MINUTES

MONTANA HOUSE OF REPRESENTATIVES
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN BOB CLARK**, on January 31, 1995, at 7:00 AM.

ROLL CALL

Members Present:

Rep. Robert C. Clark, Chairman (R)
Rep. Shiell Anderson, Vice Chairman (Majority) (R)
Rep. Diana E. Wyatt, Vice Chairman (Minority) (D)
Rep. Chris Ahner (R)
Rep. Ellen Bergman (R)
Rep. William E. Boharski (R)
Rep. Bill Carey (D)
Rep. Aubyn A. Curtiss (R)
Rep. Duane Grimes (R)
Rep. Joan Hurdle (D)
Rep. Deb Kottel (D)
Rep. Linda McCulloch (D)
Rep. Daniel W. McGee (R)
Rep. Brad Molnar (R)
Rep. Debbie Shea (D)
Rep. Liz Smith (R)
Rep. Loren L. Soft (R)
Rep. Bill Tash (R)
Rep. Cliff Trexler (R)

Members Excused: NONE

Members Absent: NONE

Staff Present: John MacMaster, Legislative Council
Joanne Gunderson, Committee Secretary

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

Committee Business Summary:

Hearing:	SB 36, HB 296, HB 311
Executive Action:	SB 29 BE CONCURRED IN AS AMENDED
	HB 135 DO PASS AS AMENDED
	HB 177 DO PASS AS AMENDED
	HB 232 DO PASS

{Tape: 1; Side: A}

EXECUTIVE ACTION ON SB 29

Motion: **REP. LINDA MC CULLOCH MOVED SB 29 BE CONCURRED IN.**

Motion: **REP. MC CULLOCH MOVED TO AMEND PAGE 16, LINE 6 AFTER "ISSUED" INSERT "FOR THE SAME OBLIGATION."**

Discussion: **John MacMaster** explained the need for the amendment.

Vote: **The motion carried unanimously by voice vote, 19 - 0.**

Motion: **REP. MC CULLOCH MOVED SB 29 BE CONCURRED IN AS AMENDED.**

Discussion: **REP. SHIELL ANDERSON** had a question about which parent could claim the child as a dependent for income tax purposes.

REP. DEB KOTTEL said her understanding was that it is determined by the terms of the decree of dissolution.

REP. DANIEL MC GEE referred to page 8, line 24 under the definition of obligor, and questioned the phraseology, "alleged father."

REP. JOAN HURDLE thought it might mean that paternity had not been definitely established.

REP. KOTTEL asked, "Why not an alleged parent?" She said sometimes the obligor is a female and it is sexist to make the assumption that the obligor is a man.

REP. MC GEE suggested striking that phrase.

REP. HURDLE spoke in favor of leaving that phrase in since she did not think it was sexist since 95% of people who don't pay child support are fathers and if it is the mother, she is not the alleged mother, the only one who could be an alleged parent is the father.

REP. BRAD MOLNAR said they are currently conducting a vital statistics review in human services and an alleged father is somebody who has been adjudicated to be the father even though he might say that he is not.

Vote: **The motion carried 19-0 by voice vote.**

REP. DUANE GRIMES said he would carry SB 29.

EXECUTIVE ACTION ON HB 135

Motion: **REP. DIANA WYATT MOVED HB 135 DO PASS.**

Motion: **REP. HURDLE MOVED TO AMEND PAGE 2, LINE 20 BY STRIKING "AND" AND TO INSERT, "A LINE ITEM OR OTHER SPECIFIC."**

Discussion: **Mr. MacMaster** explained the amendment.

Vote: **The motion carried unanimously, 19 - 0.**

Motion/Vote: **REP. LIZ SMITH MOVED HB 135 DO PASS AS AMENDED. The motion carried 18 - 1, REP. MC GEE voting no.**

EXECUTIVE ACTION ON HB 232

Motion: **REP. WILLIAM BOHARSKI MOVED HB 232 DO PASS.**

Discussion: **REP. HURDLE** asked if sufficient background check is accomplished with a person who has past military service.

CHAIRMAN BOB CLARK said background check is not the issue here.

REP. HURDLE said section 3 seems to be worded in such a way that a person can demonstrate familiarity with a firearm by a variety of methods or, evidence that the applicant has had military service. She pointed out that there was no requirement to show that the discharge was honorable.

CHAIRMAN CLARK said when they do the background check that is taken into consideration as part of it. If someone had a less than honorable discharge, they would not even get to the point where they would have to show their qualifications.

REP. HURDLE followed up with the comment that it still looked to her as if on line 30 with the word, "or," as if an honorable discharge exempted them from a background check.

REP. BOHARSKI said that language she was reading at the top of page 3 goes with subsection 3 which outlines the qualifications for familiarity with the firearm and doesn't have anything to do with the background check.

REP. SMITH said her local sheriff's department was in opposition to the bill primarily because of the language on page 2, lines 16 through 18 and also on page 3. She felt this language sets up an interference of what is being requested of law enforcement as well as placing a tremendous burden on them to be cognizant of those who may be engaged in unethical behavior and then make that judgment. She would not be in support of this bill without deleting those sections.

REP. MC GEE suggested that a denial without explanation would lead the applicant to wonder why it was denied.

REP. SMITH agreed.

REP. MC GEE explained that these sections simply state that the sheriff will give the reason for the denial.

REP. SMITH said that she would continue to support her local law enforcement officers by opposing the bill.

CHAIRMAN CLARK said her argument was precisely the reason for the 60-day written explanation. The 60 days allows time to complete the investigation for the permit application. He quoted, "If you can't write it and cite it, don't say it."

REP. ANDERSON asked about the individual who is the subject of an ongoing investigation when it may take longer than 60 days and they do not want to inform the person that they are the subject of an investigation.

CHAIRMAN CLARK thought that argument is refuted by the 60 days. If the sheriff denies the issuance of the permit, he only has to state that the investigation is continuing. If they protest that explanation, they can go to court. If the court orders it so, they will have to divulge why the permit is denied. There is nothing to prevent that sheriff from saying the background investigation is not complete.

REP. WYATT felt this would be setting up a appeal process for which everyone denied a permit can go into court. She asked if that was correct.

CHAIRMAN CLARK said that is no different from current practice.

REP. WYATT said, "But the state is stipulating the reason, so they are giving their evidence in advance for the defense, correct?"

REP. ANDERSON did not think they would be foolish enough to do that. He agreed with the Chairman that the reasons given for not issuing a concealed weapons permit could be couched in terms vague enough that the person wouldn't realize they were a suspect of an investigation.

REP. SMITH read a statement on behalf of **REP. AUBYN CURTISS** which affirmed the bill.

REP. WYATT turned to page 3, lines 10 and 11 to address her concern about the delegation of authority to a non-law enforcement person.

CHAIRMAN CLARK gave an example of a deputy sheriff having a firearms instructors' business and the sheriff delegating this to them. He asked, "What then?"

REP. WYATT said there was no question that he would be competent, but she questioned that he would not be representing the government when he makes that determination. Her concern was that the instructor be acting as a law enforcement officer while they are doing it and not as a sideline.

REP. CLIFF TREXLER said this was aiming at the situation existing in certain communities where several give gun courses. At the end of the course, a certificate is issued. He felt they were giving the authority to the sheriff to appoint the instructor. The certificate proves competency to use the gun. It has nothing to do with background checks.

REP. BILL TASH was comfortable to leave the bill the way it is because the sheriff is the one with the responsibility and he would not delegate it to someone who would not be responsible. The sheriff still has to sign off on it.

REP. BOHARSKI said other sections of the bill allow safety training courses to be conducted by someone other than law enforcement personnel.

REP. HURDLE said she also had a concern about this section because she did not feel it was "our" place to delegate that kind of authority. She felt there was a potential for abuse in it with a sheriff who would not exercise good judgment in delegating the responsibility.

Motion: REP. HURDLE MOVED TO STRIKE SECTION 5, LINES 8, 9, 10, AND 11 ON PAGE 3.

Discussion: REP. CURTISS opposed the amendment because the legislature delegates far more authority every day and because sheriffs are elected to discharge their responsibility. If there is no confidence in them, she thought they were in a poor position.

Vote: The motion failed, 5 - 14, REPS. WYATT, BILL CAREY, HURDLE, KOTTEL and SMITH voting aye.

Discussion: REP. CAREY said it was clear to him that the intent of the bill was to make it easier to acquire concealed firearms. He asked if he was correct.

CHAIRMAN CLARK corrected the statement by saying, "to carry a concealed firearm."

REP. CAREY believed it was the wrong way to go. He recalled the testimony which showed the increase in permits issued. He

personally felt that the more people carry concealed weapons, the more dangerous the society and would prefer to see an opposite direction being taken and was strongly opposed to the bill.

REP. LOREN SOFT echoed the previous statement and stated his opposition to it.

REP. BOHARSKI viewed the bill as being simple. He could see no big change except to require a reason in writing for the denial of a permit. He said section 5 was a mutual agreement section and was completely permissive. He could recall no opposition from the court system and there was one opponent, an undersheriff from Lewis and Clark County. Everyone seemed to agree that the reciprocity agreements were a good idea and the exceptions from the Brady bill drew no objection. He felt that the bill doesn't make anything easier, but rather lightens the duty of some of the difficult responsibilities law enforcement might have later. He remembered the sheriffs in Missoula wanted the bill to pass.

REP. DEBBIE SHEA supported the bill. She had faxed a copy of the bill to her local sheriff and he was very comfortable with it. He was pleased that he needed to put in writing the reason for denial.

REP. TREXLER echoed **REP. SHEA's** remarks. He also had talked with his local sheriff who agreed that the denial of a permit should have a reason that can and should be written.

REP. GRIMES agreed that this didn't need to be made a big issue, but for the record, said he was slightly uncomfortable with page 3, line 25 which provided for the Governor establishing a council. He felt that was redundant and said he "hated the idea of establishing councils all over the place."

CHAIRMAN CLARK explained that the purpose of it is to take the pressure off the Governor so that he can communicate with the other states which have concealed weapons permits and negotiate reciprocity agreements. The council would do the work for the Governor.

Vote: The motion carried 16 - 3, REPS. CAREY, HURDLE and SOFT voting no.

EXECUTIVE ACTION ON HB 177

Motion: REP. WYATT MOVED HB 177 DO PASS.

Discussion: REP. ANDERSON suggested the committee act favorably on this bill. He recounted from personal knowledge how it works.

REP. MC GEE recalled that this bill makes non-record courts courts of record and the district would only rule on the law and not on the facts. He asked if that was correct.

REP. KOTTEL said that was correct. The district court would act like an appeal court.

Motion/Vote: REP. KOTTEL MOVED TO AMEND PAGE 2, LINE 15 BY DELETING "INTENTION TO." The motion carried unanimously by voice vote.

Motion: REP. CAREY MOVED HB 177 DO PASS AS AMENDED.

Discussion: REP. BOHARSKI commented that it has been a long-standing tradition in the state of Montana for a person to represent himself/herself in minor proceedings, perhaps not knowing a great deal about the law, but saving the cost of hiring an attorney. It seemed to him that the cases could be filed in any court of record as well as a court of limited jurisdiction. If the person realized they were in over their head, then it could be appealed in a court of record. He felt courts of limited jurisdiction had worked well over the years and that they would be making "a pretty broad sweep with the pen here."

REP. ANDERSON did not believe the person with a case in city court would have the option of going to district court just to get it on record. As a practical matter, he said the cases where people represent themselves were few and there were few appeals on minor traffic offenses. He felt this would address domestic and DUI cases which are generally represented by an attorney.

REP. KOTTEL added that a person convicted of domestic abuse or a DUI in a court not of record would be out from the jurisdiction of the court once they filed an appeal and would be released. Therefore, she felt they would be encouraging people who are convicted to go free in society while awaiting their new trial.

REP. GRIMES said he would be more sympathetic with **REP. BOHARSKI'S** remarks if they paid for the second trial because it is at the county's expense.

CHAIRMAN CLARK said defense attorneys are paid for any indigent defendant and so would not agree with **REP. GRIMES**. He felt they were trying to fix something that really isn't broken.

Vote: The motion carried 17 - 2, REP. BOHARSKI and CHAIRMAN CLARK voting no.

CHAIRMAN CLARK limited testimony on HB 296 to twenty minutes per side. He admonished the audience against any outbursts or disruption during the hearing and to keep testimony to the subject of the bill.

HEARING ON HB 296

Opening Statement by Sponsor:

REP. JACK WELLS, HD 27, said this bill calls for the right of the jury in criminal or civil trials in which the state or local government is one party to be advised of its power or its right both to judge not only the facts of the case but also the law which may apply to the case. He gave background and historical information to support that this has been in the jury system from the beginnings of the country and in English common law before the beginnings of this country.

{Tape: 1; Side: B}

The sponsor distributed a copy of the definition of jury according to Noah Webster's *Original Dictionary of the English Language*. He said it defines "jury" as it has always applied in our judicial system. **EXHIBIT 1** He said the key point in the definition was that they "decide both the law and the fact in criminal prosecutions." The bill extends its application in civil cases wherein the state or an agency of the state is one party in the trial. He cited Georgia, Maryland, Oregon and Indiana as currently having explicit passages in their constitutions which address this issue. Twenty other states have constitutional language which covers this issue as related to freedom of speech. He read the portion of the 1972 Montana Constitution which involves that language in article 2 section 7.

Proponents' Testimony:

Camella Webb, Director, Montana Fully Informed Jury Association, rose in support of HB 296 and read her testimony citing the historical basis for that support.

Gary Marbut, President, Montana Shooting Sports Association, Gun Owners of America, Citizens Committee for the Right to Keep and Bear Arms, Western Montana Fish and Game Association and Big Sky Practical Shooting Club, said all the organizations he represents support this important measure. He cited an application which happened just before the Civil War. He also submitted written testimony. **EXHIBIT 2**

Don Doig, National Coordinator, Fully Informed Jury Association, said that people from many backgrounds and perspectives like this legislation because it returns power to the level of the people. He stated that people need to be given the power to signal the legislature as to what laws are going to be accepted.

Bob Davies read the concluding paragraph of his written testimony in support of HB 296. **EXHIBIT 3**

Robert Koopman distributed his written testimony supporting HB 296 and read portions of it to the committee. He said the

founding fathers understood that justice is of a higher order which begins with written civil law but that the potential for mischief of written law must always be held in check by the power of the people themselves through the jury system to judge that law unfit in specific cases and sets of circumstances. The founding fathers recognized that as God is higher than man, so moral law is higher than civil law. **EXHIBIT 4**

Neal Ganser said that HB 296 does not change the definition of jury as held in the U. S. or Montana Constitutions, but change is necessitated by neglect or purposeful withholding of the availability or dissemination of the knowledge of its definition.

Steve Schwartzman, Fully Informed Jury Association, said that he had learned when average citizens are involved in decision-making processes and that is carried out into the schools, they buy into the system and they buy into decisions that are made. People seem to want less government which means they want to be involved themselves in government. By passing this bill, the power will be given back to the people who should have it; i.e., on a local level, a person's peers.

{Tape: 1; Side: B; Approx. Counter: 27.0}

Michael Fellows, Montana Libertarian Party, distributed his written testimony. **EXHIBIT 5**

Arlette Randash, Eagle Forum, rose also on behalf of **Laurie Koutnik, Christian Coalition,** in favor of this bill. She cited cases where adopted children and children in divorce cases have been wrenched from the arms of their parents and given back over some convoluted point in the law. They believe that fully informed juries would have been able to uphold the obvious interests of the child and of the families.

Steve McNeil pointed out that current practice in setting up a jury system is that if someone informs the jury they have the right to judge the law as well as the facts, they can be declared in contempt of court and that is why this bill is needed.

Opponents' Testimony:

John Connor, Attorney General's Office and Montana County Attorneys Association, appeared in opposition to HB 296. He argued that there are significant problems with the bill, one being that it proposes to do something that seems incongruous. He said the bill would do harm to the jury process as a whole because it would encourage jurors to ignore or vote on laws without the benefit of the process engaged in to arrive at the legislation. During his law practice of 25 years both as a defense attorney and as a prosecutor, he has learned that juries are diverse and in the jury selection process they are told to set aside their prejudices and attitudes and beliefs and follow the law as given to them by the court. He also referred to the

constitutional provision in article 2, section 26 which requires that jury verdicts be unanimous. He felt the enactment of this proposed law would result in a multitude of hung juries necessitating costly retrying of the cases.

