*, 467 U.S. 253, 270 (1984).

Second, if Foucha can no longer be held as an insanity

[3] JUSTICE THOMAS in dissent complains that Foucha should not be released based on psychiatric opinion that he is not mentally ill because such opinion is not sufficiently precise—because psychiatry is not an exact science and psychiatrists widely disagree on what constitutes a mental illness. That may be true, but such opinion is reliable enough to permit the courts to base civil commitments on clear and convincing medical evidence that a person is mentally ill and dangerous and to base release decisions on qualified testimony that the committee is no longer mentally ill or dangerous. It is also reliable enough for the State not to punish a person who by a preponderance of the evidence is found to have been insane at the time he committed a criminal act, to say nothing of not trying a person who is at the time found incompetent to understand the proceedings. And more to the point, medical predictions of dangerousness seem to be reliable enough for the dissent to permit the State to continue to hold Foucha in a mental institution, even where the psychiatrist would say no more than that he would hesitate to certify that Foucha would not be dangerous to himself or others.

[4] JUSTICE KENNEDY's assertion that we overrule the holding of *Jones* described in the above paragraph is fanciful at best. As that paragraph plainly shows, we do not question and fully accept that insanity acquittees may be initially held without complying with the procedures applicable to civil committees. As is evident from the ensuing paragraph of the text, we are also true to the further holding of *Jones* that both JUSTICE THOMAS and JUSTICE KENNEDY reject: that the period of time during which an insanity acquittee may be held in a mental institution is not measured by the length of a sentence that might have been imposed had he been convicted; rather, the acquittee may be held until he is either not mentally ill or not dangerous. Both Justices would permit the indefinite detention of the acquittee, although the State concedes that he is not mentally ill and although the doctors at the mental institution recommend his release, for no reason other than that a psychiatrist hesitates to certify that the acquittee would not be dangerous to himself or others.

JUSTICE KENNEDY asserts that we should not entertain the proposition that a verdict of not guilty by reason of insanity differs from a conviction. *Post*, at 10. *Jones*, however, involved a case where the accused had been "found, beyond a reasonable doubt, to have committed a criminal act." 463 U.S., at 364. We did not find this sufficient to negate any difference between a conviction and an insanity acquittal. Rather, we observed that a person convicted of crime may of course be punished. But "[d]ifferent considerations underlie commitment of an insanity acquittee. As he was not convicted, he may not be punished." *Id.*, at 369.

JUSTICE KENNEDY observes that proof beyond reasonable doubt of the commission of a criminal act permits a State to incarcerate and hold the offender on any reasonable basis. There is no doubt that the States have wide discretion in determining punishment for convicted offenders, but the Eighth Amendment insures that discretion is not unlimited. The Justice cites no authority, but surely would have if it existed, for the proposition that a defendant convicted of a crime and sentenced to a term of years, may nevertheless be held indefinitely because of the likelihood that he will commit other crimes.

[5] JUSTICE THOMAS, dissenting, suggests that there was no issue of the standards for release before us in *Jones*. The issue in that case, however, was whether an insanity acquittee "must be released because he has been hospitalized for a period longer than he might have served in prison had he been convicted." *Jones*, 463 U.S., at 356; and in the course of deciding that issue in the negative, we said that the detainee could be held until he was no longer mentally ill or no longer dangerous, regardless of how long a prison sentence might have been. We noted in footnote 11 that Jones had not sought a release based on nonillness or nondangerousness, but as indicated in the text, we twice announced the outside limits on the detention of insanity acquittees. The Justice would "wish" away this aspect of *Jones*, but that case merely reflected the essence of our prior decisions.

acquittee in a mental hospital, he is entitled to constitutionally adequate procedures to establish the grounds for his confinement. *Jackson* v. *Indiana*, *supra*, indicates as much. There, a person under criminal charges was found incompetent to stand trial and was committed until he regained his sanity. It was later determined that nothing could be done to cure the detainee, who was a deaf mute. The state courts refused to order his release. We reversed, holding that the State was entitled to hold a person for being incompetent to stand trial only long enough to determine if he could be cured and become competent. If he was to be held longer, the State was required to afford the protections constitutionally required in a civil commitment proceeding. We noted, relying on *Baxstrom* v. *Herold*, 383 U. S. 107 (1966), that a convicted criminal who allegedly was mentally ill was entitled to release at the end of his term unless the State committed him in a civil proceeding. "'[T]here is no conceivable basis for distinguishing the commitment of a person who is nearing the end of a penal term from all other civil commitments.'" *Jackson* v. *Indiana*, *supra*, at 724, quoting *Baxstrom*, *supra*, at 111–112.

Third, "the Due Process Clause contains a substantive component that bars certain arbitrary, wrongful government actions 'regardless of the fairness of the procedures used to implement them.'" *Zinermon* v. *Burch*, 494 U. S. 113, 125 (1990). See also *Salerno*, *supra*, at 746; *Daniels* v. *Williams*, 474 U. S. 327, 331 (1986). Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause from arbitrary governmental action. *Youngberg* v. *Romeo*, 457 U. S. 307, 316 (1982). "It is clear that commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection." *Jones*, *supra*, at 361 (internal quotation marks omitted.) We have always been careful not to "minimize the importance and fundamental nature" of the individual's right to liberty. *Salerno*, *supra*, at 750.

A State, pursuant to its police power, may of course imprison convicted criminals for the purposes of deterrence and retribution. But there are constitutional limitations on the conduct that a State may criminalize. See, *e. g.*, *Brandenburg* v. *Ohio*, 395 U.S. 444 (1969); *Robinson* v. *California*, 370 U.S. 660 (1962). Here, the State has no such punitive interest. As Foucha was not convicted, he may not be punished. *Jones*, *supra*, at 369. Here, Louisiana has by reason of his acquittal exempted Foucha from criminal responsibility as La. Rev. Stat. Ann. § 14:14 (West 1986) requires. See n. 1, *supra*.

The State may also confine a mentally ill person if it shows "by clear and convincing evidence that the individual is mentally ill and dangerous." *Jones*, 463 U.S., at 362. Here the State has not carried that burden; indeed, the State does not claim that Foucha is now mentally ill.

We have also held that in certain narrow circumstances persons who pose a danger to others or to the community may be subject to limited confinement and it is on these cases, particularly *United States* v. *Salerno*, *supra*, that the State relies in this case.

Salerno, unlike this case, involved pretrial detention. We observed in *Salerno* that the "government's interest in preventing crime by arrestees is both legitimate and compelling," *id.*, at 749, and that the statute involved there was a constitutional implementation of that interest. The statute carefully limited the circumstances under which detention could be sought to those involving the most serious of crimes (crimes of violence, offenses punishable by life imprisonment or death, serious drug offenses, or certain repeat offenders), *id.*, at 747, and was narrowly focused on a particularly acute problem in which the government interests are overwhelming. *Id.*, at 750. In addition to first demonstrating probable cause, the government was required, in a "full-blown adversary hearing," to convince a neutral decisionmaker by clear and convincing evidence that no conditions of release can reasonably assure the safety of the community or any person, *i. e.*, that the "arrestee presents an identified and articulable threat to an individual or the community." *Id.*, at 751. Furthermore, the duration of confinement under the Act was strictly limited. The arrestee was entitled to a prompt detention hearing and the maximum length of pretrial detention was limited by the "stringent time limitations of the Speedy Trial Act." *Id.*, at 747. If the arrestee were convicted, he would be confined as a criminal proved guilty; if he were acquitted, he would go free. Moreover, the Act required that detainees be housed, to the extent practicable, in a facility separate from persons awaiting or serving sentences or awaiting appeal. *Id.*, at 747–748.