John Alke, Montana Defense Trial Lawyers, spoke in opposition to this bill. He felt the law would be reduced to a suggested rule of conduct. He presented examples of what could happen under the bill. The bill without any constraints permits a defendant or a plaintiff in a case against the state to suggest that his belief system is higher than the law itself.

{Tape: 1; Side: A; Approx. Counter: 47.6}

Christine Kaufman, Executive Director, Montana Human Rights Network, recalled the 1963 Medger Evers case in stating opposition to HB 296. When the defendant was retried last year there were present at that trial members of the fully informed jury movement suggesting that the jury should vote their conscience rather than the facts of the case. She did not think the concept is inherently racist, but thought it would make a mockery of the judicial system particularly in the highly charged emotional cases.

Russell Hill, Montana Trial Lawyers Association (MTLA), said that some of the proponents' arguments were very compelling, but opposed the bill because he believed it has some serious problems. He gave an extensive argument against the bill.

{Tape: 1; Side: B; Approx. Counter: 50.4}

Jacqueline Lenmark, American Insurance Association, urged that the committee not support this bill.

Don Judge, AFL-CIO, opposed because it creates unfunded mandates in causing cases to be retried.

Ron Ashabraner, State Farm Insurance Company, requested that the committee not pass the legislation.

Questions From Committee Members and Responses:

REP. KOTTEL said the sponsor had cited the definition by Webster as conclusive as to defining a jury. She asked if that was how he felt about this definition.

REP. WELLS answered, "Yes, we feel that definition still applies."

REP. KOTTEL challenged him to notice in the definition it says, "a number of freeholders." She asked if he knew the definition of freeholder.

REP. WELLS said he did not know the exact definition of freeholder, but knew it is a "hot" topic of contention in the state of Montana. He believed it addresses a man who holds and owns property free and clear and in our original government system these were the people who were entitled to vote and apply the law in other senses.

REP. KOTTEL asked, "Since you believe this definition to be still true today, do you believe that only freeholders should be on juries?"

REP. WELLS answered that he did not believe only freeholders should, but he looked at anyone who is a taxpayer, a registered voter, in that sense as one who qualifies.

REP. KOTTEL asked, "Then you believe only registered voters can be on juries?"

REP. WELLS answered said, "No, I guess I believe all citizens, of course, as the law states. I don't believe aliens or anybody like that can be on a jury."

REP. KOTTEL stated, "Then, Representative, this definition is not correct today and doesn't follow your beliefs."

REP. WELLS answered, "That's your interpretation. I still believe it applies."

REP. KOTTEL reiterated, "This definition says a jury comes from freeholders, do you believe this definition is current and would you support it today that only freeholders could be on the jury?"

REP. WELLS answered, "I'll just say what I said again. I believe the definition applies. I think it certainly was written in the time of the country when a freeholder sort of defined the citizen of the country and in that sense, if you want to narrow that definition down to say it doesn't apply, in this sense I think we can logically extend it to include citizens and people of the United States."

REP. KOTTEL said that the definition also says, "twelve men." She recalled that for a long time women were not allowed to sit on juries, "so does this definition in your mind still apply today that being true that only men should serve on juries?"

REP. WELLS said he was aware that it does say, "twelve men," and he was aware that for many years women could not vote in this country. "They can vote now and we recognize also that women sit on juries. I think it is logical distinction of the definition bringing it up to the modern time."

REP. KOTTEL said she then heard him saying that as justice changes, definitions change, "and here we see two very distinct

parts of this definition which you agree change with our justice system." She asked, "Is that correct?"

REP. WELLS said, "The change of a definition is certainly true, however an extension of a definition is also true and I think we can take this definition, expand it and still see the logic in it."

REP. KOTTEL asked **Mr. Marbut** about the examples in his testimony having to do with the Federal Fugitive Slave Act where juries were aware that they had the power to apply questions of fact to law. She wondered if she understood him to mean that jurors are not currently aware that was true.

Mr. Marbut said some jurors are aware of their current power to judge the law. He referred to the Bernard Guest trial of New York when he was charged with having murdered some youths in a subway. The jury did not convict him because they exercised that power even though the evidence was compelling. He said the problem is that the courts generally will not allow the defense attorney to tell the jurors that they have the power, so the question is whether or not they can be told.

REP. KOTTEL said she could give hundreds of current examples where because of compelling reasons, when jurors apply questions of fact to law that they understand the system and find the defendant not guilty. She asked, "If the system isn't broke, why are we trying to fix it?"

Mr. Marbut said there have been recent cases where defense attorneys have actually been held in contempt of court because they have tried to tell jurors that they have the power. He said it did not make sense to him to keep people in ignorance of basic power and prerogatives.

REP. KOTTEL rebutted by saying that jurors are told the system during jury instructions. They are given the facts and instructed in the law, but the jury decides questions of fact as applied to law. She proceeded to explain the process. She did not know why after being given the jury instructions, they could then be told to use their conscience in deciding the case.

{Tape: 2; Side: A}

Mr. Marbut said this applies when the government is a party to an action and this generally implies criminal matters rather than civil matters although conceivably it would involve civil matters. By virtue of the fact that it applies when the government is a party, it would rule out being applied or argued in most civil cases and would not be an issue. There are other cases where he believed that the defense attorney should be able to tell the jury that they have the authority to acquit regardless of whether or not they believe the person actually did what they are accused of doing. The best example he could think

of was someone traveling within 1,000 feet of a school with a gun in the car. He would like to have his attorney be able to argue to the jury that if they thought this was an improper law for the custom and culture and conditions in Montana, they could vote to acquit even though the defendant obviously might have done what they had been accused of doing.

REP. KOTTEL asked if she understood that he said that a person who admits that they did what they are accused of doing has an absolute right to be acquitted if they can convince the jury that the law is not palatable to the jury or that the person had a reason for doing it.

Mr. Marbut replied that he did not think a person has a right to be acquitted, but they have a right to make that argument to the jury as the defense did over the Fugitive Slave Act.

REP. KOTTEL said she saw this bill being soft on crime with mercy for the defendant and asked if he felt comfortable looking into the eyes of the victim when the defendant could convince the jury that they were driven to do it. She wanted to know if it meant if the jury doesn't like the law, they can acquit.

Mr. Marbut said that one difference between himself and the Representative was that he "has a great deal of faith in the people, ordinary citizens and the people who would serve on juries" to do what is right. He believed that over history that has been true. He said he did not feel soft on crime and the Montana Shooting Sports Association is supporting the "two strikes and you are out" bill. But in terms of sorting out the right and wrongs at trial, they think the jury is the best repository of that responsibility and that this mechanism will fully vest them with it.

REP. KOTTEL recalled that **Mrs. Randash** supported this bill because the jury would be best able to determine the best interests of the child. She asked if she was correct that there is no jury trial in an adoption case or a custody case because those are questions in equity.

Mr. Connor said that was his experience.

REP. KOTTEL concluded this would have nothing to do in terms of making better determinations in adoptions and custody cases.

Mr. Connor said that if it did, it would be tenuous at best and infrequent.

REP. KOTTEL quoted **Mr. Ganser**, "Conscience is borne of the veto power of the jury."

Mr. Ganser replied, "No, I did not say that." He said, "Veto power is borne on conscience."

REP. KOTTEL asked if he was saying that the jury's veto power is borne on their conscience.

Mr. Ganser restated, "That duty and responsibility includes a conscience-borne veto power over the works of government."

REP. KOTTEL asked if the juries are elected by the people.

Mr. Ganser said, "No, they are of the people."

REP. KOTTEL asked if juries write opinions of their reasoning that can be followed by the people.

Mr. Ganser answered, "Not that I am aware of."

REP. KOTTEL asked, in talking about the people, if there are three branches of government in this country.

Mr. Ganser answered that there are considerably more than that and referred to the state level, county level....and asked of which level she was.

REP. KOTTEL said she was talking about branches of government.

Mr. Ganser asked which level of government she was discussing.

REP. KOTTEL said, "At the state."

Mr. Ganser answered, "At the state, yes, we do."

REP. KOTTEL asked if the people elect representatives in each of the three branches.

Mr. Ganser said they were not totally elected and asked if some of the judges were appointed.

REP. KOTTEL said that of the three branches all were elected. She asked if it takes two of the three branches of elected people for a bill to become law and thus represent the people.

Mr. Ganser said it did.

REP. KOTTEL asked if it takes the judicial branch to judge the law from an enforcement or constitutional standpoint.

Mr. Ganser did not believe that happens unless there is a challenge.

REP. KOTTEL asked if any citizen can challenge a bill as being unfair.

Mr. Ganser said that was correct in the judiciary.

REP. KOTTEL discussed the process for statutes to be appealed, amended, or to be overturned through the processes of the three branches.

Mr. Ganser said while that was true, there is also another mechanism and that would be the jury. He said she was not discussing the rights of the jury which are called for or discussed in the present bill. The knowledge of that right by purpose or by accident has failed to be disseminated to the population. The people have an ultimate veto power. The bill does not address that, they are not creating a new branch of government and that is not its intent. Its intent is merely to disseminate the knowledge of the existing powers of the jury.

REP. KOTTEL stated that one of the underlying principles of any legal system's palatability is consistency in the law. She felt what was being said would undermine the peoples' faith in our legal system.

Mr. Ganser said he thought **REP. KOTTEL** was misrepresenting the existing system. First of all, he said they were addressing our legal system and not any legal system. That present legal system consists of the ability of the jury to judge the fact and the law. He claimed she was discussing the creation of a new law, a new appropriation of power to the jury, which is incorrect. He reiterated the history and current existence allowing for the jury to be fully informed of its rights and responsibilities.

REP. KOTTEL said that if the power to veto the law exists, that would not stop the law from being enforced or take it off the books, or bind another jury to that line of reasoning.

Mr. Ganser said that was correct.

REP. KOTTEL concluded that would lead to anarchy in terms of veto power, under which each jury without any checks or balances could decide to ignore the law and that "we should encourage juries to do this."

Mr. Ganser thought what she described more accurately is insurance against that which she was implying was her fear of jury law through her questioning. The fact is that there is no dissemination of opinion other than in the press.

REP. KOTTEL said what disturbed her was that there is no jury law, no accountability for the jury and because of that dissemination, there is no way to know how the reasoning took place and there is no way to judge their prejudices.

{Tape: 2; Side: A; Approx. Counter: 15.6}

REP. WYATT compared the current discussion to a time when Jeannette Rankin stood against the law concerning the draft in war time and wanted to know how this would apply in a jury case

brought with a defendant who had avoided the draft. In addition, her concern was that the results of a trial could have different consequences based upon its locality with the particular prevailing biases and beliefs influencing their decision.

Mr. Connor spoke from the perspective of a prosecutor with the responsibility of prosecuting cases based upon statutes which he may think are poorly drafted or ones that he may not agree with. However, his job is to take the case into court if the defendant pleads guilty and try to present it to a jury so that panel can assess responsibility. During the voir dire process he must determine the prospective jurors' beliefs and concepts of the law relating to that case. Through this process he can assess whether they will follow what the judge instructs them concerning the law on that issue. If they demonstrate that they cannot or will not, then he would have them excused for cause.

REP. GRIMES asked if his understanding was correct that juries currently have this power and this bill informs them they have that power.

Ms. Webb said they currently to have the power, but they are just not informed in most cases.

REP. GRIMES said this would give them the right to know that they have the power to judge the law as well as the facts.

Ms. Webb answered, "Yes."

REP. GRIMES asked which other states might have the fully informed jury law.

Ms. Webb said she believed Maryland, Oklahoma and Georgia. (The witness corrected herself and it was not clear whether it was Georgia instead of Oklahoma or both states have the law.)

REP. GRIMES asked her to describe the results in those states regarding hung juries or discarding components of the law assuming that those states have the same requirement for unanimous decision by a jury.

Ms. Webb said she did not know if they have the same requirement, and referred the question to **Mr. Doig**.

Mr. Doig said there are nine states which have general provisions which date from the 19th Century which say the jury is the judge of the law as well as the facts. He referred to an academic study done in the '70's of Maryland in which it was standard practice for the judges to actually inform the jury that they were in fact judges of the law as well as the facts. The majority of the judges responding in a mail survey said they saw no problems with the law as it was then enforced and wouldn't change it.

REP. GRIMES asked if **Mr. Connor** was familiar with the other states which have this law and if he was aware of practical problems in those other states such as hung juries and additional costs to the local government.

Mr. Connor was not aware of any state that has a statute similar to that in HB 296. He said he had never seen a statute that gives the jury the power to accept or reject the law.. He promised to do some research in that regard.

REP. GRIMES asked **Ms. Webb** to do the same.

Ms. Webb said she had law review articles which state that it does not result in any more mistrials or hung juries.

REP. GRIMES asked if she disagreed with **Mr. Connor** saying that this legislation goes further or is significantly different.

Ms. Webb said, "No."

REP. MOLNAR asked if **Mr. Alke** agreed that the jury currently has a constitutional right and that this simply mandates that they be given knowledge of their right.

Mr. Alke said he did not agree with that. He said the jury has an opportunity in that they are instructed as to the law and that they must follow the law and that it is to apply and determine the facts being applied to the law. They have an opportunity to nullify the law in that there is no right of appeal by the state to a verdict that is a defense verdict. So if the jury chooses to ignore the law, there is no remedy, but it does not have the power.

REP. MOLNAR gave an example of the process when a judge is interpreting laws contrary to their intent or when laws have become convoluted in such a way as to misinform juries in their instruction.

Mr. Alke said that the legislative code committee has the power to nullify any administrative rule that has been promulgated by a state law.

REP. MOLNAR said he was referring to passing a law and the rule appears to be contrary to that law. Even if there is power to nullify them, they may not be nullified. Rather the judge rules on a case based on those rules without benefit of jury and then a second judge using case law instructs the jury based on that case law. Then the jury who elected the original representatives and senators feel as their elected representatives did about that law and the application of the law and the rules of the law. This would appear to somebody to get them back full circle to where it becomes the system of the people and not the system of the judges and the attorneys.

Mr. Alke was having trouble tracking with the argument and he said, "under our system of government the judiciary's primary job is to interpret the law and of course the primary source of the law for the judiciary is the legislature. There are also constitutional laws that it must interpret. So if the legislature enacts the law and there is an ambiguity, yes, indeed, the judge fills the gap created by the ambiguity, interprets the law and then it is applied. If you as a legislator agreed or disagreed with the courts, the judicial branches' interpretation or handling of that ambiguity, it comes back to the legislature and you have the power to supersede the court's interpretation. That is the way is should be done because we want our system of laws to be determined primarily by one deliberative body. We don't want the laws determined in effect at town house meetings where everybody gets to say, 'it doesn't matter what the law says, this is what I think and I want to follow my moral code, my belief system instead of the laws this body has enacted.'"

REP. MOLNAR asked if he would agree that a precedent-setting case means that the finding should be on the current local law, statute law or case law, so that the instructions from the judge may lead the jury to strike down current law or convoluted current law and that what this bill would do is give them opportunity to refuse to strike down current law based on the whim of the judge or to convolute current law based on interpretation of the judge.

Mr. Alke said, "My answer would be no and no."

REP. MOLNAR asked if he really believed that when a judge gives instructions to a jury that the prejudices, regardless of what they are, are struck down and that a judge's instructions will change that bigotry.

Mr. Alke said the best way to answer the question was two-fold:

> "There is no question that a jury in any case, right now, if that jury's conscience dictates to the jurors as a collected whole or even one in a criminal case....if there is something about the case that he doesn't like, facts or the law, it doesn't matter what instructions have been given to the jury, we can't make that juror follow the instructions. There is no question that is the current state.
>
> "The problem with the bill and the problem with informing the jury of that right, remember this bill goes far beyond simply informing the jury about jury nullification, the problem is if you embrace that concept that it is their right to do that, then the focus of the trial will soon become the wisdom of the law. Under the current situation, the thing that the proponents believe in, still occurs, it occurs right now. If a juror feels so strongly about the case he is sitting on how that the law is unjust, indeed he

will return right now a not-guilty verdict. If we however instruct the jury and permit argument to the jury about the wisdom of the law, then the focus of the trial is the wisdom of the law and that is not the purpose of the trial. The trial is to determine facts. So there is a huge difference between recognizing that in fact jurors will do what they are told they can do and can't do. There is a huge difference between recognizing that's a reality and that occurs and changing the very focus of the trial as to is it a good law or is it a bad law. That's the difference between informing the jury of their right to nullification and recognizing that nullification and recognizing that nullification occurs despite our best efforts that it does not occur."

REP. SMITH asked **Mr. Hill** where his concerns were in the bill itself.

Mr. Hill said the 1993 bill only benefitted defendants in civil cases and that was seen by MTLA as patently unjust imbalance. This bill narrows that down because it is only when you are a defendant in a civil case where the state is an opposing party. He was clear in speaking on behalf of MTLA that his testimony was that it is not so much a right of the jury as an inability to discipline them when they disregard the law. His testimony was to say that this is not really a fully informed jury amendment bill, but this is a partially informed jury amendment bill because in questioning the proponents, they would have to acknowledge that it doesn't inform all juries of this right, but only some juries and to the extent that it does that, he thought it is not true to the proponents' justifications for the bill. MTLA doesn't want to indicate that juries have a right to do this and we should inform them, but he thought it is an important bill and he understood the sentiment of the legislature in considering this bill, he thought the committee needed to consider the fact that this bill is inconsistent with what at heart the proponents were advocating.

REP. SMITH asked if **Mr. Connor** had selected juries.

Mr. Connor said he had selected hundreds.

REP. SMITH asked if there was a format or standardization of what he looks at when he has selected a juror.

Mr. Connor said he looks at honesty in responses. He looks at how the prospective juror expresses the response more than the content of the response.

REP. SMITH asked if there was a standard of ethics and how consistent county attorneys and district judges are in regards to jury selection.

Mr. Connor said jurors take several oaths in the process.

REP. SMITH said she was not talking about the jurors, but rather the judge or attorney who has selected the jury. She was looking for some kind of standardization of selection within their ethics. She wanted to know if there was an abuse of that selection process in Montana.

Mr. Connor explained the process. He asks jurors if they will commit to setting aside their personal biases or prejudices as best they can to follow the law.

{Tape: 2; Side: A; Approx. Counter: 48.0}

REP. SMITH referred to page 1, lines 17 and 18, and asked **Mr. Alke** to expound on that.

Mr. Alke said that sentence was at odds with the statute. Right now under the statutes governing the jury selection process, one of the grounds for disqualifying a juror for cause is the juror who says he will not put his prejudices aside and follow the law as instructed by the court.

REP. SMITH felt that legislatures are often the uninformed jury and that processing turns out to be the interpretation of the law that seems to take precedence over all other things regardless intent. She referred to his statement that the legislature has the code commission. She felt that how they can work at enforcing that code commission to do what their intentions are is ambiguous. She felt they were just now being informed about their powers within the code commission so she could relate to the right to know issue.

Mr. Alke said there are substantial constitutional limitations and existing statutory limitations on the sovereign's ability to prosecute anyone for violation of administrative rules. Criminal prosecutions for violation of administrative rule is a very limited subject area. He said what they were really talking about here are prosecutions for violations on a statute, something the Legislature has enacted into law. There has been a great deal of litigation in the U.S. Supreme Court that severely restrict a sovereign's ability to criminally prosecute for violation of administrative rule.

{Tape: 2; Side: A; Approx. Counter: 51.5}

REP. CURTISS asked if proponents would volunteer some specific instances where failure of judges to properly instruct juries of their prerogatives had actually resulted in a miscarriage of justice.

Mr. Doig spoke of cases where judges intimidate a jury to give up their rights to vote according to conscience. He referred to a case in Phoenix, Arizona in response to the question.

REP. CURTISS asked for a citing of an instance in Montana.

Darcene Stephenson gave an example in response to the question which underscored the proponents' position that juries are not fully informed and are controlled by the judge's instructions.

REP. CURTISS asked **Mr. Hill** to describe when they would have a right to discipline juries.

Mr. Hill's understanding of the jury's power to disregard the law was basically the same as previous testimony. He said that there is no mechanism in the law for dealing with a jury that does not convict because they believe the law is unjust.

REP. MOLNAR asked **Ms. Kaufman** if she thought it was possible for prejudices and racism and bigotry to be set aside in a person's mind just because a judge told him to set it aside.

Ms. Kaufman answered that she did not.

REP. MOLNAR then wanted to know the point of her testimony.

Ms. Kaufman said it was that if they are instructed to act on those prejudices, community beliefs and their conscience, there will be a mockery of the judicial system.

REP. BOHARSKI asked if there is any way a judge can declare a mistrial in the situation where the decision is made by a jury in the privacy of their deliberations.

Mr. Connor said that if a juror decides they are not going to convict, the jury will be unable to reach a verdict and then the judge will declare a mistrial. Then the matter can be tried again. If that juror persuades the others that a lessor charge ought to be imposed, they have the opportunity to do that, but they are not instructed under the law that they have that right.

{Tape: 2; Side: B}

It appeared to **REP. BOHARSKI** that under the current Constitution and criminal justice system that a jury now, without this notification, can judge the law and there is no remedy for that.

Mr. Connor said that was a correct assumption.

REP. BOHARSKI asked why we would not want to inform them if they have the right to do that now.

Mr. Connor replied, "The reason we don't want to do that, in my view, is because we are encouraging hung juries more and more frequently if that's the case. When you end up in a situation where you are deliberating about the law and you are told you have the right to accept or reject it and you have the right to decide on the basis of moral grounds, I think you are opening up an opportunity to get that kind of argument that's going to result ultimately in 12 different views of how things ought to be

and you are going to encourage hung juries. That's my major concern with this. It's called a fully informed jury bill, but in fact we are only informing them about one minor thing. We are not informing them, for example that you can tell them the defendant had been convicted of myriad felonies. You can't do that under Montana law, or that he has committed all these other kinds of acts. None of that stuff, except under limited circumstances can be brought out. We are only telling them a very limited amount of information here and we're encouraging them to have extreme difficulty in reaching a unanimous verdict."

REP. BOHARSKI said the evidence should bear that out and referred to previous testimony that this current scenario exists in other jurisdictions around the country. He asked if that is in fact the result of doing this.

Mr. Connor said he did not know that or that an experience in another state with other demographics, attitudes and beliefs would have an affect here. His perspective was offered based on 25 years of experience in Montana law.

REP. BOHARSKI asked the sponsor if it was the intent of his bill that one juror could say that a defendant was not guilty even though he clearly broke the law but with reasonable cause.

REP. WELLS answered that that was true. The intent is that the jury is the final defense. There would be cases where the jury would vote their conscience and not apply a law to a specific instance.

REP. BOHARSKI asked if the jury in a case returns a not guilty verdict based upon six of the jurors thinking that the law shouldn't apply and six other jurors saying that if they apply the law, the facts don't bear it out, would that result in a total acquittal.

Mr. Connor said that was correct. There is no system of inquiry into the jury's process of reaching the verdict.

REP. MC GEE asked if the jury today has the right to judge the law.

Mr. Connor answered that the jury has the right to apply the law to the facts.

REP. MC GEE gathered that the purpose of the bill is to simply allow the jury to be informed by the court of its current right.

Mr. Connor said that was not his perspective of it. He believed that the jury has the opportunity to reject the law, but the jury does not have a right to judge the law because the jury is instructed, and the statutes provide that the law is the prerogative of the court. The court decides what law applies to a particular case and then decides upon the law that is going to

be given to the jury. The court instructs the law to apply that law to the facts in reaching the decision. He does not believe the jury has the right to judge the law, just apply the law to the facts.

REP. MC GEE asked the sponsor if it is his understanding of the Constitution that the jury has the right to judge the law.

{Tape: 2; Side: B; Approx. Counter: 9.4}

REP. WELLS did not think the jury has the right, but did believe the jury has the power. He felt the question was significant to the bill. He addressed an historical case which occurred in the late '60's called "The Case of the D.C. Nine" wherein nine clergymen had ransacked the Dow Chemical Company plant where napalm was made. In the case, the defendants requested that the jury be told specifically of their power to nullify the law. The request was denied and they appealed it to the U. S. Court of Appeals and it was also denied there by a two to one vote. In the written opinion of the majority, the judge recognized the power of juries to nullify the law. He stated that if juries already knew that power, they got that power from informal sources. But he would not recognize their right to do so. He agreed that they had the power, but disagreed with instructing the jury to do so. The minority dissenting opinion was written by the chief judge in the same court and supported the concept of informing the jury. He indicated that jurors would not revolt simply because they are told of their nullification powers because of many checks and balances which keeps an internal restraint on juries from acting irrationally. In his view, juries are not apt to free dangerous persons. A law journal review of this case was done with a survey comparing the two views and concluded that the judge writing the dissenting opinion was probably more correct. They concluded the internal checks were very real and that even when a juror knows they have that power, they have a strong psychological need to see the case settled according to a sense of equity, justice and fairness. The power is there, but the right is not there because it is not stated as a right in our statutes. This bill's essential purpose is to inform the juries and give them that right.

REP. MC GEE asked **Mr. Connor** to respond to the testimony just heard.

Mr. Connor said the jury is the ultimate decider of a criminal case if the defendant and the state agrees to a jury trial. He said that he did not believe they have a power. Then he said maybe they do have the power because they exercise it by rejecting a law in a given case. But he felt that prosecutors in Montana exercise discretion in selecting cases to bring to trial and that this bill would provide for something that is not needed in this state since he did not think that excessive abuse of prosecution power exists here.

REP. MC GEE asked if the court ever instructs the jury that it cannot judge the law.

Mr. Connor said he did not recall ever hearing that instruction.

REP. MC GEE said that he did.

Closing by Sponsor:

REP. WELLS responded to the objections to the bill. He felt a question that arises related to a jury being told of its power to acquit or bring a lesser charge in a case. This addresses the mercy issue included in the power of the jury. He observed that most of the objection came from the peoples' side and all the proponents represented the basic citizens. The intent of the bill is to put a little bit of the law back into the hands of the citizens. He pointed out that jury nullification is not the power to make law, redefine the law, supplant the law with the jury's own notions of what it should be, to overrule the law and make some other law, and not to take the law into its own hands. The dispensing of this power of conscience would permit the jury to suspend the application of a particular law in a particular instance to a particular defendant in the interests of conscience and justice. In discussing the application of discretion to juries, he pointed out that police officers have discretion in making an arrest, prosecutors have discretion in bringing criminal charges in court, trial judges have discretion whether or not allowing the case to proceed to trial, jurors also act on behalf of the public and have discretion whether or not to convict the accused. Frequently jurors are not informed they have this discretion and this deprives the accused of an important safeguard. Instructions often make it sound as if the jury needs to convict without being apprised of alternatives available to them.

He read from a summary of a jury nullification study which was done in 1980 analyzing the states of Indiana and Maryland who do have current constitutional phrases which address this. This summary did not indicate that the juries acted irresponsibly, acquitting more often or that judges are unhappy with the instruction. He cited Thomas Jefferson as saying in 1789 that the jury is the final safety net for the citizen and thereby holding the government to the principles of its Constitution. He felt this bill would help avert excesses which may result from federal mandates such as the gun control bill which are being imposed on the citizens of Montana. The intent is to re-establish the tenth amendment.

{Tape: 2; Side: N; Approx. Counter: 25.7}

HEARING ON SB 36

Opening Statement by Sponsor:

SENATOR AL BISHOP, SD 9, presented SB 36 which was proposed by the Child Support Enforcement Division of the Department of Social and Rehabilitation Services (SRS). It has to do with the Ominbus Budget Reconciliation Act of 1993. Montana already has most of the law in place to meet the federal requirements. The bill is important to secure child support enforcement money to pay for dependent children. It deals with establishment of paternity.

Proponents' Testimony:

Mary Ann Wellbank, SRS, gave a brief overview of the content and necessity for the bill in establishing paternity in the process of collecting child support. She said it is a federally mandated piece of legislation and is good for Montana because it tightens up the process, gives everyone due process to object and allows the department to proceed with establishment of the child support order.

Kate Cholewa, Montana Women's Lobby, claimed the bill is good for the state budget because it helps the department and helps children.

Opponents' Testimony:

None

Informational Testimony:

EXHIBIT 6 was submitted by SRS as a supporting document.

Questions From Committee Members and Responses:

REP. SMITH asked for a definition of "alleged father."

Ms. Wellbank replied that it describes someone the mother alleges to be the father. It is defined in the law as "the man who is alleged to have engaged in sexual intercourse with the child's mother during a possible time of conception of the child; or man who is presumed to be the child's father."

REP. SMITH asked where the blood tests are taken.

Ms. Wellbank said the division contracts with Baltimore labs and they maintain blood testing sites throughout Montana.

REP. SMITH asked about the process of informing the alleged father of his need to respond.

Ms. Wellbank referred to section 4 on page 4 to address her question.

REP. TREXLER went to page 9, line 16 for clarification that there is no choice in ordering an additional blood test.

Ms. Wellbank said that was correct.

REP. TREXLER then referred to page 8, lines 18 and 19 and asked who the administrative agency is in this case.

Ms. Wellbank said there is an administrative law judge in their division.

REP. MOLNAR went to page 5, lines 1 and 2 to discuss the preclusion of justice by saying that it is illegal to request a rehearing if technology proves the tests to be wrong.

Ms. Wellbank said the blood testing comes back as 99% or greater probability.

Amy Pfeifer, SRS, confirmed the above response in relation to the current method of HLA testing. She said there may be some challenges in using DNA testing. With technology change, they might want to look at changing the statute.

REP. MOLNAR asked why it is being set in statute that a person cannot later challenge it if he believes he has a legitimate claim.

Ms. Pfeifer said that the lab performing the test must be accredited by the American Association of Blood Banks and only through such a lab can such a presumption of paternity be based. The specific language relating to this is a federal requirement.

REP. HURDLE commented on this provision as curtailing delays by contesting paternity.

REP. KOTTEL asked who pays the costs of blood tests and how much it costs.

Ms. Wellbank said it depends on the hearing officer. Generally the testing is 90% federally funded and 10% state funded. She said it is a total of about $270.

REP. SMITH asked if there is a potential of using DNA testing exclusively for this.

Ms. Wellbank said her understanding is that it more expensive. Most are satisfied that the HLA results. In a few cases, they proceed to DNA.

Closing by Sponsor:

REP. BISHOP closed with a few remarks about the questions raised on the testing.

HEARING ON HB 311

Opening Statement by Sponsor:

REP. HAL GRINDE, HD 94, quoted from the 5th Amendment of the U. S. Constitution and described the reasons for this bill when property rights are guaranteed by that document. He described a case known as Lucas v South Carolina supporting his statement that the bill is intended to protect the state of Montana. He said the basic premise is that if the government wants to take a property, it must pay for it. He said the bill doesn't affect cities or counties, but only state government. There are two kinds of property rights bills, one is "look before you leap" and the other is called "takings compensation." This bill is designed from the former category. He submitted amendments which would result in a reduction in the fiscal requirements. **EXHIBIT 7**

CHAIRMAN CLARK limited testimony on both sides to 20 minutes.

{Tape: 3; Side: A}

Proponents' Testimony:

Leo Giacometto, Governor's Office, rose in support of the amended version of the bill. He presented written testimony prepared for Glenn Marx. **EXHIBIT 8**

Hertha Lund went through the proposed amendments and described their affect on the bill. **EXHIBIT 9**

Lorna Frank, Montana Farm Bureau, distributed a booklet relating to property rights legislation. **EXHIBIT 10**

David McClure, Montana Farm Bureau, supported the bill and described the reasons for that support.

Connie Cole, Pegasus Gold Corporation, offered their support of the bill.

Cliff Cox, Broadwater County Farm Bureau, described his support of the bill.

Joyce Baker, Judith Basin County Farm Bureau, shared the concern about government regulations affecting how people use their property. They support HB 311 because it asks government to look at regulations and assessment of impacts which may affect property rights and doesn't change takings law.

Mike Murphy, Montana Water Resources Association, said the association sees the bill as a straightforward, common sense approach consistent with state and federal constitutions.

David Owen, Montana Chamber of Commerce, felt that over the past years through the rule-making process in an effort to protect the environment, the people have backed themselves into a corner. They see this bill as adding to the dimension of evaluating all aspects of rule making rather than just from an environmental protection viewpoint.