Salerno does not save Louisiana's detention of insanity acquittees who are no longer mentally ill. Unlike the sharply focused scheme at issue in *Salerno*, the Louisiana scheme of confinement is not carefully limited. Under the state statute, Foucha is not now entitled to an adversary hearing at which the State must prove by clear and convincing evidence that he is demonstrably dangerous to the community. Indeed, the State need prove nothing to justify continued detention, for the statute places the burden on the detainee to prove that he is not dangerous. At the hearing which ended with Foucha's recommittal, no doctor or any other person testified positively that in his opinion Foucha would be a danger to the community, let alone gave the basis for such an opinion. There was only a description of Foucha's behavior at Feliciana and his antisocial personality, along with a refusal to certify that he would not be dangerous. When directly asked whether Foucha would be dangerous, Dr. Ritter said only "I don't think I would feel comfortable in certifying that he would not be a danger to himself or to other people." App. 18. This, under the Louisiana statute, was enough to defeat Foucha's interest in physical liberty. It is not enough to defeat Foucha's liberty interest under the Constitution in being freed from indefinite confinement in a mental facility.

Furthermore, if Foucha committed criminal acts while at Feliciana, such as assault, the State does not explain why its interest would not be vindicated by the ordinary criminal processes involving charge and conviction, the use of enhanced sentences for recidivists, and other permissible ways of dealing with patterns of criminal conduct. These are the normal means of dealing with persistent criminal conduct. Had they been employed against Foucha when he assaulted other inmates, there is little doubt that if then sane he could have been convicted and incarcerated in the usual way.

It was emphasized in *Salerno* that the detention we found constitutionally permissible was strictly limited in duration. 481 U. S., at 747; see also *Schall*, 467 U. S., at 269. Here, in contrast, the State asserts that because Foucha once committed a criminal act and now has an antisocial personality that sometimes leads to aggressive conduct, a disorder for which there is no effective treatment, he may be held indefinitely. This rationale would permit the State to hold indefinitely any other insanity acquittee not mentally ill who could be shown to have a personality disorder that may lead to criminal conduct. The same would be true of any convicted criminal, even though he has completed his prison term. It would also be only a step away from substituting confinements for dangerousness for our present system which, with only narrow

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exceptions and aside from permissible confinements for mental illness, incarcerates only those who are proved beyond reasonable doubt to have violated a criminal law.

"In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception." *United States* v. *Salerno*, *supra*, at 755. The narrowly focused pretrial detention of arrestees permitted by the Bail Reform Act was found to be one of those carefully limited exceptions permitted by the Due Process Clause. We decline to take a similar view of a law like Louisiana's, which permits the indefinite detention of insanity acquittees who are not mentally ill but who do not prove they would not be dangerous to others.[*]

III

It should be apparent from what has been said earlier in this opinion that the Louisiana statute also discriminates against Foucha in violation of the Equal Protection Clause of the Fourteenth Amendment. *Jones* established that insanity acquittees may be treated differently in some respects from those persons subject to civil commitment, but Foucha, who is not now thought to be insane, can no longer be so classified. The State nonetheless insists on holding him indefinitely because he at one time committed a criminal act and does not now prove he is not dangerous. Louisiana law, however, does not provide for similar confinement for other classes of persons who have committed criminal acts and who cannot later prove they would not be dangerous. Criminals who have completed their prison terms, or are about to do so, are an obvious and large category of such persons. Many of them will likely suffer from the same sort of personality disorder that Foucha exhibits. However, state law does not allow for their continuing confinement based merely on dangerousness. Instead, the State controls the behavior of these similarly situated citizens by relying on other means, such as punishment, deterrence, and supervised release. Freedom from physical restraint being a fundamental right, the State must have a particularly convincing reason, which it has not put forward, for such discrimination against insanity acquittees who are no longer mentally ill.

Furthermore, in civil commitment proceedings the State must establish the grounds of insanity and dangerousness permitting confinement by clear and convincing evidence. *Addington*, 441 U.S., at 425–433. Similarly, the State must establish insanity and dangerousness by clear and convincing evidence in order to confine an insane convict beyond his criminal sentence, when the basis for his original confinement no longer exists. See *Jackson*, 406 U.S., at 724; *Baxstrom*, 383 U.S., at 111–112. Cf. *Humphrey* v. *Cady*, 405 U.S. 504, 510–511 (1972). However, the State now claims that it may continue to confine Foucha, who is not now considered to be mentally ill, solely because he is deemed dangerous, but without assuming the burden of proving even this ground for confinement by clear and convincing evidence. The court below gave no convincing reason why the procedural safeguards against unwarranted confinement which are guaranteed to insane persons and those who have been convicted may be denied to a sane acquittee, and the State has done no better in this Court.

For the foregoing reasons the judgment of the Louisiana Supreme Court is reversed.

So ordered.

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[*] JUSTICE THOMAS' dissent firmly embraces the view that the State may indefinitely hold an insanity acquittee who is found by a court to have been cured of his mental illness and who is unable to prove that he would not be dangerous. This would be so even though, as in this case, the court's finding of dangerousness is based solely on the detainee's antisocial personality that apparently has caused him to engage in altercations from time to time. The dissent, however, does not challenge the holding of our cases that a convicted criminal may not be held as a mentally ill person without following the requirements for civil commitment, which would not permit further detention based on dangerousness alone. Yet it is surely strange to release sane but very likely dangerous persons who have committed a crime knowing precisely what they were doing but continue to hold indefinitely an insanity detainee who committed a criminal act at a time when, as found by a court, he did not know right from wrong. The dissent's rationale for continuing to hold the insanity acquittee would surely justify treating the convicted felon in the same way, and if put to it, it appears that the dissent would permit it. But as indicated in the text, this is not consistent with our present system of justice.

JUSTICE THOMAS relies heavily on the American Law Institute's (ALI) Model Penal Code and Commentary. However, his reliance on the Model Code is misplaced and his quotation from the Commentary is importantly incomplete. JUSTICE THOMAS argues that the Louisiana statute follows "the current provisions" of the Model Penal Code, but he fails to mention that § 4.08 is "current" only in the sense that the Model Code has not been amended since its approval in 1962, and therefore fails to incorporate or reflect substantial developments in the relevant decisional law during the intervening three decades. Thus, although this is nowhere noted in the dissent, the Explanatory Notes expressly concede that related and similarly "current" provisions of Article 4 are unconstitutional. See, e.g., ALI, Model Penal Code, § 4.06(2) Explanatory Note, (1985)(noting that § 4.06(2), permitting indefinite commitment of a mentally incompetent defendant without the finding required for civil commitment, is unconstitutional in light of *Jackson* v. *Indiana*, 406 U.S. 715 (1972), and other decisions of this Court). Nor indeed does JUSTICE THOMAS advert to the 1985 Explanatory Note to § 4.08 itself, even though that Note directly questions the constitutionality of the provision that he so heavily relies on; it acknowledges, as JUSTICE THOMAS does not, that "it is now questionable whether a state may use the single criterion of dangerousness to grant discharge if it employs a different standard for release of persons civilly committed." JUSTICE THOMAS also recites from the Commentary regarding § 4.08. However, the introductory passage that JUSTICE THOMAS quotes prefaces a more important passage that he omits. After explaining the rationale for the questionable provision, the Commentary states: "Constitutional doubts . . . exist about the criterion of dangerousness. If a person committed civilly must be released when he is no longer suffering mental illness, it is questionable whether a person acquitted on grounds of mental disease or defect excluding responsibility can be kept in custody solely on the ground that he continues to be dangerous." *Id.*, § 4.08, Comment 3, p. 260. Thus, while JUSTICE THOMAS argues that the Louisiana statute is not a relic of a bygone age, his principal support for this assertion is a 30-year-old provision of the Model Penal Code whose constitutionality has since been openly questioned by the ALI Reporters themselves.

Similarly unpersuasive is JUSTICE THOMAS' claim regarding the number of States that allow confinement based on dangerousness alone. First, this assertion carries with it an obvious but unacknowledged corollary—the vast majority of States do not allow confinement based on dangerousness alone. Second, JUSTICE THOMAS' description of these state statutes also is importantly incomplete. Even as he argues that a scheme of confinement based on dangerousness alone is not a relic of a bygone age, JUSTICE THOMAS neglects to mention that two of the statutes he relies on have been amended, as JUSTICE O'CONNOR notes. Nor does JUSTICE THOMAS acknowledge that at least two of the other statutes he lists as permitting confinement based on dangerousness alone have been given a contrary construction by highest state courts, which have found that the interpretation for which JUSTICE THOMAS cites them would be impermissible. See *State* v. *Fields*, 77 N.J. 282, 390 A.2d 574 (1978); *In re Lewis*, 403 A.2d 1115, 1121 (Del. 1979), quoting *Mills* v. *State*, 256 A.2d 752, 757, n.4 (Del. 1969) ("By necessary implication, the danger referred to must be construed to relate to mental illness for the reason that dangerousness without mental illness could not be a valid basis for indeterminate confinement in the State hospital."). See also ALI, Model Penal Code, *supra*, at 260 (although provisions may on their face allow for confinement based on dangerousness alone, in virtually all actual cases the questions of dangerousness and continued mental disease are likely to be closely linked). As the widespread rejection of the standard for confinement that JUSTICE THOMAS and JUSTICE KENNEDY argue for demonstrates, States are able to protect both the safety of the public and the rights of the accused without challenging foundational principles of American criminal justice and constitutional law.

Foucha v. Louisiana: When Must the State Release Insanity Acquittees?

Paul S. Appelbaum, M.D.

Few legal doctrines have been as durably contentious as the defense of "not guilty by reason of insanity." Widely publicized trials of defendants who plead the insanity defense—for example, mass murderer Jeffrey Dahmer and John Hinckley, the would-be assassin of President Reagan—periodically rivet the public's attention on the question of whether mental disorder should excuse offenders from punishment for their crimes. However difficult the solution to this question may be, the issue of avoiding punishment by no means exhausts the moral and legal conundrums associated with the insanity defense.

In its last term, the U.S. Supreme Court addressed one of the less visible, but no less important, questions raised by a finding of not guilty by reason of insanity: when must the state release a person confined to a psychiatric facility after being found not guilty by reason of insanity? Specifically, if a defendant acquitted by reason of insanity is no longer displaying symptoms of mental illness, can the state continue to hold that person indefinitely, on the basis that he or she continues to represent a danger to the public at large?

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The issue confronting the court involved a Louisiana man, Terry Foucha, who broke into a house looking for valuables (1). Brandishing a revolver, he chased the couple who lived there into the street. When the police arrived, Foucha fired at them before being subdued. Foucha was charged with aggravated burglary and illegal use of a weapon and pled not guilty by reason of insanity. Under Louisiana's M'Naghten-type test, defendants seeking an insanity acquittal must demonstrate by a preponderance of the evidence that they were "incapable of distinguishing between right and wrong with reference to the conduct in question." With the concurrence of the district attorney, the judge found that Foucha met this standard and, without a trial, entered a verdict of not guilty by reason of insanity.

Foucha was committed to the East Feliciana Forensic Facility, where he remained for the next three and a half years. On the request of the superintendent, a panel was convened at the facility to review his status. Finding that he was no longer mentally ill—his original condition was attributed to a drug-induced psychosis that had long since resolved—the panel recommended conditional discharge, with ongoing monitoring of substance use. As required by Louisiana law, the recommendation was forwarded to the judge who entered the original verdict. The judge appointed a second panel, made up of the two doctors who had examined Foucha at the time of his original plea of not guilty by reason of insanity, to conduct an independent examination.

The examining psychiatrists concurred with the judgment of the facility that Foucha currently did not have symptoms of psychosis and gave Foucha a diagnosis of antisocial personality disorder. They pointed out that Foucha had been involved in a series of physical altercations at the forensic hospital, including a fight less than two months before that resulted in Foucha's transfer to a maximum-security unit. The examining psychiatrists declined to predict that Foucha would not harm other people if released. In the words of one examiner, "[I would not] feel comfortable in certifying that [Foucha] would not be a danger to himself or other people." Under Louisiana law, Foucha had the burden of demonstrating that he was no longer dangerous. The judge concluded that he had failed to meet this burden and ordered Foucha returned to the forensic facility.

In a case before the Louisiana Supreme Court, Foucha challenged the provisions of the law that had resulted in his rehospitalization (2). In the majority of states, a person found not guilty by reason of insanity and subsequently hospitalized is entitled to release from confinement when found either not mentally ill or no longer dangerous. Louisiana is one of a small number of states that allow indefinite confinement until the defendant can prove that release would not endanger other people, regardless of whether he or she remains mentally ill. Foucha argued that this provision, which constituted indefinite preventive detention on the basis of future dangerousness, violated his rights to due process and equal protection under the law. The Louisiana court upheld the statute, setting the stage for Foucha's appeal to the U.S. Supreme Court.

A fragmented group of U.S. Supreme Court justices demonstrated, if further evidence was needed, just how divisive the insanity defense can be. Writing for a four-judge plurality, Justice White struck down the Louisiana law. "Due process," he wrote, referring to the court's landmark decision in *Jackson v. Indiana* (3), "requires that the nature of commitment bear some reasonable relation to the purpose for which the individual is committed." Insanity

acquittees are hospitalized because they are assumed to be mentally ill and dangerous (4). Their continued confinement is predicated on both criteria being met. As in the case of civil commitment, neither criterion alone—mental illness or dangerousness—suffices without offending insanity acquittees' right to substantive due process. Moreover, because no other category of person who has committed a criminal act is forced to prove that he or she is no longer dangerous to avoid facing indefinite confinement, the Louisiana statute also violated the right to equal protection of acquittees found not guilty by reason of insanity.

Justice O'Connor, the swing vote in this case, wrote a separate concurring opinion to underscore some limitations she would place on the plurality's holdings. Although she agreed that the Louisiana statute was unconstitutional, O'Connor held open the possibility that persons found not guilty by reason of insanity might legitimately be confined after regaining their mental health, "if the nature and duration of detention were tailored to reflect pressing public safety concerns related to the acquittee's continuing dangerousness." O'Connor seemed particularly concerned that insanity acquittees in Louisiana could be held indefinitely, even if they had not committed a violent crime, and that they would be confined in psychiatric facilities, although no longer mentally ill. She seemed to suggest that statutes avoiding these pitfalls might garner her support.

Justice O'Connor's willingness to accept some restrictions on the liberty of insanity acquittees whose symptoms have remitted has implications for another aspect of their treatment and supervision. Several states, led by Oregon (5), have adopted systems in which persons found not guilty by reason of insanity are committed for a period of time to an agency that supervises their care. They may be kept in the hospital, released to the community, or moved back and forth as their condition warrants. While in the community, requirements for treatment, living arrangements, and work may be imposed.

These systems of extended parole might have been endangered by a narrow view of the plurality opinion, which could be read to suggest that the state loses all coercive power over an insanity acquittee who is no longer mentally ill. Justice O'Connor's position that a restoration of mental health does not necessarily end the state's interest in protection of the public may well protect these programs from challenge.

Justices Kennedy and Thomas wrote dissenting opinions in which the other members of the conservative wing of the court, Chief Justice Rehnquist and Justice Scalia, joined. They differed sharply with their colleagues in the majority as to the consequences of a finding of not guilty by reason of insanity. Whereas Justice White's plurality opinion said flatly, "As Foucha was not convicted, he may not be punished," the dissenters noted that Foucha had been proven to have committed the criminal acts in question. A finding of not guilty by reason of insanity, in their judgment, is not equivalent to a finding of innocence. Because a criminal act has been proven, the state retains the right to confine the insanity acquittee even beyond the restoration of sanity. They also found it unnecessary to address the issue of indefinite confinement, noting that Foucha could have been sentenced for up to 32 years and that only a small proportion of that span had elapsed. Moreover, the dissenters were unconcerned with the possibility that Foucha would be held in a psychiatric hospital for preventive detention rather than treatment.