Riley Johnson, National Federation of Independent Business, asked support for HB 311 as a fair and reasonable approach to the private property question which the rule making has created.

John Bloomquist, Montana Stockgrowers and Montana Woolgrowers Associations, said the bill represents a change in business as usual.

Bob Robertson, Department of Health and Environmental Sciences (DHES), said the department supports the bill as amended.

Tom Salansky presented written testimony. **EXHIBIT 11**

Cary Hegregerg, Executive Vice President, Montana Wood Products Association, said their members stand in support of this bill.

Tammy Johnson, Citizens United for a Realistic Environment (CURE), urged support for HB 311.

Larry Brown, Agricultural Preservation Association, expressed wholehearted support for the bill and felt it clarifies the rights of citizens in the state over and above the importance of other elements in the environment. They also felt this helps to re-establish the correct role of government in the citizens' everyday lives.

{Tape: 3; Side: A; Approx. Counter: 23.7}

Opponents' Testimony:

Jim Richards, Montana Wildlife Federation, distributed amendments for the committee's consideration. He said that with **REP. GRINDE'S** amendments he could almost speak as a proponent of the bill. He said his amendments do nearly the same but he discussed the differences. **EXHIBIT 12**

Stan Bradshaw, Montana Tri____ Unlimited, said his inclination was to say that the amendments presented by the sponsor go a long way toward solving his concerns about the bill. He remained concerned but believe the amendments presented by **Mr. Richards** would eliminate some of those concerns as well. He did not agree that this bill would protect the state of Montana since he was unaware of the type of litigation referred to and he did not

believe it would address other issues raised relating to wildlife; therefore, he did not believe that there was a need for the bill.

{Tape: 3; Side: A; Approx. Counter: 32.1}

Ted Lange, Northern Plains Resource Council, submitted written testimony. He felt the amendments presented during the hearing address some of their concerns. **EXHIBIT 13**

Janet Ellis, Montana Audubon Legislative Fund, said the testimony she was presenting was prepared before seeing the amendments proposed which answer many of their questions. **EXHIBIT 14**

Debbie Smith, Sierra Club, opposed HB 311. They believe the affect of this bill and the implicit purpose is to intimidate government agencies into not acting at all by the perceived threat that anything they do could be perceived as a takings. They believe that this amendment is based on a flawed notion of what a takings is.

Informational Testimony:

Melissa Case, Montanans For a Healthy Future, Montanans Against Toxic Burning, said they were neither supporting or opposing this bill but had questions regarding interpretation of the legislation. The questions were:

1. Could the citizens of Montana City with their tax dollars be forced to compensate after they are denied a permit to burn hazardous waste, and

2. Would citizens of the surrounding areas be compensated when the facilities cause property values to decrease or if agricultural producers suffer economic losses due to the public or real perception of tainted food products.

Opponents' Testimony:

J. V. Bennett, Montana Public Interest Research Group, opposed the bill.

Don Judge, Montana AFL-CIO, shared the concerns of the previous witnesses about the original version of the bill. He presented written testimony. **EXHIBIT 15**

Ann Hedges, Montana Environmental Information Center, opposed HB 311 for all of the stated reasons and urged the committee to table the bill.

Brad Martin, Montana Democratic Party, also opposed HB 311.

Christine Kaufman, Director, Montana Human Rights Network, believed there are implications beyond environmental laws including access for handicapped people in the bill.

Edmund Caplis, Executive Director, Montana Senior Citizens Association, opposed the bill beyond environmental reasons.

Informational Testimony:

EXHIBIT 16 was included as informational testimony.

Questions From Committee Members and Responses:

REP. TASH asked about the $25,000 one-time expense on the fiscal note.

Beth Baker, Attorney General's Office, said this figure was based on the assumption that their office would not be involved in any litigation as a result of this bill. The $25,000 represents the amount of legal work necessary to come up with the advisory opinion and the guidelines. They anticipate hiring that work done by the agency legal services bureau. This would eliminate the necessity to hire new FTEs to perform that function. The annual update of the guidelines required by the bill can be done with existing staff.

REP. TASH asked for clarification about previous testimony.

Mr. Bradshaw restated that his point was that the arguments for the bill being a protection for the state from litigation in takings cases was unfounded.

REP. TASH asked if he considered the pending litigation on Beaverhead National Forest to be takings.

Mr. Bradshaw said his understanding of that litigation was not that it was initiated as a takings. He understood it to be a challenge of Forest Service policy and that intervening parties had raised takings issues.

REP. TASH asked **Mr. Richards** if he considered it a takings case.

Mr. Richards said he did not because a federal agency is involved. He went to the substance of the case to substantiate his opinion.

REP. TASH said takings involves the loss of assets and wanted to know how he would interpret the loss of 44,000 head of cattle.

Mr. Richards questioned that those assets would be lost as a result of the lawsuit. The issue is the grazing practices which are allowed to continue or changes.

REP. ANDERSON said the opponents claim that this sets up the state to pay polluters not to pollute and asked if that was correct.

Ms. Lund said this bill has no ability to do that. She clarified that this bill only deals with current takings law as it currently exists.

REP. ANDERSON asked her to address the concern about the handicapped.

Ms. Lund said the bill only addresses real property. There are no cases and she did not see how it could affect that area. She cited the Lucas case which talks about the two situations which can be construed as categorical takings:

1. When government physically invades the land such as with a highway, or

2. When there is 100% diminution in value.

The justice who wrote the majority opinion did not say that those are the only times that there is a takings. He said they would not address what constitutes less than 100% diminution because it was not before the court. In a later case, the appellate court sent it back to the claims court with the opinion that the Constitution did not say that there has to be 100% diminution of value. The question of less than 100% diminution in value is a takings is fluid and is in debate. To say that it is frozen at only 100% diminution of value is inaccurate.

REP. ANDERSON asked if there is a similar law in debate at the congressional level.

Ms. Lund said that Senator Gramm is going to introduce a takings compensation bill which goes further than HB 311. A takings compensation bill would quantify what a takings is through legislative action. Senator Dole is also offering something similar. Bills she had seen at the federal level are stronger than this current bill which is based on the Montana Constitution.

REP. ANDERSON referred to **Mr. Richards'** testimony that this bill would require agencies to put a dollar amount on the takings. He asked if the agency doesn't know the value of its takings, should that agency continue with those rules not knowing the effect it would have.

Mr. Richards said that if the agency doesn't know the value of the takings, they need to go back to re-examine their actions. He felt requiring them to estimate what that cost will be went beyond what is required.

REP. ANDERSON asked if it would make sense, in a cost benefit analysis done by the agency, that it should know the cost of that takings to the private property owner in order that they may compensate that person if the public need is greater than that cost.

Mr. Richards said that if they determine that their action constitutes a takings and they proceeded, the wise thing would be to proceed under the process of imminent domain because compensation in that case would be necessary.

REP. MC GEE asked if **Mr. Richards** helped draft the Model Subdivision Regulations for the Department of Commerce.

Mr. Richards said he did.

REP. MC GEE asked how this bill would address parkland requirements.

Mr. Richards said it would not and explained why.

REP. MC GEE asked the sponsor about the bill addressing only state agencies and if he had thought about the concept of political subdivisions.

{Tape: 3; Side: B}

REP. GRINDE said he had thought about that. It becomes very complicated when political subdivisions are included. He wanted to concentrate on state actions although there is a bill draft request in which will bring up political subdivisions.

REP. SMITH asked if there were other states looking at similar legislation.

Ms. Lund said the bill offered by Senator Dole is a look-before-you-leap type of bill similar to this one. Forty-four other states have considered this type of legislation. She expected that other states will pass similar legislation because of public concern that government has gone too far.

REP. SMITH asked about the amendments proposed by the Wildlife Federation.

Ms. Lund said that some of those amendments would take the bill out of the stated scope. She would advise the sponsor to not accept them.

REP. SMITH said the fiscal note is not accurate into the long-range vision as to the impact of this bill and asked for comments on that.

Ms. Lund believed the fiscal note was still too high. She explained the reasons for her opinion.

REP. SMITH asked if there was a physical review of the takings.

Ms. Lund said that was not necessary because completing the check list would determine whether it is a case of a takings.

REP. SMITH wanted to know how they could make the judgment on the checklist if they hadn't been to the site.

Ms. Lund explained by describing the checklist which was a part of the amendments to HB 311.

REP. GRIMES asked why this would not affect a devaluation of property in the case of hazardous waste consideration.

Ms. Lund said the bill is set up to track current constitutional law at the state and federal levels. This considers a theory of takings that has not been accepted or held in a court of law.

REP. GRIMES and **Ms. Lund** agreed that this deals with current state and federal court decisions and constitutional law.

REP. GRIMES assumed that this bill only applies to state actions and asked if it applies to local government actions and how it affects both governments.

Ms. Lund said it does not affect state and local governments and is only confined to state agency actions which is reflective of some property rights bills that have passed in other states.

REP. MOLNAR asked the sponsor to discuss the impact on those who could not put their cattle on certain land inhabited by buffalo infected with brucellosis.

Ms. Lund said that was consequential actions and the bill would not apply.

REP. MOLNAR said if it is determined that there is a takings by following the checklist, could the person sue because the state has admitted the takings.

Ms. Lund said they could sue whether or not the checklist is completed showing a takings. The government could see that it would be a takings and decide to do it another way or they could proceed knowing they may or may not be taken to court.

{Tape: 3; Side: B; Approx. Counter: 15.5}

REP. HURDLE proposed a series of hypothetical situations to determine the definition of a takings.

Ms. Lund responded to each with explanations.

REP. MC CULLOCH asked the sponsor for an elementary version of the difference between the look-before-you-leap concept and the takings compensation concept.

REP. GRINDE said the look-before-you-leap concept is to try to make an evaluation before the state takes an action and if the actions will result in a takings, they would find an avenue to complete the process or not do it at all. Takings compensation bills set up a percentage of how much a takings is and how much the compensation should be.

REP. MC CULLOCH asked how frequently this occurs in Montana.
REP. GRINDE said it is not a frequent problem right now, but the idea is to stop problems before they start.

REP. MC CULLOCH asked about the concern for the handicapped.

Mr. Caplis said they were concerned that making changes to a building to provide access for disabled individuals could be construed as a takings.

REP. MC CULLOCH asked if that was a fair way to conduct this if the person does not have to go to the site to make a determination.

Ms. Lund said that was a viable concern, however they are asking for a legal opinion and many of those are made in courts of law where the property is not visited. There is no reason in implementing the guidelines to go to the property. She clarified the question on the handicapped issue that this bill would not affect ramps or implementing access for the disabled.

REP. MC CULLOCH asked if these decisions are made by a paralegal rather than a judge.

Ms. Lund said they are asking personnel in the agency who are trained in the use of the guidelines to do a legal analysis.

{Tape: 3; Side: B; Approx. Counter: 32.0}

Closing by Sponsor:

REP. GRINDE recommended to the committee that they read **EXHIBIT 10** to answer many of their questions concerning takings. He reiterated the reasons for the legislation as a preventive measure. He addressed the cost and referred to other states' experience with it which demonstrates that there is not much cost and compared the projected cost with what would happen if a takings case occurs as had happened in the Lucas case. The intent is not to endanger the environment or the people or to restrict the rights of state government but only to evaluate their actions before proceeding.

Motion: **REP. CAREY MOVED TO ADJOURN.**

{Comments: This set of minutes is complete on three 60-minute tapes.}

ADJOURNMENT

Adjournment: The meeting was adjourned at 12:45 PM.

Bob Clark
BOB CLARK, Chairman

Joanne Gunderson
JOANNE GUNDERSON, Secretary

BC/jg

HOUSE OF REPRESENTATIVES

Judiciary

ROLL CALL DATE 1/31/95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bob Clark, Chairman	✓		
Rep. Shiell Anderson, Vice Chair, Majority	✓		
Rep. Diana Wyatt, Vice Chairman, Minority	✓		
Rep. Chris Ahner	✓		
Rep. Ellen Bergman	✓		
Rep. Bill Boharski	✓		
Rep. Bill Carey	✓		
Rep. Aubyn Curtiss	✓		
Rep. Duane Grimes	✓		
Rep. Joan Hurdle	✓		
Rep. Deb Kottel	✓		
Rep. Linda McCulloch	✓		
Rep. Daniel McGee	✓		
Rep. Brad Molnar	✓		
Rep. Debbie Shea	✓		
Rep. Liz Smith	✓		
Rep. Loren Soft	✓		
Rep. Bill Tash	✓		
Rep. Cliff Trexler	✓		

1/31/95
HB 177 Tash Yes

HOUSE STANDING COMMITTEE REPORT

January 31, 1995

Mr. Speaker: We, the committee on **Judiciary** report that **Senate Bill 29** (third reading copy -- blue) **be concurred in as amended.**

Signed: Bob Clark
Bob Clark, Chair

And, that such amendments read: **Carried by: Rep. Grimes**

1. Page 16, line 6.
Following: "issued"
Insert: "for the same obligation"

-END-

Committee Vote:
Yes 19, No 0.

261618SC.Hdh

HOUSE STANDING COMMITTEE REPORT

January 31, 1995

Mr. Speaker: We, the committee on **Judiciary** report that **House Bill 232** (first reading copy -- white) **do pass**.

Signed: Bob Clark

Bob Clark, Chair

Committee Vote:
Yes 16, No 3.

HOUSE STANDING COMMITTEE REPORT

January 31, 1995

Mr. Speaker: We, the committee on **Judiciary** report that **House Bill 177** (first reading copy -- white) **do pass as amended.**

Signed: Bob Clark

Bob Clark, Chair

And, that such amendments read:

1. Page 2, line 15.
Strike: "intention to"

-END-

Committee Vote:
Yes 17, No 2.

261627SC.Hdh

HOUSE STANDING COMMITTEE REPORT

January 31, 1995

Mr. Speaker: We, the committee on **Judiciary** report that **House Bill 135** (first reading copy -- white) **do pass as amended**.

Signed: Bob Clark

Bob Clark, Chair

And, that such amendments read:

1. Page 2, line 20.
Strike: "an"
Insert: "a line item or other specific"

-END-

Committee Vote:
Yes 18, No 1.

261621SC.Hdh

EXHIBIT 1
DATE 1/31/95
HB 296

The Jury According to Webster--1828!

Thanks to Wyoming FIJA activist Dave Dawson, we have a copy of Noah Webster's definition of the word "jury", from his original Dictionary of the English Language, 1828. The importance to FIJA is obvious: this is the definition of "jury" which was in use at the time the Constitution was written--which is to say that jury veto power is guaranteed every time trial by jury is guaranteed in the Constitution and Bill of Rights (three times)!

JU'RY, *n.* [Fr. *juré*, sworn, L. *juro*, to swear.]

A number of freeholders, selected in the manner prescribed by law, empanneled and sworn to inquire into and try any matter of fact, and to declare the truth on the evidence given them in the case. *Grand juries* consist usually of twenty four freeholders at least, and are summoned to try matters alledged in indictments. *Petty juries*, consisting usually of twelve men, attend courts to try matters of fact in civil causes, and to decide both the law and the fact in criminal prosecutions. The decision of a petty jury is called a *verdict*.

EXHIBIT 9
DATE 1/31/95
HB 296

HOUSE BILL 296, WELLS, ET AL

TESTIMONY BEFORE HOUSE JUDICIARY COMMITTEE

by
Gary S. Marbut, President
Montana Shooting Sports Association

HB 296 does not create a new concept or power. It merely recognizes what already is. It is unquestioned that juries can acquit despite the law. The only question is whether or not juries CAN BE TOLD that they have this power. HB 296 would simply allow them to be told. We ask, what service does it do the public for citizens to be kept in ignorance?

Some will claim that HB 296 will create anarchy in the courtroom. It worked okay for the first one hundred years of this country's history, and it works okay today in Indiana. It will work fine in Montana too.

Below are some authoritative quotes about the jury's unquestioned power to judge both the facts and the law:

"Though the common-law courts of this State ascertain disputed facts by a jury, yet they unquestionably have jurisdiction of both fact and law" - Federalist Papers No. 81, Alexander Hamilton

"If the jury feels the law is unjust, we recognize the undisputed power of the jury to acquit, even if its verdict is contrary to the law as given by a judge, and contrary to the evidence ... and the courts must abide by that decision." - US v Moylan, 4th Circuit Court of Appeals, 1969, 417 F.2d at 1006

"The jury has the power to bring a verdict in the teeth of both the law and facts." Oliver Wendell Holmes, U.S. Supreme Court Justice, Horning v. District of Columbia, 138 (1920).