Two other issues of interest to mental health professionals were raised in the court's discussion of the case. Although the issue was not before them explicitly, no justice objected to the characterization of a person with an antisocial personality disorder as someone without a mental illness. The status of personality disorders is controversial within psychiatry, but those disorders often serve as a basis for civil commitment, and their treatment is routinely reimbursed by health insurance. In this case, the conclusions of the examining psychiatrists that antisocial personality disorder is not a "mental illness" were accepted at face value.

Finally, Justice White's plurality opinion noted that the state had another option for holding on to Mr. Foucha. Had criminal charges been filed "against Foucha when he assaulted other inmates, there is little doubt that if then sane he could have been convicted and incarcerated in the usual way." The legitimacy of prosecuting hospitalized patients who deliberately harm others, a subject of considerable dispute (6), appears to have been given an unqualified endorsement by the Court.

On balance, psychiatry's interests were well treated in *Foucha.* The major concern of the American Psychiatric Association, which filed a friend-of-the-court brief (7), was to preclude psychiatric hospitals from being used as repositories for dangerous persons who are not mentally ill. A majority of justices recognized that concern. On the other hand, four of the nine justices were willing to allow persons who were not mentally ill to be confined indefinitely in mental hospitals merely because they were dangerous. The shift of a single vote could alter the outcome in a future case.

References

1. Foucha v Louisiana, 60 USLW 4359, May 19, 1992
2. State v Foucha, 563 So 2d 1138 (La 1990)
3. Jackson v Indiana, 406 US 715 (1972)
4. Jones v US, 463 US 354 (1983)
5. Rogers JL: 1981 Oregon legislation relating to the insanity defense and the Psychiatric Security Review Board. Willamette Law Review 18:23–48, 1982
6. Appelbaum KL, Appelbaum PS: A model hospital policy on prosecuting patients for presumptively criminal acts. Hospital and Community Psychiatry 42:1233–1237, 1991
7. Brief Amicus Curiae of the American Psychiatric Association, Foucha v Louisiana, No 90-5844 (US 1990)

EXHIBIT 3
DATE 1-27-93
SB HB 255

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MONTANA THIRD JUDICIAL DISTRICT COURT, COUNTY OF DEER LODGE

HENDERSON HOUGHTON, RONALD WOOSTER, GENE LEISCHNER, PAUL WOODS, RUSSELL THOMPSON, GARY SKULETICH, TINA PIERCE, MATTHEW EDMUNDSON, et. al., Plaintiffs	*	Cause No. DV-93-03
v.,	*	**COMPLAINT FOR**
	*	**DECLARATORY JUDGMENT**
State of Montana, Department of Corrections and Human Services, Superintendent of the Montana State Hospital, Defendants.	*	

1. The plaintiffs in this action are persons who: (1) have been found not guilty by reason of mental disease or defect pursuant to Section 46-14-301, MCA and its predecessors; (2) were committed to the Montana State Hospital, Warm Springs, Montana; (3) are currently patients at the Montana State Hospital; and, (4) have petitioned for release, have had Montana State Hospital staff recommend their release or desire to petition for release from their commitments to the Montana State Hospital.

2. Montana statutes governing the release of plaintiffs (Sections 46-14-302 and 303, MCA) require that the plaintiffs prove that they are neither mentally ill nor dangerous before they may be released from the Montana State Hospital.

3. The Montana statutes for release directly violate the plaintiffs' rights under the United States Constitution as set forth in Foucha v. Louisiana, _____ U.S. _____, 60 U.S.L.W. 4359 (1992). The U.S. Supreme Court held in Foucha that: the state, not the committed person, has the burden of proof in proceedings for release from confinement; and, the state must prove by clear and convincing evidence that the committed person is both mentally ill and dangerous before the state may continue the commitment.

4. The Defendant State of Montana is responsible for the enactment, implementation and enforcement of the Montana statutes at issue. The Defendant Superintendent of the Montana State Hospital, Warm Springs, Montana is responsible under Section 46-14-302, MCA for petitioning committing courts for the release of persons committed to the Montana State Hospital and the custody of the Superintendent pursuant to Section 46-14-301, MCA. The Defendant Department of Corrections and Human Services requires that the Superintendent acquire the Departments' approval prior to petitioning committing courts for release.

5. Plaintiffs are aware that the Department of Corrections and Human Services is prepared to propose legislation to amend Montana's statutes to conform with the holding in Foucha, however, there is no assurance that such legislation will be enacted into law, nor that the legislation enacted would meet the constitutional standards set by Foucha. Further, the effective date for such legislation, if enacted, could be as late as October 1, 1993.

6. Plaintiffs' rights are currently being abridged by having

to proceed with petitions for release under the current unconstitutional statutory scheme. An action for declaratory judgment, pursuant to Section 27-8-201, et. seq., is an appropriate means to address the violation of plaintiffs' rights.

WHEREFORE the plaintiffs request that the Court adjudge and declare:

1. That Section 46-14-302, MCA is unconstitutional as it violates the plaintiffs' rights under the Due Process Clause guaranteed by the fourteenth amendment to the United States Constitution.

2. That the defendants, their agents and employees be enjoined from implementing, following or enforcing the provisions of the current Montana statutes that require committed persons to prove that they are no longer mentally ill or dangerous.

3. That in any proceedings for the release of plaintiffs or others similarly situated, the State of Montana shall have the burden of proving by clear and convincing evidence that such persons are both mentally ill and dangerous and therefore appropriate for continued commitment to the Montana State Hospital.

4. Award the plaintiffs their costs.

5. Award the plaintiffs such other relief as the court deems appropriate and just.

DATED this 7th day of January, 1993.

ALLEN SMITH JR.
Attorney for Plaintiffs

EXHIBIT 3
1/27/93

EXHIBIT 4
DATE 1-27-93
255 HB

HB 255

TESTIMONY OF KIMBERLY A. KRADOLFER
ASSISTANT ATTORNEY GENERAL

I am a member of the Montana Mental Health Planning and Advisory Council and appear today on behalf of the Council to support HB 255. I have been an assistant attorney general for the State of Montana for nine and a half years. During my first four or five years in that position, I handled virtually all of the criminal appeals in which challenges were brought to Montana's statutes on the defense of mental disease or defect. The past five years I have defended civil cases against the State of Montana, including the Ihler class action lawsuit against Montana State Hospital at Warm Springs. It was based upon that background that the Department of Corrections and Human Services asked me to serve as the Justice Department member of the Montana Mental Health Planning and Advisory Council. I have served on the Council for the past year and a half.

Several members of the Council worked with other interested parties over the past year and a half to draft changes to the statutes dealing with commitments of persons acquitted based upon the defense of mental disease or defect. HB 255 was triggered by a number of practical problems which arise in trying to apply the current statutes. Some of those concerns were echoed in the United States Supreme Court's decision in Foucha v. Louisiana. That decision was handed down last May.

The intent of this bill is to address the mandates which were set out in the Foucha decision and to then apply those mandates to

Montana's statutes. The bill accomplishes a number of things. First, it includes one minor "housekeeping" change which adds the seriously developmentally disabled within the scope of these statutes since they had not been included in the statutes previously for evaluating the reason a person was unable to hold a mental state which is a requisite element of an offense. The bill provides for civil commitment under Title 53, chapter 20, MCA, of anyone determined to have been acquitted of an offense based upon his developmental disability.

Second, the bill addresses the mechanics of how a person who has been committed because he was acquitted of a crime due to his mental disease or defect should be reviewed, how often such review should take place, and what standards should be applied in determining what sort of placement that person should remain in or whether the person should be released.

1. **Foucha v. Louisiana**

The United States Supreme Court decision in Foucha v. Louisiana held that a person who had been found not guilty by reason of insanity (or by reason of mental disease and defect under Montana's statutes) must be handled as a civil commitment of some sort. The opinion recognized that it was appropriate to presuppose that a person who had just been acquitted of a crime based upon an insanity or mental disease and defect was still suffering from

mental illness and could be automatically committed for an initial period of time. The opinion also suggested that it would be permissible to have different levels of scrutiny that applied to commitments depending upon the nature of the acts underlying the offense that had been charged.

However, the opinion holds that a state has the obligation to treat this as a civil commitment and to apply the same sorts of standards and burdens that it would apply in other civil commitment cases.

The Foucha holding requires that after the initial 180 day commitment: (1) the State of Montana must assume the burden to prove that a person should be recommitted; (2) the State must prove the need for recommitment by clear and convincing evidence; (3) the recommitment must be based upon proof that the person is still a danger to himself or others; and (4) the State must prove that the dangerousness is caused by the person's mental illness.

In other words, if a person was mentally ill at a given point in time, but he has recovered from that mental illness and it is under control and the illness itself no longer renders him dangerous, the person cannot be constitutionally recommitted (even if he is dangerous because of his criminal propensities).

2. Levels of Scrutiny.

HB 255 amends the statutes by changing the burden of proof and the standard of proof, and by prohibiting recommitment unless a person is a danger because of his mental illness. It also provides two tiers of scrutiny based upon the acts that formed the basis for the original criminal charges.

First, HB 255 provides that where the charged offense involved "a substantial risk of serious bodily injury or death, actual bodily injury, or substantial property damage," the court can immediately commit the person to the custody of the director of the Department of Corrections and Human Services to be placed in an appropriate mental health facility for custody, care, and treatment. By contrast, if an offense did not involve "substantial risk of serious bodily injury or death, actual bodily injury, or substantial property damage," the person would simply be committed under Montana's regular civil commitment statutes.

3. Jurisdiction.

Another change involves jurisdiction. Under HB 255, the jurisdiction of the commitment will be moved to the location where the person has actually been committed. This mirrors the process that takes place in the regular civil commitment proceedings, where the district judge of the district where the patient is located would have jurisdiction over the proposed recommitment. (While

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that is often at Montana State Hospital at Warm Springs or the Boulder Center for the Developmentally Disabled, it can also be in community placements under certain circumstances.) The judge presiding on the case would be in the position to review information pertaining to the patient's behavior in his or her community and to rule on the appropriateness of continuing such placement.

4. Notice to County Attorney/Original Judge.

The bill also provides that the county attorney who handled the matter originally when the offense was charged and the judge who originally presided over the initial commitments shall be allowed to continue to provide input on appropriate placement for the person. The statutes as amended require notification of the county attorney and the district judge and also allow those individuals to have an opportunity to appear and provide information to the district court which has current jurisdiction over the person. This allows a higher degree of scrutiny than would normally occur in any other civil commitment.

This provision is patterned after Montana's sentence review division statutes (which require that the county attorney and the sentencing judge be notified of hearings before the sentence review division and be given an opportunity to express their viewpoints on any change in sentence of the inmate).

5. Annual Review/Second Opinion.

The bill also amends the statutes to provide the same annual review which other patients who are civilly committed receive and to allow them to secure a second opinion from a professional person of the committed person's choice. This language is identical to the statutes pertaining to civil commitments. As a practical matter, such evaluations are conducted with regularity and the court regularly appoints one or more professional person at the request of the patient in preparing for the recommitment proceeding. Dan Anderson will address the fiscal note in his testimony. However, there will as a practical matter be no fiscal impact to this bill since in practice the courts have been appointing professional persons of the patients' choice to assist in preparing for recommitment hearings.

6. Conditional releases.

The other portion of the statutes which are changed pertain to conditional release of a person who had been acquitted based upon mental disease or defect. At the present time, a district judge has virtually unlimited jurisdiction over someone who has been acquitted and is originally committed under these statutes. There is a five-year limit on any conditional release during which time a judge may revoke the release and bring the person back to

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the hospital. The problems that have occurred with this are the same sort that are addressed in Foucha v. Louisiana.

In some instances, district courts have used the conditional release provision to revoke a release into the community based upon activity which had nothing to do with the person's mental illness. For example, a former patient who had been released to a community was picked up for violation of drug laws. His mental illness was not a factor in him violating statutes dealing with dangerous drugs. Rather than prosecuting the person for a crime and sending the person to prison, it was easier for the court and the county attorney to revoke the conditional release and to send him back to the Montana State Hospital. Again, that is unconstitutional under the Foucha decision. Such revocation or recommitment is not constitutional unless the person is a danger and that danger is caused by the person's mental illness.

The changes to the statutes in this area will eliminate the possibility of abuse since they will provide that judges cannot repeatedly release someone and leave then out for nearly five years and then simply revoke based upon some conduct which is a violation of the terms of release. If the violation is caused by the person's mental illness and it demonstrates that the person is in fact dangerous, such revocation is appropriate. However, unless dangerousness can be tied directly to the illness, other criminal proceedings would be more appropriate than recommitment.

Additionally, if someone has been conditionally released, more than five years has passed from his original commitment to the hospital, and most of that time has been spent on community release without incident, it is more appropriate to simply commit him civilly on a new commitment under the regular commitment statutes if the status of his mental illness warrants commitment. To simply hold a prior criminal charge over someone's head for an indeterminate period of time and to use that as a means of maintaining control over the person is not permissible in light of the Foucha v. Louisiana decision.

7. Lawsuit: Houghton v. State of Montana

On January 7, 1993, based upon the holding in Foucha v. Louisiana decision, a lawsuit was filed by eight named patients at Montana State Hospital who have been committed after acquittal based upon mental disease and defect. Those patients filed suit on behalf of themselves and all others similarly situated to request an injunction against enforcement of Montana's current statutes. They request the relief which this bill would afford. I would note that the hospital staff have identified a ninth patient who falls into this category.

It is the position of the Montana Mental Health Planning and Advisory Council that this bill will establish the standards required by Foucha. It will also structure the recommitment

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process to allow a higher degree of scrutiny in more serious cases (where an act involved "substantial risk of serious bodily injury or death, actual bodily injury, or substantial property damage"). It also provides a means for continued input from the original county attorney and district court judge. This is therefore a more desireable approach than simply imposing an injunction which leaves questions about the procedures which should be followed, who has standing to appear, the standards which apply, and how recommitment review should be triggered.

Conclusion

The Montana Mental Health Planning and Advisory Council has reviewed this area extensively and has sought input from the hospital, local community mental health providers, the Board of Visitors for Mental Disabilities, and from people working in the criminal justice system. I would urge this committee's thoughtful consideration of this bill and that the committee issue a "Do Pass" recommendation. Thank you.

western montana regional community
MENTAL HEALTH CENTER

EXHIBIT 5
DATE 1-27-93
255 HB

HB 255
TESTIMONY OF JOHN LYNN
DIRECTOR, COMMUNITY SUPPORT SERVICES
WESTERN MONTANA COMMUNITY MENTAL HEALTH

I have worked as a mental health professional in the public sector here in the state of Montana for 12 years. During that time, I have been a member of the Montana State Hospital Admission and Discharge Review Team which is comprised of a group of professionals from the hospital and the mental health centers from around the state. We are charged with the task of reviewing all admissions to the hospital and the subsequent discharges to assure appropriate care. For many years the team has been frustrated by admissions to the hospital of individuals found not guilty by reason of mental disease or defect but for whom active treatment is not indicated. Historically, such individuals remained at the hospital for periods of time often exceeding the sentence which they would have received had they been found guilty of the crime. Based on the United States Supreme Court decision in Foucha v. Louisiana, this practice is now unconstitutional.

HB 255 would reconcile the Montana statute to the Supreme Court decision while allowing for a review process that requires continued hospitalization for those individuals who remain a danger to self or others due to a mental illness, but allows appropriate referral to community agencies for those individuals who are no longer dangerous because of the illness. The bill makes good sense in terms of the utilization of the Montana State Hospital and it makes good sense clinically. I respectfully request this committee recommend passage of this legislation.