"The jury has the right to determine both the law and the facts." - Samuel Chase, U.S. Supreme Court Justice (1796)

EXHIBIT 3
DATE 1/31/95
HB 296

HB296 -- FULLY INFORMED JURY AMENDMENT

TESTIMONY OF BOB DAVIES, Box 3634, Bozeman, MT 59772

Virtually no one denies that the jury has the power to acquit a defendant if they think the law under which he is accused is unjust. The courts have even affirmed this. Yet certain elements of the Judiciary vigorously oppose informing the jury that they have this power. In fact, a judge will almost always tell the jury exactly the opposite -- that they must convict if the law was broken without regard for the validity or constitutionality of the law.

Did our founding fathers make a mistake in giving the jury this power? Hardly. They knew that as government grew in power it would tend to become oppressive. The "checks and balances" provided by separating the three branches of government would become less and less effective as governmental power grew and the various branches cooperated more and more with each other, just as is happening today. The right to a trial by a jury of our peers, with the jury to be the last word in any particular case, was to be an additional protection against a tyrannical government.

The history of this goes back a long way. In England in the 17th century, William Penn, a Quaker, was arrested and tried for holding church services not sanctioned by the government. The jury acquitted him because the law was unjust. The king was enraged to the extent that he jailed the jury to force them to change their decision. They refused to do so. Our founding fathers saw this and other travesties of justice and made sure that this couldn't happen here. But, in effect, it is happening here because judges routinely misinform the jury, and even forbid the defense from informing the jury. It is time this is corrected.

The jury is about the only defense or "check" on the oppressive power of government. It was intended to be so. A number of bad laws have been changed or repealed because juries, exercising their power to pass judgement on unjust laws, have refused to convict. Prohibition is probably the most recent example. Since no one denies that the jury has the last word, what can be wrong with informing them of this fact? FIJA confers no new powers on anyone. It also takes none away. It only seeks to let juries know the power they already have.

I urge you to support the Fully Informed Jury Amendment.

EXHIBIT 4
DATE 1/31/95
HB 296

TESTIMONY OF ROGER KOOPMAN

Supporting HB 296

Mr. Chairman. Perhaps the strongest statement in favor of this legislation is made by the nature of its opposition. This is the third such hearing I have attended in support of the fully informed jury. In every case, it is the common man who comes to speak in favor of jury rights legislation, and it is the professional legal establishment who turns out in force to rail against it.

The reason for this is not hard to understand. In recent years, the proper, constitutional role of "a jury of one's peers" has been enormously compromised and its essential powers greatly eroded. Those powers have been shifted to a professional class of "legal practitioners" -- the lawyers on the courtroom floor and the lawyers on the benches. The common man wishes to regain his lost powers and with it, the defense of his liberties. The professionals wish to hold tight to the monopoly of power they now unjustly enjoy.

There are many bills that will come before this legislature that will be highly controversial and hotly debated. But I would suggest, Mr. Chairman, that this is not one of them. It is a sad commentary that this bill has become so necessary, but the substance of the bill itself is not controversial. HB 296 does one very basic and very simple thing: it requires judges to do what they should have been doing all along -- to inform jurors of the powers and responsibilities vested in them exclusively, by the principles of the Constitution, and the defining statements and writings of our nation's founders. Some of those statements are attached to my testimony for the record. Mr. Chairman, I would challenge <u>any</u> of the opposition present this morning to produce one document or definitive statement from any of our nation's founders that would contradict the principles asserted in this bill.

It is commonly believed that our liberties are secured by our right to vote for our elected officials. But as history has proven, political democracy alone does not assure freedom and justice for all -- to the contrary, it only assures that the politically strong will have the right to dominate and oppress politically weak minorities. Therefore, the rights of the common citizen in our American republic were secured by a system of three types of votes:

(1) The first vote is the one we cast at the polls on election day, to select our governmental representatives.

(2) The second vote is when we serve on a grand jury. Through this process, governmental authority must seek the permission of the people to bring an individual to trial. If the people vote "no", that person is not tried for the commission of any crime.

(3) The third vote is exercised when we serve on a jury in a courtroom trial. Once again, the common man is given the power to preserve his liberties by, in specific cases, overruling the power of unjust government and unjust law.

The operative word here is justice. Contrary to what spokesmen from the legal profession may try to insist, the blind, mechanistic enforcement of law is not synonymous with justice. Our founding fathers understood that justice is of a **higher order**. It begins with written civil law, but the potential mischief of written law must always be held in check by the power of the people themselves -- through the jury system -- to judge that law unfit in specific cases and sets of circumstances.

Our founding fathers recognized that as God is higher than man, so **moral law is higher than civil law.** While we strive to pattern our civil law after moral absolutes, we understand that man errs time and again in that pursuit -- sometimes cynically and intentionally, sometimes innocently and accidentally. But in either case, poor law is unjust law. It is only through the application of **moral conscience**, which resides not on paper documents but in the **hearts and souls of people**, that a truly just and free society can be maintained.

That, ultimately, is what the jury system is all about. Justice does not rest with judges. It does not rest with lawyers. Justice rests with the individual jurors, or it rests nowhere at all.

If, as some would have you believe, the only role of the jury is to determine the facts and blindly apply the law, then I would ask with the utmost sincerity, why should we continue a system of fallible human jurors at all? I can assure this committee that any good computer programmer is capable of developing software that would do a far better job of "analyzing the facts and applying the law" than any group of human beings could do. Just hook all the witnesses up to a polygraph to determine the true facts, enter those facts into the computer which is pre-loaded with statutes and case law, and let the computer try the defendant, render the verdict and mete out the sentence.

But people aren't computers, are they? They are **moral beings**, capable of making moral as well as analytical decisions. That is precisely why, in a free society, the jury system exists. But when -- as current practice has done -- you strip from the juror his right to make moral judgements on a case and on the law itself, you turn him into a brute, a machine, a computer, and nothing more. And you turn our entire system of justice into something that is professionalized, politicized and bastardized -- into something that is no longer justice at all.

The time is long overdue to pass this legislation. Thank you.

EXHIBIT 4
DATE 1-31-95
HB 296

THE FREEMAN
IDEAS ON LIBERTY

JURY NULLIFICATION: CORNERSTONE OF FREEDOM

by Roger Koopman

"The Jury has the right to judge both the law and the fact in controversy." That statement was penned not by some modern-day political theorist, but by John Jay, first Chief Justice of the United States Supreme Court. It did not reflect some quaint or offbeat ideology, but rather, the consensus of opinion at the founding of our nation. Our Founding Fathers understood that the constitutional republic they had crafted was a fragile thing. Without the proper safeguards, it could in time fall prey to tyranny masquerading as law. They recognized that one of the most essential of safeguards was the power vested in the common citizen through the jury box.

If our nation's founders were able to come back today and witness the instructions that judges lay upon the juries, they would react with horror at the emasculation of our once-proud jury system. Indeed, it bears little resemblance to the system they established, precisely because its most essential ingredient—the individual, independent juror—has largely disappeared. The juror is instructed to accept the letter of the law without question, and apply no moral judgment to his decisions. To the nation's founders, today's jury system would appear as nothing more than a ghost of its former self.

They would wonder how we managed to stray so far from the original pattern they instituted and why, as a result, America has chosen to place her freedoms in such obvious peril. Our forefathers, it seems, understood far better than we that for a nation to remain free, sovereign power must rest in the people themselves. They designed the jury system to act as a constant check on the excesses of government and the abuses of unjust law. Individual jurors acknowledged that they had not only the authority, but the moral responsibility to acquit just men who ran afoul of unjust law.

Throughout the history of our republic, there have been many instances of juries that stood firmly for justice in the face of illegitimate law. They commonly refused,

Mr. Koopman is a free-lance writer and businessman from Bozeman, Montana.

for example, to enforce the British Navigation Acts against the colonists and later, the Fugitive Slave Act against the abolitionists. American history would have been written much differently if the juries of the past functioned like the juries of the present. Sadly, a modern-day jury would toss those abolitionists in jail, not because we now believe in slavery, but because juries today are consistently misinformed from the bench about their essential role in securing justice, and are thus rendered impotent in the defense of freedom. They are instructed to determine the facts, apply the law, and go home.

The "Fully Informed Jury"

It is ironic, then, that proposals to require juries to be informed of their vested powers are characterized as "radical." There is nothing radical about recognizing the wisdom of our Founding Fathers and reestablishing those sound principles of justice which we have allowed, through carelessness and neglect, to slip away. The so-called "fully informed jury" is at the bedrock of our republic.

It is important to recognize that this concept does not create any "new" powers, rights, or privileges. It merely asserts those jury powers and rights that have long existed. Simply stated, the proposal requires that juries once again be apprised of their inherent right to judge not only the facts of a case, but the law itself as it relates to that case.

As a practical matter, fully informed juries would result in little or no change in the great majority of all jury decisions. But in the few cases where juries asserted themselves and to some degree judged the law itself, they would help both secure justice and maintain a free society. Over time, if juries consistently "nullified" certain statutes by refusing to convict defendants, juries would be sending a powerful message to the legislative branch. The "sovereign" (the people) would have spoken, making an unjust law unenforceable and dramatically demonstrating that the law should be amended or repealed.

Jury nullification could also act some day as a vital defense against oppressive federal laws criminalizing behavior that is no crime. Consider if, for example, Congress voted to ban gun ownership. Ninety percent of those living in my home state of Montana would instantly become "law-breakers," yet none would be viewed by their neighbors as having committed any "crime." If Montana juries were informed of their true powers, it would be impossible to convict a Montanan who was simply exercising his Second Amendment rights. But this kind of check on abusive governmental power requires that juries be well informed.

Of course, juries could refuse (and occasionally have refused) to enforce just laws. But such cases are likely to be rare since most people agree on the government's basic duty to protect life, liberty, and property.

Once "informed juries" started cleansing the system of unpopular and repressive laws, two changes would begin to take place among the people themselves. First, people's respect for law itself (something that has declined in recent years, largely because of the mischief caused by so much bad law) would be regenerated. Second, people's moral senses would be sharpened by their increased individual responsibility to preserve our freedoms. We would become, once again, a vigilant people, more keenly aware of the abuse of government power, jealous of our liberties, sensitive to the moral and philosophical prerequisites of freedom.

America's founders did not place their trust in a "professionalized" judiciary, controlled by lawyers, judges, and organized interests that make their living from government. They had a deep and abiding faith in the people themselves, and placed the ultimate power of the courtroom in the citizens' hands. Isn't it time that we returned to this fundamental principle of our republic? □

"It is not only his (the juror's) right, but his duty, to find the verdict according to his own best understanding, judgement, and conscience, though in direct opposition to the direction of the court."

-- John Adams

"I consider trial by jury as the only anchor yet imagined by man, by which a government can be held to the principles of its constitution."

-- Thomas Jefferson

"Jurors should acquit, even against the judge's instruction, if exercising their judgement with discretion and honesty thay have a clear conviction that the charge of the court is wrong."

EXHIBIT 5
DATE 1/31/95
HB 296

MONTANA LIBERTARIAN PARTY
P.O. BOX 4803 MISSOULA MT. 59806

H.B. 296

Good morning Chairman Clark and House Judiciary members. My name is Michael Fellows and I'm the state Chair of the Montana Libertarian Party. I am speaking in in favor of this bill.

From the beginning of our Judiciary system, the powers that be recognized that Fully Informed Juries were an important check on government and its power. Fully Informed Juries have always had the right to judge both the law and fact. Judges, who want to keep their power would disagree.

The Libertarian Party recognizes Jury power, and one of our planks addresses the issue: in short it says "the Judge should be required to inform the jurors of their common law right to judge the law, as well as the facts". They can also find against the government in a civil trial, whenever they deem the law unjust or oppressive.

This is all too evident in Missoula. Because of a state law government can restricted who can live together in a household. The Missoula "Family Definition" law which by the way is included in land use regulations, states that 2 or more people not related by blood, adoption or marriage can't live together. This makes criminals out of college students who choose to live together to save money. It also makes criminals of families who may need help with the mortgage and take in a

renter.

By law the jury would have to convict, but recent court cases have found such laws unjust and discriminatory.

In closing I would recommend a Do-Pass by this committee and I thankyou for the opportunity to speak before you today.

END

EXHIBIT 6
DATE 1/31/95
SB 36

PATERNITY ESTABLISHMENT INFORMATION
CHILD SUPPORT ENFORCEMENT DIVISION
MARY ANN WELLBANK, ADMINISTRATOR
DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

Background on Genetic Testing

All human cells contain twenty three (23) pairs of chromosomes containing the genetic makeup of that person. A child inherits one-half of his/her chromosomes from each parent. The 23rd gene determines a person's sex, the 6th determines human leukocyte antigens (HLA), and the 9th determines blood type. The genetic lab does red blood cell (RBC) and HLA test systems on all blood samples to identify genetic markers from each person being tested. The lab compares these genetic markers to determine if the genetic markers from the child are a composite of those identified in the mother and the alleged father. The lab requires that more than one test system must be done to accomplish the testing, even though one system could be conclusive. HLA excludes 93.5% of all non-fathers and RBC excludes 63-72% of all non-fathers, and the two combined will exclude 99% on all non-fathers. DNA testing is done if the RBC and HLA do not reveal conclusive results. DNA is done by comparing short sections of DNA called a probe. The child's DNA probes are compared to that of the mother and the alleged father. If these two people are the biological parents of the child, exactly one-half of the child's DNA will exactly match with each of the parents. Two probe systems are run for absolute accuracy. DNA testing excludes 99% of all non-fathers.

The paternity index, shown on the test results, is set by comparing the genetic markers of the alleged father to a random man of the same race and calculating the ratio of the frequency that the random man could produce the same genetic markers. A probability factor of .05% assumes the alleged father and a random man had an equal chance to father the child and is used

in a formula to determine the final percentage of probability. that the alleged father is the father of this child.
If a blood test result shows a 2000 : 1 probability, the alleged father is 2000 times more likely to be the father of the child than a random man of the same race given access to the same mother.

PATERNITY GLOSSARY

Alleged Father	A man against whom there exists an assertion, declaration, or statement indicating that he may be the father of a child/ren in a case.
Acknowledgment of Paternity	A legal document signed and notarized by both parents of a child and filed with the birth records at the Bureau of ital Statistics. This document may be challenged in the courts.
Admission of Paternity	An administrative document, signed, notarized, and sworn-to by the alleged father declaring that he is the father of the child named. This document cannot be challenged in the courts.
AFDC	Aid to Families with Dependent Children. Public assistance paid to a custodial party on behalf of children who are deprived of one or both of their parents by death, disability, or a continued absence from the home by a parent including desertion and incarceration.
Amended Birth Certificate	The document that results from adding the father's name to a birth certificate at the request of either parent.
Applicant	The custodial party who requests the services of CSED to determine paternity, establish an order for support, or enforcement of an order for support.
Assignment of Rights	The procedure/document by which a recipient of public assistance or an applicant of NAFDC services agrees to turn over to the State any right to support paid on behalf of such recipient/applicant or their dependent children.
Caretaker/ Custodial Party/ Guardian	A parent, relative, or guardian who maintains care and control of the dependent children of a NAFDC household or whose needs are included with the children's in an AFDC payment or Medicaid benefits.
Certificate of Service/ Sheriff's Return	A signed document by which the person who served process, delivered documents in person, upon a party to the case which affirms that the service was performed.
Certified Birth Record	A document obtained from the state agency responsible for maintaining ital statistics of birth and death records. The record contains birth information for the child, mother's name, and father's name if paternity has been acknowledged. The document bears the signature of an agency official and seal of certification as to the facts.