EXHIBIT #6
DATE 1-27-93
HB257

Amendments to House Bill No. 257
First Reading Copy

Requested by Rep. Toole
For the Committee on the Judiciary

Prepared by John MacMaster
January 26, 1993

1. Title, lines 6 and 7.
Strike: "DEVELOP METHODS FOR QUICKLY RESPONDING TO EMERGENCY MEDICAL SITUATIONS"
Insert: "TO NEGOTIATE IN GOOD FAITH WITH OTHER LOCAL GOVERNMENT ENTITIES AND POLITICAL SUBDIVISIONS FOR AN EMERGENCY MEDICAL RESPONSE BY ANOTHER LOCAL GOVERNMENT ENTITY OR LOCAL POLITICAL SUBDIVISION THROUGH INTERLOCAL AND OTHER AGREEMENTS IN INSTANCES IN WHICH ONE OR MORE OTHER LOCAL GOVERNMENT ENTITIES OR LOCAL POLITICAL SUBDIVISIONS ARE ABLE TO PROVIDE AN EMERGENCY MEDICAL RESPONSE THAT IS QUICKER, OR BETTER, OR BOTH"

2. Page 4, lines 6 through 10.
Strike: "develop" on line 6 through "providing" on line 10
Insert: "negotiate in good faith with other local government entities and local political subdivisions"
Strike: "a" on line 10
Insert: "an emergency medical"

3. Page 4, lines 10 and 11.
Strike: "public" on line 10 through "entity" on line 11
Insert: "local government entity or local political subdivision"
Following: "agreements" on line 11
Insert: "in instances in which one or more other local government entities or local political subdivisions are able to provide an emergency medical response that is quicker, or better, or both"

TITLE A BILL FOR AN ACT ENTITLED: "AN ACT MAKING LOCAL GOVERNMENTS LIABLE FOR CAUSING OR CONTRIBUTING TO PERSONAL INJURY BY FAILING TO NEGOTIATE IN GOOD FAITH WITH OTHER LOCAL GOVERNMENT ENTITIES AND POLITICAL SUBDIVISIONS FOR AN EMERGENCY MEDICAL RESPONSE BY ANOTHER LOCAL GOVERNMENT ENTITY OR LOCAL POLITICAL SUBDIVISION THROUGH INTERLOCAL AND OTHER AGREEMENTS IN INSTANCES IN WHICH ONE OR MORE OTHER LOCAL GOVERNMENT ENTITIES OR LOCAL POLITICAL SUBDIVISIONS ARE ABLE TO PROVIDE AN EMERGENCY MEDICAL RESPONSE THAT IS QUICKER, OR BETTER, OR BOTH.

(c) a local government entity or local political subdivision that causes or contributes to personal injury because of its failure to negotiate in good faith with other local government entities and local political subdivisions for an emergency medical response by another local government entity or local political subdivision in instances in which one or more other local government entities or local political subdivision are able to provide an emergency medical response that is quicker, or better,

EXHIBIT 7
DATE 1/27/93
HB 257

Fire response 'foot-dragging' burns mayor

By JOHN STROMNES
of the Missoulian

Missoula's city and rural fire departments have been negotiating for the last 20 years to get a "quickest response" agreement signed between them.

Mayor Dan Kemmis says Missoula residents won't stand for any more foot-dragging, name calling, buck passing and excuses in getting such an agreement for medical emergencies up and running. So he wants to personally light a fire under the negotiators to speed things up.

On Monday, he asked the city council for permission to take a personal hand in pushing the oft-delayed negotiations along, and to put on the record it is a high priority item for the city.

He wants a resolution that would allow him "to contact the Missoula Rural Fire Department immediately, communicating to the Rural Fire Department the contents of this resolution, and arranging a meeting to develop a plan for quickest station response for medical emergencies throughout the urbanized area."

The resolution says that it is of the "highest priority" to develop a plan for city-rural cooperation so that whichever department can get to an emergency medical call first does so, even if the medical calls is outside the agency's formal jurisdiction.

The mayor introduced his resolution Monday at the regular city council meeting. It was referred to committee, and should be back for full council action in about two weeks, the mayor said — if the mayor gets a quick response from the city council's Public Safety Committee.

MONTANA

Rural Fire board cinc

By MICK HOLIEN
of the Missoulian

The Missoula Rural Fire District Trustees Wednesday night unanimously approved an agreement with the Missoula City Fire Department that will ensure that the nearest fire crew will respond to emergencies.

Rural volunteer firefighters strongly endorsed the agreement Tuesday and the Missoula City Council unanimously supported the nearest available station response agreement last week.

Missoula Rural Fire Chief Paul Laisy was predictably ecstatic. "It is morally unacceptable for people having a fire or medical emergency to wait for a unit when the closer station can't respond. If we can all make this work, and I'm sure we can, this is a step towards a lot better relationship between departments in the valley."

Rural Fire board chairman Jim Lofftus said this could be just the beginning. "I hope eventually there is a full-blown agreement (with all neighboring fire departments) in the val without respect to boundaries," he said.

The agreement is effective immediat but will not be implemented until after the f of the year, when addresses are reprogramm into the 9-1-1 computer, said Laisy.

"We'll probably use mutual aid even m until then," he said. The mutual aid agreem is the forerunner to this pact and allows e department to request the other's assista upon request.

Here is how the agreement works:

An emergency call will either be simul to both departments or dispatched to the c est fire station.

Each department will respond to an en gency call within its own boundaries with normal complement of personnel and eq ment. The station closer to the emergency respond with one engine regardless of boundary.

The first engine arriving on the scene take command, assess the situation and call any additional equipment.

Council rebuffs mayor

Majority says no to emergency-response resolution

By JOHN STROMNES
of the Missoulian

"Butt out, Mr. Mayor," a majority of the Missoula City Council in effect told Dan Kemmis Monday night by rejecting a resolution he lobbied hard for that would have made an emergency response agreement between the city and rural fire departments the top city priority.

The mayor's resolution also would have given him the council's blessing to contact the rural fire department to push the negotiations along.

In another controversy in a meeting filled with the stuff, the council decided to hear comments Oct. 19 on a plan by councilman Norm Laughlin to evict Farmers Market from its Circle Square location of the last 20 years to make way for the Mountain Line bus transfer station. At the request of councilwoman Elaine Shea, the hearing will also seek comment on other possible locations for the bus transfer station. Those locations including a new proposal to put the hub outside the Missoula Public Library at 300 E. Main St. about two blocks east of its current location.

The action on Kemmis' emergency-cooperation resolution came shortly after city Fire Chief Chuck Gibson told the council that he and Rural Chief Paul Laisy earlier Monday had reached a verbal agreement on how to provide closest station response for medical emergencies.

Past negotiations had gotten stuck on how much area the agreement would encompass -- the city didn't want to cover some rural territory near the city -- and how Rural Fire, manned mostly by volunteers, would be able to give city residents their tax money's worth when responding to city calls. The agreement must still be reduced to writing and withs

(See COUNCIL, Page A 6)

nes up deal

One department will not have the authority to cancel another, but may advise the other to proceed at a slower pace, depending on the status of the situation.

Some areas that will receive quicker response automatically because of the agreement:

- Union Square Apartments, Missoula Community Hospital and Big Sky High School on South Avenue. They are in the city, but closer to the rural station at South and Reserve.
- Businesses on the east side of Reserve Street north and south of South Avenue. Some are in the city, but again closer to the rural station.
- Pattee Canyon. Located in the rural fire district, but the city station at 39th and Russell streets is closer.
- Upper Grant Creek and Snow Bowl roads. In rural fire's jurisdiction, but closer to city fire's downtown station.
- Some of the industrial area north of West Broadway. Closer to city fire's downtown station, but in rural fire's jurisdiction.

tand scrutiny of several committees, including an ad hoc fire policy committee, the city's Public Safety Committee and the independently elected Rural Fire District board. It can then come to the full council for review.