EXHIBIT 6
DATE 1-31-95
SB 36

Certify	To declare, under oath, the accuracy of facts by a signed, written statement.
Child	Any person under 18 years of age who is not otherwise emancipated, self-supporting, married or a member of the armed forces of the United States, any person under 19 years of age and still in high school or any person who is mentally or physically incapacitated if the incapacity began prior to the person's 18th birthday. [MCA 40-5-201 (2)(a)]
Circumstantial Evidence	Evidence directed to the surrounding events, whereby which existence of the principal fact in an issue may be inferred by logical reasoning.
Cite	A statute, ordinance, or judicial opinion identified by section, volume, or page numbers, and code of the source.
Code	A collection of federal or state laws published in one or more volumes.
Collateral Facts	Facts outside of or not directly connected with the principal matter in dispute.
Continuance	The postponement of a hearing to a different day.
Cooperation	An applicant's observance of the conditions of application or service by any State agency.
Cross-examination	The questioning of a witness by the opposing party for the purpose of testing the truth of the testimony.
CSED	Child Support Enforcement Division
Default	The failure of a party to a case to respond to legal process within the time-period prescribed by law for that response.
Dependent Child	Child under the age of emancipation or receiving assistance ia AFDC.
Discovery	The disclosure of facts, documents, witnesses or other information in the possession of one parties in an adversarial action to the other party prior to formal hearings procedures.
Due Process of Law	The observance of legal rules and procedures to protect the rights of all parties to a legal action.
Emancipation	To release from parental care and responsibility ia reaching the legal age of emancipation in a state, marriage, entry to military service, death, or by court order.
Et Al	Latin abbreviation for "and others".

Et Seq.	Latin abbreviation for "and the following".
Ex Parte	Something that is done for the benefit of one party only and improperly excluding others to the same action.
Exhibit	A document or article of fact, marked for identification, submitted to the court or to the hearings officer to support the argument of a party to a legal action.
(Title) I-A	of the Social Security Act covering public assistance programs under Federal Law.
(Title) I-D	of the Social Security Act covering support enforcement programs under Federal Law.
Grant Amount	The amount of public assistance paid to an AFDC family in a given month.
Guardian Ad Litem	A guardian appointed by a court to protect the legal interests of a minor or otherwise incapacitated person.
Hearings Officer Administrative Law Judge	An impartial person authorized by the agency to hear evidence and render decisions regarding proper application of policy and procedure.
Inadmissable	A term to describe evidence or testimony that cannot be considered by a judge or hearings officer under established legal procedures.
Incarceration	Imprisonment; not including County Jails.
Informational Birth Record	An uncertified document containing birth information for a child. Sometimes this is a document issued by the hospital "suitable for framing" and other times this is a copy of the documents submitted by the hospital to the Bureau of ital Statistics. This is not a legal document, but does provide valuable information regarding the birth records of a child.
Informed Consent	An administrative document signed by an alleged father by which he acknowledges that he is signing an Admission of Paternity fully aware of additional possible fathers.
Initiating State	The state in which the custodial party resides when the alleged father resides in another and interstate actions are required.
Interrogatories	A set or series of written questions to assist in discovery prior to a hearing.
Judgment	The official decision of findings of a court; a decree.

EXHIBIT 6
DATE 1-31-95
SB 36

Judicial Review	Appeal to a court of higher authority for the review of the judgment of an administrative agency.
Jurisdiction	The determination by law prescribing the class of cases which may be heard by a legal entity including a specific geographical area and the parties which may be included in an action.
Legal Father	A man who is recognized by law as the parent of a child.
MCA	Montana Code Annotated, Montana laws. Title 40 and Title 41 specifically govern the actions of CSED and define its authority.
Medicaid	Medical benefits related to AFDC benefits or to NAFDC persons who are eligible.
Motion	An application to a judge or hearings officer for an order or ruling.
Non-AFDC/NAFDC	I-D cases in which the custodial party is not a recipient of public assistance.
Notarize	The administration of an oath to a person, a Notary Public, who then attests and certifies by his or her signature and official seal on the document that the person who signed the document was the person named on the document.
Objection	The act of a party who disagrees to something or proceeding in the course of a hearing.
Opening Statement	The statement made as an overview at the beginning of a hearing setting forth the purpose and the facts to be covered.
Order	The decision rendered in writing by the judge or hearings officer.
Paternity	Fatherhood.
Paternity Affidavit	An administrative document, completed by the custodial party, containing declarations and statements regarding the circumstances of conception and the relationship as it existed between the biological parents of the child. This document is completed voluntarily, signed and sworn-to before a notary.
Personal Service	Delivery of a notice of document to a named party to an action by handing it to him/her in person.
Precedent	An judgment or decision that serves as an example or authority for an identical or similar case or question of law.

Pre-hearing Conference	A telephone conference call including the Hearings office, the CSED, and the alleged father to inform the alleged father of his rights and the format of the hearing; to obtain a list of necessary witnesses; set deadlines for discovery and submitting of exhibits; and, to set a hearing date.
Probable/ Reasonable Cause	Facts exist which would induce a reasonable person to believe that an event did occur as alleged.
Pro Se	A person legal representation of his own interests in a hearing without benefit of a lawyer by his/her own choosing.
Presumed Father	A man who was married to the mother at the time the child was born or who meets criteria of presumption as defined under the law. MCA 40-6-105.
Publication/ Decree by Publication	Service has been accomplished by printing of the notification of a legal action in a local newspaper in the area of last known address of the alleged or presumed father. Does not establish paternity.
Rebut	New evidence can be introduced to contradict prior facts or evidence.
Recipient	The person receiving public assistance.
Redirect	The re-questioning of a witness.
Regulation	The rules of an administrative agency.
Release	The relinquishment of a right.
Relevance	A determination that evidence or testimony bears a direct relationship to an issue and proves a fact.
Reporter	A publication that contains judicial opinions.
Responding State	The state in which the alleged father resides if different from that in which the custodial party lies in an interstate action.
Security Copy	A copy of a letter or official document retained in the case-file and stamped as a "copy". Such documents are used as exhibits in administrative hearings and in District Court by way of a Subpoena Duces Tecum.
Statutes	Formal written law found in code books.
Statute of Limitations	Under the law, sets the period of time within which a legal action can take place.

EXHIBIT 6
DATE 1-31-95
SB 36

Stay	An order by the court to stop a legal proceeding.
Stipulation	An agreement between parties, done in writing, to validate agreement upon facts.
Subject Matter Jurisdiction	Jurisdiction to proceed with actions against a specific class of case. (example: Native Americans)
Subpoena	The legal process to order cooperation of a witness to appear.
Subpoena Duces Tecum	The legal process to order presentation of documents.
Substitute Birth Certificate	The document requested, by a submitting a Paternity Consent Order, when scientific evidence and/or an administrative or court order requires the information on the birth certificate be changed.
SYSTEM/SEARCHS	The CSED computerized record keeping system.
TEAMS	The computerized record keeping system used by the I-A/welfare agency.
Wavier	The intentional and voluntary relinquishment of a known legal right.

EXHIBIT 7
DATE 1/31/95
HB 311

AMENDMENTS TO HOUSE BILL NO. 311
INTRODUCED BILL (WHITE COPY)

1. Page 1.
Following: line 11
Insert: "STATEMENT OF INTENT

A statement of intent is required for this bill because it grants the attorney general authority to develop guidelines for state agencies to follow in identifying and evaluating agency actions with taking implications. The attorney general using a public process shall develop an orderly, consistent internal management process for state agencies to evaluate the effects of proposed regulatory or administrative actions on private property. In addition to developing a process the attorney general shall provide an advisory memorandum for evaluation of proposed regulatory or administrative actions to identify potential taking of private property. It is intended that the advisory opinion not be construed as an opinion by the attorney general on whether a specific action constitutes a "taking". Consistent with the Montana and United States constitutions, the attorney general should consider the following issues in developing guidelines: (1) whether there is a constitutionally protected property right that will be affected; (2) whether the regulation or action substantially advances a legitimate state interest; (3) whether the regulation deprives the owner of economically viable use of the property or results in a temporary or permanent physical invasion of the property; (4) whether the regulation damages the property; (5) whether the regulation or action requires a property owner to dedicate a portion of property or to grant an easement and; (6) whether in the balance the regulation justifies the burden on private property. In addition, the attorney general may consider any other factors that bear upon the determination of whether a compensable taking has occurred including new case law.

2. Page 1, line 16.
Following: "be"
Strike: "taking"
Insert: "taken or damaged"
Following: "owner"
Insert: ", in accordance with the meaning ascribed to these concepts by the United States Supreme Court and the Montana Supreme Court"

3. Page 1, line 28.
Strike: "license"
Following: "denial"
Insert: "pertaining to land or water management or other enivironmental regulation, that does not substantially advance a legitimate government purpose with a nexus between the protected public interest and the permit condition or denial and that would constitute"

Strike: ", or dedication or exaction that a state or federal court might hold to be"

4. Page 2, line 6.
Following: "real"
Strike: "and personal"
Insert: "including water rights"

5. Page 2, line 9.
Following: "Taking"
Insert: "or damaging"
Strike: "of all or part of the use or economic value"

6. Page 2, lines 13 and 15.
Strike: "Each state agency"
Insert: The attorney general"

7. Page 2, line 14.
Following: "develop"
Strike: "and adopt"
Insert: "and provide to state agencies"
Strike: "it"
Insert: "the agencies"

8. Page 2, line 15.
Following: "review"
Strike: "its"
Insert: "the"

9. Page 2, line 17 through Page 3, line 5.
Following: "guidelines," on line 17
Strike: remainder of line 17 through Page 3, line 5 in its entirety
Insert: "In developing the guidelines, the attorney general must require that state agencies ~~anticipate~~ and follow obligations imposed by the 5th and 14th amendments to the constitution of the United States and Article II, section 29, of the Montana constitution, as construed by the United States Supreme Court and the Montana Supreme Court, when considering and implementing an action with taking implications, in order to avoid unanticipated and undue burdens on the state treasury.

10. Page 3, line 12
Following: "avoid"
Strike: "a"
Insert: "an immediate"

11. Page 3, line 14.
Strike: "state agency's"
Insert: "attorney general's"

12. Page 3, line 22 through 26.
Following: "assessment"

EXHIBIT 7
DATE 1-31-95
HB 311

Strike: lines 22 through 26 in their entirety
Insert: "of any action with taking implications must be given to the governor before the action is taken, except an action to avoid an immediate threat to public health or safety may be executed before the impact assessment is completed and the assessment may be reported to the governor after the action is completed.

EXHIBIT 8
DATE 1/31/95
HB 311

House Judiciary Committee
January 31, 1995
Testimony on House Bill 311
by Glenn Marx, Policy Director, Governor Racicot's Office

Mr. Chairman, for the record my name is Glenn Marx and I serve as Policy Director on the staff of Governor Marc Racicot.

The Governor supports the amended version of House Bill 311 and offers his appreciation to the sponsor, Rep. Grinde, and to the Montana Farm Bureau for their cooperation in working with the administration to develop a consensus position on a series of important amendments.

The original version of House Bill 311 was perhaps a bit "high strung" and carried a fiscal note in excess of a quarter-million dollars. The original version of this bill presented serious questions that would probably only be answered in court, required a sizeable amount of new state spending and contained enough vague language that both the intent and breadth of the bill were arguable.

But the amendments now focus the bill on natural resource issues, on rulemaking, and on real property. These three changes not only drop the fiscal note to one-tenth its orginal size, but make the bill practical, reasonable and implementable.

The bottom line is that when a state agency conducts rule-making under the Adminstrative Procedures Act, it ought to analyze the impact of those proposed rules on private property. And when a state agency requires a permit condition that has no connection to the permit itself or a protected public interest, the impact of that permit condition should be looked at very closely.

It will be alleged, I suppose, that this bill is anti-environmental protection and that support of this bill will handicap the authority of state agencies to effectively regulate industries and issues or provide protection to Montana's environmental resources.

That allegation will be wrong. This bill simply states that during state agency rulemaking or during imposition of a permit condition, impacts of those rules or permit condition on private lands must be researched, understood, disclosed, important and defensible.

Mr. Chairman, Marc Racicot has said several times that private property and private property rights are conerstones of our democracy. This bill represents a common sense approach to respect and protect those rights.

The Governor urges your approval of House Bill 311.

Bozeman Daily
CHRONICLE
Volume 84 • Number 19 Sunday, January 22, 1995 • Bozeman, Montana $1.25

EXHIBIT 9
DATE 1/31/95
HB 311

EXHIBIT 4
DATE 1/31/95
HB 311

Myths abound in the realm of property rights legislation

Hertha Lund
Guest Columnist

A recent news article on property rights legislation (Economy page, Jan. 15) in the Chronicle exemplified the current misunderstanding and myth propagation surrounding what has become a national issue — property rights. In this short article I will attempt to provide a basic understanding of the takings law and to bust a few of the myths that attract news coverage.

The Fifth Amendment states, "No person shall be ... deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use without just compensation."

The Supreme Court has interpreted the takings clause — Fifth Amendment — to establish two scenarios in which it is easy to determine whether a takings has occurred. The first scenario is when the government physically invades the property. The second scenario is when a government regulation denies all economically beneficial use of the property. The next question to be answered by the court is whether the Constitution requires compensation for a partial takings and/or how do you measure a partial takings — is a government taking of 10 of 20 acres a 50 percent taking of 20 acres or a 100 percent taking of 10 acres?

This third scenario has not been decided and it is the topic of much legal scholarship. Suffice it to say that this explanation is a current snapshot of an ongoing legal debate.

Now that we have the constitutional platform established, what is all of this hullabaloo about takings legislation? Since the late 1980s, many Americans have found that they cannot farm, ranch, or build homes on portions of their land. Why? They are blocked by state and federal regulations designed to protect endangered species, reduce conversion of wetlands, preserve historic districts or accomplish any number of other social goals.

The effect of many current regulations has been described as the "orange rind theory" by one leading property rights professor, Richard Epstein of the University of Chicago. He says that such regulations take all of the juice, pulp and seed from the orange (the property) leaving the property owner with the rind (the privilege to pay taxes). A growing number of people have joined together to oppose this government encroachment.

In response to what has been deemed the "property rights movement" many myths have been propagated. Instead of debating the issue squarely, it seems that the environmental lobbyists and others have been more interested in hyperbole and public relations. These tactics have clouded the debate for the average citizen.

In reality, the 13 property rights bills that have passed and the other 100 bills introduced in 44 states are not radical measures. Two types of bills are being offered. One, the "look before you leap" type of bill, would require government agencies to do an assessment of possible takings implications before an action is taken. This bill is analogous to an individual determining a budget or realizing that there are other means to attain the same goal.

This "look before you leap" type of bill would protect the taxpayers' pocket books while allowing government to achieve important government objectives. Montana House Majority Leader Larry Grinde's bill is this type of bill. It would not increase or decrease current constitutional protections. It simply calls for government to assess takings implications before an action is taken that could violate the Constitution.

The other type of bill being offered in other states would legislatively determine the definition of a partial takings. This type of bill is not being offered in Montana at the current time.

Contrary to some claims, property rights laws will not wreak havoc on environmental regulations. Most environmental regulations reflect the police power of the government. The regulations that endanger property rights by going beyond constitutional boundaries are those that require certain property owners to disproportionately shoulder burdens that properly belong to society as a whole.

In the most recent takings case, Chief Justice William Rehnquist, writing for the court, stated, "One of the principal purposes of the Takings Clause is to bar government from forcing some people alone to bear public burdens, which in all fairness and justice, should be borne by the public as a whole." He also stated that a desire to improve the public condition does not justify circumventing the "constitutional way" of paying for what government wants.

This basic quest for justice has implied a populist "property rights movement." It is not an attempt to gut environmental laws or an attempt to unleash the private sector to do what they want. In fact, Grinde's bill has no ability to do either dastardly deed because it simply asks government to do an assessment based on constitutional requirements.

Individual citizens often cannot afford to go all the way to the Supreme Court. Grinde's bill would require government agencies to do an assessment before there was a Lucas type situation. In Lucas v. South Carolina, David Lucas spent hundreds of thousands of dollars, as did the state of South Carolina, in a takings challenge. After the case was decided and the dust settled, the state paid Lucas around $1.5 million. Lucas barely broke even after expenses and the state subsequently sold the property for development. Grinde's bill would provide a mechanism to avoid costly litigation.

Numerous other myths arose in the Chronicle's story; however, due to space constraints I will only deal with one other myth — that zoning will be inhibited by property rights legislation. Property rights legislation is no safe haven for those who oppose zoning. Current takings jurisprudence has not found normal local zoning ordinances to violate the Fifth Amendment, so long as the ordinances equally affect the citizens. Therefore, property rights legislation such as Grinde's bill would have no effect on zoning. Those who oppose zoning have their remedy in local participation, not in property rights legislation.