"This (the mayor's resolution) will muddy the waters," said Alderman Jack Reidy of Ward 5. Reidy, along with AL Sampson, Bob Hermes, Curtis Horton, Bill Potts, Norm Laughlin and Donna Shafer voted against it.

"I fail to see how putting the city council on record (supporting the mayor's resolution) muddies the waters," shot back Alderwoman Chris Gingerelli of Ward 3. Gingerelli, Elaine Shea, Kelly Rosenleaf, Doug Harrison and Mike Cregg voted for the mayor's initiative.

The full council did approve a resolution originally sponsored by Al Sampson, former fire chief of the city fire department and a veteran council member from Ward 6, simply urging Laisy and Gibson to "continue to negotiate."

In other action, the council unanimously approved purchase of a lot along North Reserve Street (Gateway Place 20A) for $251,000 from a Washington firm, A&C Ventures II, for Missoula's future fourth fire station, should a $3.35 million fire station bond issue be approved in the November election.

MISSOULIAN EDITORIAL

Who's in charge here?

City officials have no excuse for foot-dragging in fire fight

If Mayor Dan Kemmis and the City Council won't put an end to the unprofessional rivalry that guides the Missoula Fire Department's dealings with the rural fire district that surrounds the city, voters should elect a city government that will.

This suggestion comes as we watch council members and fire officials drag their heels over a common-sense pact for dispatching emergency help in the Missoula area from the closest fire station. Many city residents live closer to rural fire stations than city stations, while some city stations are closer to rural fire district residents.

Under current practice, 9-1-1 dispatches city fire crews to emergencies inside the city limits, while rural fire crews are sent to emergencies outside the city limits.

The folly of this territorial approach became apparent once again recently when heart-attack victim Bonnie Babbitt died after waiting for help from a rural fire station to make a 12-minute drive to reach her — twice as long as it would have taken city firefighters to make the trip from the downtown fire station. Although this incident has received unusual attention because it involved a death, it's hardly an uncommon occurrence. We've complained about the situation for years, to no apparent avail.

The city's reluctance to enter an agreement to have emergency help dispatched from the closest fire station to the scene is tied in part to the annexation issue. The idea is that if you want help from the city, you'd best be in the city when you need it. That cold, bureaucratic sentiment has never been more clearly stated than by Alderman Al Sampson in Monday's Missoulian: "I think an automatic aid agreement might be useful, but if people do not want to pay for the protection, I don't know why they should be given protection." His view ignores the fact that many city residents live closer to rural fire stations and might appreciate speedy assistance in emergencies, even though they don't pay taxes to Rural Fire. For what it's worth, Bonnie Babbitt was a city resident who had the misfortune to work at a business outside the city limits.

For years, Missoula Rural Fire District was the city's primary antagonist in battling annexation, and animosity toward rural fire seems to cloud judgment at City Hall. There's also a labor issue involved, since the city Fire Department is staffed with union firefighters, while Rural Fire uses a combination of paid and volunteer firefighters.

None of those issues add up to a good reason for not having closest-station response. The bottom line is this: Your life may depend where you happen to be when you need help.

Missoula Roundup

MONTANA

Panel drowns mayor's fi

BY JOHN STROMNES
of the Missoulian

A City Council committee Tuesday rejected an attempt by Missoula Mayor Dan Kemmis to urge closer cooperation between Missoula's city and rural fire departments in responding to medical emergencies in Missoula's urban area.

The Public Safety Committee refused to endorse a resolution allowing the mayor to work toward an agreement even though Kemmis warned that public support for a ballot this November may dissipate if an agreement is not reached soon between the two long-warring fire departments.

"We need to demonstrate clearly to the public our commitment to coordinated emergency services in the urban area. I believe any delay in doing that now will be detrimental in the public eye" to supporting the bond issue, the mayor said.

"I think the (Kemmis) resolution is unnecessary," said Council President Al Samson, a retired city firefighter who took the lead in opposing the mayor's resolution. In his many years on the council, Samson closer ties between the city and rural emergency agencies, in part on the grounds that people living outside the city limits do not pay city property taxes and therefore do not deserve the services the city fire department provides residents.

Another opponent of the mayor's resolution, Ward 5 representative Curtis Horton, said council endorsement of the resolution itself made the issue a "political football." Ward 2 council member Donna Shaffer, said such a resolution was "premature."

The mayor has made no secret of his be-

What are they drinking?

Uprooting Farmers' Market is council's soggiest idea yet

Somebody should test the water piped into Missoula City Hall. There are indications that something is making certain members of the City Council so light-headed that they can't think straight.

What else could explain the City Council Public Safety Committee's proposal to evict Missoula's beloved Farmers' Market from Circle Square, forcing the market to relocate to Caras Park?

What besides ingestion of water-borne toxins could account for the same committee's proposal to move Mountain Line's bus transfer site to Circle Square, a terrible and inconvenient location that even the bus system's managers oppose?

And what, besides something bad they drank, could lead members of the Public Safety Committee to flatly reject Mayor Dan Kemmis' responsible proposal that he work to foster a closer working relationship between the Missoula Fire Department and Missoula Rural Fire District?

These three recent actions defy common sense.

The proposal to relocate Farmers' Market should be resisted by all Missoulians. More than mere tradition is at stake here, although 21 years of tradition shouldn't be ignored. Circle Square is perfectly suited to the tremendously successful and popular market; Caras Park is not. Moreover, Caras Park is plenty busy as it is. Just as important, the twice-weekly markets during the summer months have played an important role in giving people a reason to care about a portion of the downtown that needs all the vitality it can get. Replacing the festival-like atmosphere of the market with exhaust-belching buses would only promote decay in the area at the northern end of Higgins Avenue.

Mountain Line does need a new transfer site. The current site outside the US West building has safety problems, and pollution from the buses is a threat to delicate telephone switching equipment inside. While there may be no perfect site for the buses to load and unload transferring passengers, several sites downtown and elsewhere in the community would be better than out-of-the-way Circle Square. Bus ridership is low enough as it is without forcing many passengers to walk farther between the bus and their downtown destination.

Finally, members of the Public Safety Committee should not have the last word on closer cooperation between city and rural fire departments. There's no legitimate reason why Missoulians shouldn't receive emergency help from the nearest source — regardless whether it's in the city or rural fire's jurisdiction.

We aren't sure what's been so badly affecting the judgment of council members. We do know how they can be set straight, however. Pick up the phone and call them, put pen to paper and write them, or trot on down to the next council meeting to give them a piece of your mind. Tell them you don't want the Farmers' Market uprooted, you want Mountain Line to have a logical home and you take public safety seriously, even if the council's Public Safety Committee doesn't.

WEDNESDAY

GOVERNMENT SPENDING

Missoulian **B**
September 30, 1992

EXHIBIT 7
DATE 1/27/93
HB 257

e plan

idents want such an agreement, especially
ce the death of a Missoula woman from
heart attack in August received wide-
ead public attention. The city fire truck
t could have offered her the quickest aid
s not dispatched because the woman, a
resident, was stricken at her workplace,
t outside the city limits.

After Tuesday's vote, city Fire Chief
ack Gibson asked the committee if he
uld continue any negotiations at all with
counterpart in rural fire.

The committee passed a motion from
nson to allow Gibson to continue to ne-
iate with Rural Fire Chief Paul Laicy.

THE CITY OF BOZEMAN
411 E. MAIN ST. P.O. BOX 640 PHONE (406) 586-3321
BOZEMAN, MONTANA 59715-0640

EXHIBIT 8
DATE 1-27-93
SB HB 257

January 26, 1993

Post-it™ brand fax transmittal memo 7671 | # of pages ▸

To Ellie Hanson	From Paul Luvre
Co. M.L.C.T.	Co.
Dept.	Phone # 586-3321
Fax # 442-9231	Fax # 586-0835

Representative Russell Fagg
CHAIRMAN, JUDICIARY COMMITTEE
Capitol Hill Station
Helena, MT 59620

RE: HB 257

Dear Chairman Fagg: Russ

The City of Bozeman is opposed to HB 257. This bill removes immunity and makes local governments financially liable when they fail to quickly respond or when the city or county is unable to enter into an interlocal or other agreement with a private entity or another public entity. This bill creates an unacceptable burden upon the citizens and taxpayers of cities and counties.