In sum, myths abound in the realm of property rights legislation. Good policy is made based on informed public debate. In reality, property rights legislation is about citizens asking for efficient government upholding constitutional guarantees.

Hertha L. Lund is a third-year law student at the University of Montana. She wrote a booklet on property rights legislation while a PERC fellow in Bozeman last summer and helped write House Majority Leader Larry Grinde's bill on property rights.

EXHIBIT 10
DATE 1/31/95
HB 311

PERC POLICY SERIES

PROPERTY RIGHTS LEGISLATION IN THE STATES:

A REVIEW

by Hertha L. Lund

ISSUE NUMBER PS-1
JANUARY 1995

The original of this document is stored at the Historical Society at 225 North Roberts Street, Helena, MT 59620-1201. The phone number is 444-2694.

(booklet)

EXHIBIT 11
DATE 1/31/95
HB 131

I am Tom Salansky from Dupuyer, Montana. I ranch along the Rocky Mountain Front and am a member of Montanans for Private Property Rights. I'm here to speak in favor of private property legislation.

In view of the potential partnerships between state and federal agencies and preservation groups, the Endangered Species Act, and the future ecosystem management plans, private property owners need protective legislation now.

I'd like to tell you about my experience with a state agency. In the late 1980's the Montana Fish, Wildlife and Parks arranged a meeting of the ranchers on the Rocky Mountain Front west of Dupuyer. At this meeting the local biologist wanted to know our thoughts on increasing the elk herd in hunting district 441. At that time, the elk herd was between 250-300 head. The proposal was to increase it to 500 head. Most of the landowners did not have any major objections. I did object. The 250-300 head had been wintering on my land in the past and not only used pasture, but did damage to the fences. I felt that doubling the herd would only double the damage.

In the spring of 1990 the FWP agreed that I should be compensated. They offered me 225 AUM'S of grazing on the Blacklife Wildlife Management Area in exchange for winter elk pasture. I accepted the offer and grazed 150 cow/calf pairs for six weeks, for the next 5 years on the game range.

In August '94 I was informed that a new lease would be written. In Dec. '94 I was informed that a fee of $10.00

per AUM would be charged. If I do not agree to this $10.00 fee, the FWP will give this grazing allotment to other interested parties. If I agree to the fee, I will essentially be paying the FWP $10.00 per AUM to raise elk on my land. The elk herd is now at the desired 500 head.

As you can see when this agency wants something they are much easier to do business with, than after they have it.

Government agencies must be made more responsible.

We need private property protection.

EXHIBIT 12
DATE 1/31/95
HB 311

AMENDMENTS TO HOUSE BILL 311

Proposed by the Montana Wildlife Federation

Amend House Bill 311 as follows:

Page 1, line 18
after "action with"
strike "taking"
insert "private property

Page 1, line 21
after "action"
strike "with taking implications might result in the taking of"
insert "might affect"

Page 1, line 27
after "Action with"
strike "taking"
insert "private property

Page 1, line 29
strike "be a taking of"
insert "affect

Page 2, line 9
after "owner of"
strike "all or part of"

Page 2, line 13
after "(1)"
strike "each state agency"
insert "the Montana Attorney General"

Page 2, line 14
after "assist"
strike "it"
insert "state agencies"

Page 2, line 15
after "action with"
strike "taking"
insert "private property

Page 2, line 21
after "action with"
strike "taking"
insert "private property

Page 2, line 23
strike remainder of Section 4.

Page 3, line 9
after "agency action"
strike "taking"
insert "private property"

Page 3, line 7
strike Section 5 in its entirety.
insert:

"New Section. **Section 5. Private property evaluation.** Using the guidelines adopted by the Montana Attorney General, each state agency, before taking action with private property implications, shall prepare a written evaluation of the potential effects on private property."

EXHIBIT 13
DATE 1/31/95
HB 311

Northern Plains Resource Council

Testimony on HB311
House Judiciary Committee
January 31, 1995

Mr. Chairman and members of the committee. My name is Ted Lange and I'm speaking on behalf of the Northern Plains Resource Council. NPRC is opposed to HB311 because of the costs it may impose on state government and because we do not believe it will promote balanced assessments of the pros and cons of government actions.

NPRC believes that if this bill is passed, there must be adequate funds appropriated to fund the takings assessment process, as well as the costs of the flurry of litigation that may follow. As it is, state agencies often do not seem to have adequate resources to get their jobs done. This bill must not further burden the agencies.

NPRC is also concerned that HB311 oversimplifies the issue of how government actions impact private property. The bill requires the consideration of alternatives to government actions, but it is not clear that all the pros and cons of each alternative will be fairly considered. We do not believe this is a black and white issue. There are Government actions that ***protect*** private property values, there are actions that ***impact*** property values and there are also actions that actually ***enhance*** property values. But probably the most common situation in the real world is that many government actions do all three at the same time.

For instance, a regulation to protect air quality may restrict the use, profitability and value of a polluter's oil refinery. At the same time, however, it may protect the property values and health of many nearby residents. If it actually succeeds in improving air quality, it may very well increase property values in the local community.

2401 Montana Avenue #200 Billings, MT 59101-2336 (406) 248-1154

The opposite scenario exists right now in Fallon County, where members of our local affiliate are concerned about the Ross Management Company's proposal to operate an incinerator to burn PCB-contaminated electrical transformers. Ross has already constructed a facility in Baker though they are not yet permitted. Most of our members in the area are agricultural producers, concerned that the threat of contamination from the incinerator may make their beef and other products unmarketable. Their concerns are greatly increased by the fact that Ross has been banned from operating in Washington state for three years because of their track record of serious violations at a similar operation there. There have already been at least two local producers whose buyers have told them they may stop buying from them if Ross starts incinerating.

If the state grants Ross an operating permit, that will be a government action with potentially serious private property impacts for the area's farmers and ranchers. Under HB311, it appears that ***Ross*** would be able to claim a takings if they are ***denied*** a permit. But it is unclear whether local farmers and ranchers would have any recourse if Ross ***is*** permitted and they loose some or all of the value of their products.

We are concerned that if HB311 is passed in its present form, government agencies will fail to give balanced consideration to the true costs and benefits of their actions as they scramble to avoid takings lawsuits. The result could be paralysis in some agencies.

We believe it is not the legislature's place to direct the courts as to what is or is not a Takings under the Constitution. This issue has historically been left up to the courts and it should remain that way. We urge you to vote NO on HB311. Thank you.

EXHIBIT 14
DATE 1/31/95
HB 311

Montana Audubon Legislative Fund

P.O. Box 595 • Helena, MT 59624 • 443-3949

Testimony on HB 311
House Judiciary Committee
January 31, 1995

Mr Chairman and Members of the Committee,

My name is Janet Ellis and I'm here today representing the 2,400 members of the Montana Audubon Legislative Fund. We oppose HB 311.

This bill should be dubbed the "polluter protection law" as it has been in other states. The reason it should be called this are many:

1. It sets up a cumbersome paper shuffling exercise that would paralyze state and local governments in its supposid attempt to protect "private property." The net effect is that regulations that protect the public's health and safety would be tied down in the assessment process, while polluters could go unregulated.

2. Proponents indicate that the Montana Environmental Policy Act (MEPA) sets up a process that protects the environment and HB 311 sets up a similar process to protect private property rights. This is not true.

It is true that MEPA sets up a process to help protect the environment, it also contains the explicit direction in its policy section to try to achieve a balance between the "social, economic, and other requirements of present and future generations of Montanans." MEPA clearly does not put the environment above any other right Montana citizens may have.

HB 311, on the other hand, elevate private property rights above all other rights. The purpose section in HB 311 does not even pretend to seek a balance between private property rights and public values protecting health, safety and welfare.

3. HB 311 would help protect polluters over all other private property right holders. The reason for this is that government regulations written to protect the public's health, safety and welfare will now need to be examined (and potentially tested in a court of law) to assess their private property rights "takings." The only people in this state that will potentially benefit from this law are the regulated. This does not make sense since adjacent property owners and the public's health, safety and welfare do not stand to benefit from the law.

For example:

a. A law is passed to protect groundwater from cyanide heap leach pads created by a gold mine. An assessment has to be completed, assessing the impact on the regulation to mining companies. Ironically, the property of landowners that live next to a permitted mine is not "assessed" for the "takings" that the mining company might do to its land. Additionally, the public's health, safety and welfare "takings" are not assessed if ground or surface waters become polluted.

b. A law is passed to regulate the use of hazardous waste. An assessment must be done, assessing the "takings" of the waste users. Ironically, property owners adjacent to the hazardous waste user receive no consideration in the assessment. Additionally, the public's health, safety and welfare "takings" is not assessed if soils and/or water becomes polluted.

c. An air quality law is passed to protect the public's health. An assessment must be done on the polluter, assessing the "takings" of his industry. Ironically, adjacent property owners receive no consideration in the assessment - as well as the public's health, safety and welfare.

d. A law is passed to protect workers from hazardous working conditions. An assessment must be done on the "taking" from the industry. Ironically, worker safety receives no consideration in the assessment.

e. A law is passed to protect water quality from poor logging practices. An assessment must be done on the "taking" from the landowner cutting the trees. Ironically, the downstream water users - and the public - receive no consideration in the assessment.

Given the assessment, and the policy statement of HB 311, polluters would be given a compelling reason to seek compensatory damages under this act. It does not make sense that polluters should have their rights held above everyone else in the state.

We oppose this bill and urge you to do the same.

Montana State AFL-CIO

Donald R. Judge
Executive Secretary

110 West 13th Street, P.O. Box 1176, Helena, Montana 59624 406-442-1708

EXHIBIT 15
DATE 1/31/95
HB 311

TESTIMONY OF DON JUDGE ON SENATE BILL 311,
HEARINGS OF THE HOUSE JUDICIARY COMMITTEE, TUESDAY, JANUARY 31, 1995

Mr. Chairman, members of the committee, for the record, my name is Don Judge and I represent the Montana State AFL-CIO.

You may already know that, some form of "takings" legislation -- which is what bills like SB311 are commonly called -- has been adopted by 5 states. Forty states, including Montana, rejected similar bills in 1994. Even the conservative voters of Arizona handily repealed "takings" through a ballot measure last November because they came to see it for what it really was: a thinly disguised attempt to strangle any public health and safety or worker protection regulation by elevating the cost of implementation well beyond the fiscal reach of public agencies.

"Takings" legislation became a popular buzzword in the "wise use" movement after President Reagan signed Executive Order 12630 in 1988. That order required federal agencies to examine the extent to which proposed regulatory actions might interfere with private property rights. The historical record, as recounted by former U.S. Solicitor General Charles Fried, clearly shows that members of the Reagan Administration including former Attorney General Ed Meese developed the "takings" scheme -- not out of concern for individual rights, but rather as a pretext for blocking regulator objectives with which they disagreed.

Just as Executive Order 12630 -- which has since been repealed -- was a political tool to achieve a political end, so is so-called "takings" legislation like SB311. The ultimate goal is not to force state agencies to spend taxpayer dollars on expensive research into the potential uses of all private property that might be affected by a new regulation. In fact, it's not necessarily for private property owners to be compensated for any diminished use of their property. No, what the final reality of this legislation means is an end to all new public health and safety and worker protection regulations. Make no mistake, Mr. Chairman and members of the committee. That is the reality if you pass this legislation. Just for a moment, let us consider a couple of examples of what might result if SB311 passes:

Let's say a post-and-pole company wants to dump its waste -- called PQZ -- into the Clark Fork River, but state law says that's illegal. Although other substances containing compounds similar to PQZ were found to be lethal carcinogens, it hasn't yet been proven that PQZ itself poses a "real and substantial threat to public health or safety." Citing SB311, the company says the government should either pay up front for the alternate cost of NOT dumping waste into the Clark Fork of the Missouri, prove whether PQZ is dangerous or not, or else get out of the way and let them dump the PQZ where ever they wish. Will this "takings" legislation also protect the property rights of neighboring property owners whose health and property values are placed at risk by PQZ in the river?

In an effort to reduce the number of workplace illnesses, injuries and fatalities in the mining industry, and cut workers' compensation costs, the Legislature requires all underground mining operations with high experience ratings to comply with clean air regulations, including providing their workers with gas masks. The mine operator could claim this action constitutes a "taking" by requiring such a significant

Printed on Union-made paper

expenditure, and demand that the state pay for the gas masks. If the state refuses to pay, can the workers claim that their property -- their right to perform their labor in a safe and healthy working environment -- has been "taken" by the employer's refusal to supply the masks? Do they demand compensation from the employer...or the state?

In yet another case, a theater owner plans to show an X-rated film, but if a bill that just passed the House, HB83, becomes law, that theater owner will be prohibited from showing the film. That would constitute a takings under the definitions in SB311. Would the state have to pay all of the theater owners NOT to show the X-rated films they placed on order? What about all of the video rental businesses that handle X-rated films?

It's surprising that the fiscal note on this bill showed only a minimal impact on the state, when these three hypothetical examples show that the cost of SB311 could be enormous. As a companion to "takings" legislation, perhaps should consider a "givings" bill. A "Givings Bill" would require the state, in calculating the payment due a private property owner as a result of government action, to reduce the amount owed by the amount that the value of said property has been INCREASED by any action of government such as public funding for highways, schools and other public facilities, job training, tax deductions or credits, grants, subsidies, fire and police protection, water and sewer lines, snow removal, etc.

But Mr. Chairman and members of the committee, a "Givings Bill" would only "up the ante" and doesn't really solve the problem. But then again, perhaps there is no problem to solve.

This country has two hundred years of history during which private property rights and the public good have been balanced and protected. I challenge the sponsors and supporters of this bill to present concrete examples of so-called "takings" that have occurred without just compensation and due process of law under the 5th and 14th Amendments of the U.S. Constitution and Article II, Section 29 of the Montana Constitution.

If they can -- and in other states, such examples have not been brought forth -- then I'd say we've been poor watchdogs of both our federal and state constitutions, but considering the integrity, experience and dedication of the people who have run Montana's government and courts over the last 100 years, I doubt very much that would be true.

Mr. Chairman, members of the committee, I urge you to vote against obstructionism masquerading as protection of private property. Vote NO on SB311.

Thank you.

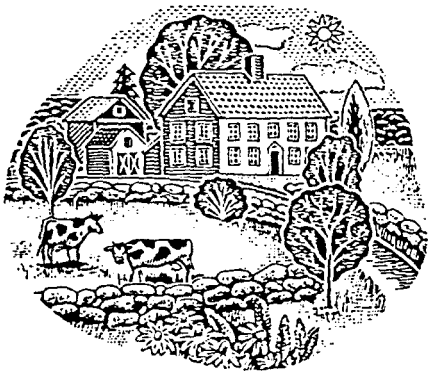
EXHIBIT 16
DATE 1/31/95
HB 3/1

A Delicate Balance

Can doing what's right for the environment threaten our personal property rights?

By John H. Ingersoll

FYI
NOT NANCY



What do the black-capped vireo and the golden-cheeked warbler have to do with property rights? You might be surprised.

Indirectly, these two rare, innocent birds have prevented Margaret Rector, 74, of Austin, Tex., from selling a 15-acre parcel of land to underwrite her retirement. She purchased the land in 1973 and tried to market it in 1990. The land was ideally situated for development, and a number of interested parties approached her. As soon as prospects discovered that, under the Endangered Species Act, the land had been designated as a critical habitat for these two birds, however, the sale collapsed.

As if that were not disappointment enough, because of its uncertain future, Mrs. Rector's 15-acre parcel—which had been assessed by the county at $803,000 just four years ago—has recently been reassessed for $30,380. Her land has effectively been put on hold since 1990 while the U.S. Fish and Wildlife Service and Austin officials try to hammer out a massive land plan that would set aside certain habitats for endangered species and allow development in the remaining areas.

"At present," says Mrs. Rector, "I'd say there are hundreds of families in the 33 counties around Austin who, like me, are unable to sell land that *may* be set aside for a habitat." All of these folks are billed regularly for taxes and mortgage payments and collect nary a penny in compensatory payments.

The Fish and Wildlife Service, the Environmental Protection Agency, and privately funded groups such as the Nature Conservancy generally hold the public's respect. Conserving wildlife and open spaces is certainly as honorable a goal as recycling and cleaning up industrial pollution. And surely no one wants to see rare birds disappear.

Today, though, there is a small army of angry property owners from all points of the United States whose land has been impacted, condemned, or reduced in value by government action in the name of conservation. Joining this expanding army are families that simply feel threatened by environmental takeovers.

Among the foot soldiers, of course, are groups with specific agendas such as the Douglas Timber Operators, Inc., or the Oregon Cattlemen's Assn. Yet many recently minted groups are made up of ordinary farmers and landowners—groups with names like Save Our Land and Stop Taking Our Property. Around the nation, more than 450 such local organizations have loosely coalesced to form Alliance for America, a networking political action group that can be contacted by writing to P.O. Box 449, Caroga Lake, N.Y. 12032.

Although every political group has its radicals, the great majority of Alliance members are much in favor of environmental conservation. Typical of these activists is Ann Corcoran, currently editor of the "Land Rights Letter" and a resident with her family on a farm bordering the Antietam National Battlefield in Maryland. Mrs. Corcoran, who studied forestry at Yale, worked briefly for the Nature Conservancy and for some years for the National Audubon Society in Washington, D.C. She and her family brought their Maryland property back to life after years of apparent neglect. They patiently restored its ancient farmhouse and put the land back into production.

Her philosophy on environmental conservation is simple: She is 100 percent in favor of it. On the other hand, she is, she says, "disturbed that protecting the environment has, for many, come to mean federal control. I'm convinced that it is the private landowners who have kept the land beautiful. They are perfectly capable of protecting the environment."

For Mrs. Corcoran and other concerned landowners, the tide may be turning, as evidenced by two recent U.S. Supreme Court decisions.

In June 1992, the Court ruled in favor of David Lucas and against the South Carolina Coastal Council, a unit created by the South Carolina legislature to protect the state's beachfront from erosion, among other environmental duties. Since 1988, the case had traveled through district and state courts at considerable cost to the defendant, a developer and builder.

In a nutshell, Mr. Lucas bought two beachfront lots on South Carolina's Isle of Palms. These two lots were among five remaining in a beachfront development of approximately 100 homes stretched along the shoreline. His lots, which lay between two completed homes, were zoned for single-family dwellings.

Soon after Mr. Lucas's purchase, the Coastal Council engaged a firm to draw a line on the coastal map, seaward of which no further beach development could begin. Their aim was to prevent beach erosion and protect existing communities.

The line ran in front of existing houses on the Isle of Palms, but, like a bubble in the line, took a detour behind Mr. Lucas's lots, eliminating his plans to build one home for himself and another for sale.

Naturally disappointed, Mr. Lucas shrugged off the decision and told the Coastal Council, "Okay, but you'll have to pay me the value of the lots [approximately $900,000]." The council refused, and Mr. Lucas sued to recoup his investment.

The case went through local and state courts and finally, in 1992, the U.S. Supreme Court ruled that a body of the South Carolina legislature cannot outlaw something today that was legal yesterday. In effect, the council's action amounted to

Continued on page 202

GREAT COLLECTIONS

Continued from page 23

and small gifts for their students. Carefully hand-lettered in old-style Germanic calligraphy, the frakturs (so named for the "fractured" appearance of the lettering style they employed) were typically ornamented with colored pen-and-ink drawings depicting such traditional motifs as birds, flowers, and hearts.

"A lot is made of the symbolism of these motifs—and sometimes the images do contain religious significance based on the Pennsylvania Germans' readings of the New Testament," remarks Pastor Frederick S. Weiser, a retired Lutheran clergyman who is an authority on fraktur art and the guest curator of an exhibition of presentation frakturs currently on view at the Museum of American Folk Art, in New York City. "We should remember, though, that we are dealing with folk art created by persons of rather limited artistic ability, and that flowers and birds are easy to draw."

In the insular and sometimes isolated villages of 18th- and early-19th-century Pennsylvania, farm people relied on the pastor or teacher who headed their church- or community-directed school to introduce their children not only to reading, writing, arithmetic, and religion but also to the arts in the form of music, poetry, and drawing. It was important, then, that a teacher's talents in these areas be made evident. The schoolmaster's well-practiced penmanship became one tool of gaining acknowledgment.

Christopher Dock, a mid-18th-century schoolmaster, explained his uses for presentation frakturs in a manual that advocated recruiting older children as monitors and helpers in the one-room schools of the day. He advised using frakturs not only as rewards of merit but as aids to learning.

Schoolmaster Dock suggested that when a child learned his ABC's, his parents reward him with a fried egg or two as positive reinforcement. When the youngster learned to read, the schoolmaster would present him with a drawing of a bird or flower. Older boys and girls would be given *Vorschriften* embellished with poems or Bible verses as tokens of appreciation for their having helped younger children in class.

These little works on paper, which generally measured about three by five inches or so, helped to endear the schoolmaster to his students and may have served to ingratiate him with their parents, who also served as members of the school's governing board, the body responsible for deciding whether that teacher would be rehired or fired at term's end.

Because these gifts were often tucked into Bibles or books for safekeeping, collectors have often mistaken the tokens of affection for bookplates, bookmarks, or awards of merit, explains Pastor Weiser. In an effort to clear up the confusion that surrounds presentation frakturs, he has assembled 100 such examples for the Museum of American Folk Art's exhibition "The Gift Is Small, the Love Is Great" and has documented them in a book of the same name that is being published in conjunction with the show.

—Marjorie E. Gage

COUNTRY PROPERTY

Continued from page 84

a "taking," an action forbidden by the Fifth Amendment to the Constitution.

Eventually, Mr. Lucas received his $900,000, plus interest and legal fees. Then, mother of all ironies, to recoup their loss, the Coastal Council sold the two lots to another developer who plans to erect two houses!

A more recent decision by the U.S. Supreme Court strengthened citizens' rights. On June 15, 1994, the Court ruled in favor of the Dolan family and against the city of Tigard, Ore.

Briefly, the town had demanded that the Dolans cede 10 percent of their land to the town in exchange for a permit to expand the building that housed their plumbing firm. The Court, in effect, said no, that constitutes a taking and is unlawful.

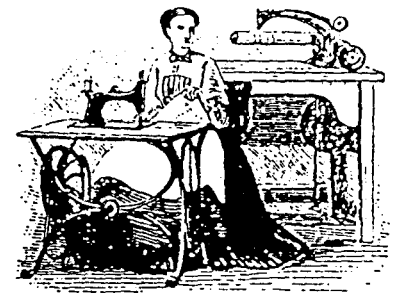
As awareness about the need to conserve our countryside grows and issues become increasingly complex, one issue remains undebatable: The scales of justice ought to be level as government agencies and the pubic at large strive to work out their mutual problems to save the environment for tomorrow's generations.

SHOPPING GUIDE

Continued from page 173

VISIT A COUNTRY INN

Page 110: *(Top)* Yellow 1930s Grandmother's Flower Garden quilt: Jabberwocky. *(Bottom left, on bunk beds)* Flag quilts and Log Cabin quilt, both by Judi Boisson American Country; available through Jabberwocky. *(Bottom, right)* Vintage Pendleton, Beakin, and serape collectible blankets: Jabberwocky.



SLEEPING BEAUTIES

The sewing patterns on these four pages are "Country Living Designs for Butterick." Ask for them at your local fabric store.

Pages 120-121: Butterick Pattern #3924, "Bed Cover & Accessories." Furniture from The Lane Co.: queen Poster Bed, charcoal finish #850-48; cherry Ladderback Side Chair #846-70; Cedar chest #2763-55; round Pedestal Table #11102-57, in plantation finish; Sisal and Iron Table (set of 3 stacking tables) #9460-61. All fabrics from Covington Fabric Corp.: "Mezzo" large-scale Check; "Maja" smaller check; "Malibu" stripe; lyrical "Adrian" print; "Harrington" Ticking Stripe; "Goodtex" bone solid. All trimmings, buttons, and beads: M&J Trimming. Custom-made bolster, pillow forms: The Company Store. Supercale Easy-Care 100-percent cotton Amethyst fitted sheet, Flax Elite Pinpoint pima cotton hemstitch flat sheet, pillow sham; Wamsutta. Paint #286: Benjamin Moore.

Pages 122-123: Butterick Pattern #3923, "Duvet Cover and Accessories." Iron bed in verdigris finish; Charles P. Rogers Brass & Iron Bed Co. Pine Writing Table #6812-20; Lane. All fabrics from Waverly: "Country Life" toile; "Simsbury Stripe"; "Clapboard Check"; solid-white "Old World Linen"; white "Bradbury Border" eyelet; "Esprit" sheer. Twill Tape, red/creme ribbon; M&J Trimming. Body Pillow, Featherbed, Comforter: The Company Store. Supercale Plus "Gingham" in Indigo fitted sheet, Elite Pinpoint ivory pillow sham; Wamsutta. Crackle Finish Wallpaper, "The Good Natured Collection" by Carey Lind Designs; York. Whispering Pines is a shop (and also a catalogue) featuring cabin life, the Adirondacks, and handmade twig furniture.

HOPS AND BEER

Pages 136-137: Beer-Making Kit #10-285 ($39.95) and Continental Light Beer #10-286 ($24.95) were used to make 5 gallons or about fifty 12-ounce bottles (bottles not included) of home-brewed beer: Gardener's Supply Co.

Country Living (ISSN 0732-2569) is published monthly by The Hearst Corporation, 959 Eighth Ave., New York, N.Y. 10019. Frank A. Bennack, Jr., President; Randolph A. Hearst, Chairman; Gilbert C. Maurer, Executive Vice President; Victor F. Ganzi, Senior Vice President, Chief Financial and Legal Officer; Jodie W. King, Secretary; Edwin A. Lewis, Vice President and Treasurer. Hearst Magazines Division: D. Claeys Bahrenburg, President; K. Robert Brink, Executive Vice President; George J. Green, Executive Vice President; Mark F. Miller, Executive Vice President, General Manager; Raymond J. Petersen, Executive Vice President; John A. Rohan, Jr., Vice President and Resident Controller. Copyright © 1995 by The Hearst Corporation, all rights reserved. Editorial offices: 224 W. 57th St., New York, N.Y. 10019. The magazine assumes no responsibility whatsoever for any unsolicited material, including transparencies. The magazine assumes no liability to return any unsolicited material. Current and previous issues are available for $4.75 postpaid from Single Copy Sales, Dept. HSC, P.O. Box 10557, Des Moines, IA 50340. Second-class postage paid at N.Y., N.Y., and at additional mailing offices. Printed in U.S.A. SUBSCRIPTION SERVICE: Country Living Magazine will, upon receipt from its reader of a complete new or renewal subscription order, undertake fulfillment of that order so as to provide the first-copy delivery by the Postal Service or alternate carriers within 6 to 14 weeks. If for some reason this cannot be done, you will be promptly notified of the issue date that will begin your subscription, with a request for any further instructions you may have concerning your order. Please address all such orders to us at Country Living, P.O. Box 7138, Red Oak, Iowa 51591-0138. Should you have any problem with your subscription, please write to Joan Harris, Customer Service Department, Country Living, P.O. Box 7138, Red Oak, Iowa 51591-0138, or call toll-free 1-800-888-0128. To assure quickest service, enclose your mailing label when writing to us or renewing your subscription. Renewal must be received at least 8 weeks prior to expiration to assure continued service.
Subscription prices: United States and possessions, $17.97 for 12 issues; $33.97 for 24 issues. Canada and all other countries, $33.97 for 12 issues; $65.97 for 24 issues (CANADA GST NBR. R105218291). POSTMASTER: Please send address changes to: Country Living, P.O. Box 7138, Red Oak, Iowa 51591-0138.
From time to time, we make our subscriber list available to companies who sell goods and services by mail that we believe would interest our readers. If you would rather not receive such mailings, please send your current mailing label or exact copy to Mail Preference Service, P.O. Box 7024, Red Oak, Iowa 51591-0024.

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

JUDICIARY COMMITTEE DATE 1/31/95

BILL NO. HB 296 SPONSOR(S) Rep. Wells

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
John Connor	Attorney General MT Crt Atty Assn		X
Jacqueline Lenmark	Am Trial. Assoc.		X
Don Doig	Fully INFORMed Jury Assoc.	X	
Steve Kikes	Fully Informed Jury Assoc	X	
STEVE SCHWALTZMAN	Fully Ins Jury Assoc	X	
Bob Davies	Self	X	
Arlette Randash	EAGLE Forum	X	
Laurie Knutsen	Christian Coalition	X	
R. Ask Brauer	State Farm Ins.		X
John Alke	Mt. [redacted] Defense Trial Lawyers		X
Bob Campbell	Self		X
Neal Carlser	SELF	X	
Russell B Hill	Mt Trial Lawyers		X

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

HR:1993
wp:vissbcom.man
CS-14

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

JUDICIARY COMMITTEE DATE 1-31-95

BILL NO. HB 296 SPONSOR(S) Rep. Wells

PLEASE PRINT ! PLEASE PRINT ! PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
Jim Jensen	METC		X
Don Judge	MT STATE AFL-CIO		X
GARY MARBUT	MSSA GOA CCRKBA WMFGA BSASC	✓	
Roger Koopman	Self	✓	
Stan Bradshaw	Self		✓
~~Janet Ellis~~			
Christine Kaufmann	Human Rights Network		✓
H.M. (Bud) Elwell	WCSM/NWTC	✓	
Michael Fellows	MT Libertarian Party	✓	

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

HR:1993
wp:vissbcom.man
CS-14

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

JUDICIARY COMMITTEE DATE 1/31/95

BILL NO. SB 36 SPONSOR(S) Sen. Bishop

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
M.A. Wellbank	SRS-CSED	✓	
Kate Cholewa	MT Women's Lobby	✓	

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

HR:1993
wp:vissbcom.man
CS-14

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

JUDICIARY COMMITTEE DATE 1/31/95

BILL NO. HB 311 SPONSOR(S) Rep. Grinde

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
J.V. Bennett	MontPIRG	[redacted]	✓
Anne Hedges	MEIC		✓
Melissa Case	MHF / MATB		✓
Tom Salansky	MPPR	✓	
Deborah Smith	Sierra Club		✓
Stan Bradshaw	T.U.		✓
Don Judge	MT STATE AFL-CIO		✓
Cliff Cox	Bdge Co FB	✓	
Joyce Baker	J.B. Co. FB	✓	
Robert Hanson	MT FB	✓	
Pete McHugh	Lt Co Farm Bureau	✓	
[redacted]	[redacted]	[redacted]	
Lorna Frank	MT. Farm Bureau	✓	

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

HR:1993
wp:vissbcom.man
CS-14

Ed Caplis MSCA Oppose
John Fitzpatrick Regulus Coal Support
David L. McClure Mont Farm Bureau support
Riley Johnson MFIB support

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

JUDICIARY COMMITTEE DATE 1-31-95

BILL NO. HB 311 SPONSOR(S) Rep. Grinde

PLEASE PRINT! PLEASE PRINT! PLEASE PRINT!

NAME AND ADDRESS	REPRESENTING	Support	Oppose
Janet Ellis	MT Audubon		✓
Peggy Trenk	WETA	✓	
Tammy Johnson	CURE	—	
Glenn Marx	Governor's office	X	
Cary Hegreberg	MT Wood Prod. Assoc.	X	
Connie Cole	Pegasus Gold Corp	X	
Jake Cummings	MT FARM BUREAU	X	
MIKE MURPHY	MT. WATER RES. ASSN	X	
Jim Rocky	MWF		✓
BOB ROBINSON	MDHES	✓	
R. Kenyon	S.I.F.	✓	
John Bloomquist	Mt. Stockgrowers Mt. Woolgrowers Assn.	✓	
David Owen	MT Chamber	X	

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

HR:1993
wp:vissbcom.man
CS-14

Pam Langley — Montana Agricultural Business Assn. ✓

Gary Langley — mt. Mining Assoc. ✓

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

JUDICIARY COMMITTEE DATE 1/31/95

BILL NO. HB311 SPONSOR(S) Grande

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
Larry Brown	Ag. Pres. Assoc	X	
John Youngberg	MT Farm Bureau	X	

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

HR:1993
wp:vissbcom.man
CS-14