The reasons for our vehement opposition are:

1. This bill invites litigation and could be interpreted to impose an absolute liability upon cities and counties. In each emergency response, there exists an allegation that cities and counties could have responded 3 minutes quicker, 2 minutes quicker, 1 minute quicker, 45 seconds quicker, etc; therefore, the city or county should be held pecuniarily responsible. This creates a deep pocket for the injured individual against the government and not against the person who actually caused the emergency condition, like the uninsured DUI driver, the abusive spouse, the arsonist, and even when this injured person created the emergency. The bottom line is the taxpayer pays and not the responsible party.

2. In order to respond to this unfettered standard of a "quick" response, taxpayers could be required to build response stations in virtually each neighborhood to ensure this 3 minute or 2 minute quicker response time. Along with each station comes more personnel and equipment. Moreover, the cities haven't been given the flexibility under I-105 to meet this future mandate.

3. Cities and Counties would be held responsible when private entities refuse to enter into an agreement with the government entity even though the private entity may have the better expertise and resources to respond to an emergency situation.

4. This bill creates a special duty to respond upon local governments which does not currently exist under the law.

This bill purports to be a solution for perceived government inaction in developing interlocal agreements for responding to medical emergencies but it does not create legislation which promotes the development of these agreements. The best tool to promote the purpose of this bill is to remove the likelihood of liability, like the good samaritan law, instead of increasing liability. HB 257 is a ruse to make local governments and ultimately the taxpayers deep pockets.

Very truly yours,

CITY ATTORNEY'S OFFICE

Paul J. Luwe
City Attorney

PJL
CC: James E. Wysocki, City Manager
Alec N. Hansen,
Mt League of Cities & Towns

MISSOULA
OFFICE OF THE CITY ATTORNEY
435 RYMAN • MISSOULA, MT 59802-4297 • (406) 523-4614

January 26, 1993

93-029

EXHIBIT #9
DATE 1-27-93
SB HB 257

HOUSE JUDICIARY COMMITTEE MEMBERS
MONTANA STATE LEGISLATURE
CAPITOL STATION
HELENA, MONTANA 59620

RE: OPPOSITION TO HOUSE BILL 257 MAKING LOCAL GOVERNMENTS LIABLE FOR CAUSING OR CONTRIBUTING TO PERSONAL INJURY BY FAILING TO DEVELOP METHODS FOR QUICKLY RESPONDING TO EMERGENCY MEDICAL SITUATIONS

Dear Honorable House Judiciary Committee Members:

The purpose of this letter is to express the City of Missoula's opposition to House Bill 257 entitled "An Act Making Local Governments Liable for Causing or Contributing to Personal Injury By Failing to Develop Methods for Quickly Responding to Emergency Medical Situations".

The City of Missoula opposes House Bill 257 for the following reasons:

(1) HB-257 could potentially generate claims and litigation against local government entities or political subdivisions by the very existence of the statutory language it sets forth. It costs thousands of dollars per lawsuit to defend frivolous lawsuits.

(2) HB-257 is an invitation for claimants to assert claims as to what the legal "Causes" of the personal injury purportedly was. For example, was the personal injury caused by heart attack or the local government entity's emergency medical response or purportedly some combination of these two.

(3) HB-257 is an invitation to claimants to assert claims as to whether or not the local government "contributes" to the personal injury. For example, response time disputes and whether delay purportedly contributed to the personal injury.

(4) HB-257 requires local government/political subdivision methods for "quickly responding to emergency medical situations" and thereby invites claimants to assert claims as to what constitutes an adequate or acceptable method for "quickly responding to emergency medical situations".

(5) HB-257 creates an opportunity for a claimant to assert claims against a local government/political subdivision when the closest fire station's fire truck is already on an emergency service call at the time a second emergency occurs in the

geographical area near the fire station and the local government/political subdivision is not able to provide its quickest or as quick a response as normal to the subsequent call because the fire truck(s) is/are already engaged in a previous emergency call.

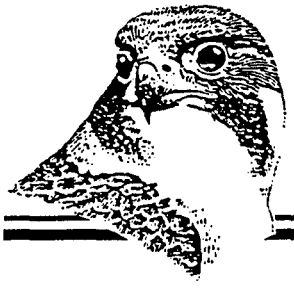
(6) HB-257 could cause a local government/political subdivision to expend substantially more money on firefighter overtime pay if the local government/political subdivision believes it must call out back up firefighters to work at a fire station in order to attempt to reduce or avoid legal liability exposure pursuant to HB-257 while the on-duty firefighter crew is engaged in a prior fire service call.

Please kill HB-257.

Yours truly,

Jim Nugent
City Attorney
cc: Mayor; City Council; Chuck Gibson; Marshall Kyle

Did not testify SB19/15



FLORENCE CARLTON SCHOOL

EXHIBIT 10
DATE 1/27/93
SB 19

DR. ERNEST WILLIAM JEAN
SUPERINTENDENT
Ph. (406) 273-6751

VANCE VENTRESCA
ELEM. PRINCIPAL
Ph. (406) 273-6741

BRADY D. SELLE
SECONDARY PRINCIPAL
Ph. (406) 273-6301

CATHY BINANDO
BUSINESS MGR.
Ph. (406) 273-6751

February 19, 1993

Representative Karyl Winslow
Capitol Station
Helena MT 59601

Dear Representative Winslow:

I am writing this letter to express my opposition to the passage of SB15 and SB19. These two bills create a legislative negotiations for individual school districts.

Since the advent of Title 39 (the Public Sector Bargaining Act), these two items have been bargained between employees and school districts, both successfully and unsuccessfully, over the years. School districts, at times, and Florence-Carlton is an example of one, have given large salary increases in lieu of placing these language items in the collective bargaining agreement. It seems unconscionable to me that the legislature would enact items that are the rightful place for actions that should take place at the table. If the legislature wishes to establish, through legislative action, collective bargaining issues, then it would seem logical to me that the legislature should repeal in its entirety Title 39 Bargaining Act.

Again, I urge you to vote NO on both SB15 and SB19.

Sincerely,

Dr. Ernest William Jean,
Superintendent

EWJ/dr

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

Judiciary COMMITTEE BILL NO HB 257

DATE Jan. 27, 1993 SPONSOR(S) Toole

PLEASE PRINT **PLEASE PRINT** **PLEASE PRINT**

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Richard Babbitt 2347 Wylie Missoula, MT 59802	self	✓	
Paul Laisy 2302 Pleasant Msla. Mt 59801	Msla Rural Fire District	✓	
JAMES A. LOFTUS 14502 HELLGATE LN TOWN	MCAIT FIRE DIST ASSC	✓	
Dave Gee	Mont. Municipal Insurance Authority		✓
Bruce McCandless	City of Billings		✓
Bill Verwolf	City of Helena		✓
Jim Nugent	City of Missoula		X
Al Sampson	City of Msla + Lewis & Clark		X
Tim Bergstrom	Billings Fire Fighters		X
[illegible]	MT St Firemans Assn		X
Alec Hansen	MLCT		X

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

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

Judiciary COMMITTEE BILL NO. SB 19

DATE Jan. 27, 1993 SPONSOR(S) Blaylock

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Bruce W. Moerer	MSBA		X
Don Waldron	MREA		X
Phil Campbell	MEA	X	
Terry Minow	MFT	X	

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HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

Judiciary COMMITTEE BILL NO HB 253

DATE Jan 27, 1993 SPONSOR(S) Anderson

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Dan Anderson	Dept. Corrections Human Svc - ~~Art~~ Mental Health Div.	X	
Kim Kradolfer	Montana Mental Health Planning/Advisory Council	X	
HARLEY WARNER	ASSOC. OF CHURCHES	X	

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