

## **MINUTES**

### **MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON JUDICIARY**

**Call to Order:** By **VICE CHAIRMAN LORENTS GROSFIELD**, on March 10, 1997, at 9:00 a.m., in the Senate Judiciary Chambers (Room 325) of the State Capitol, Helena, Montana.

#### **ROLL CALL**

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

Sen. Bruce D. Crippen, Chairman (R)  
Sen. Lorents Grosfield, Vice Chairman (R)  
Sen. Al Bishop (R)  
Sen. Sue Bartlett (D)  
Sen. Steve Doherty (D)  
Sen. Sharon Estrada (R)  
Sen. Mike Halligan (D)  
Sen. Ric Holden (R)  
Sen. Reiny Jabs (R)  
Sen. Walter L. McNutt (R)

**Members Excused:** None

**Members Absent:** None

**Staff Present:** Valencia Lane, Legislative Services Division  
Jody Bird, Committee Secretary

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

##### **Committee Business Summary:**

Hearing(s) & Date(s) Posted: HB 325, HB 343, HB 352, posted  
March 4, 1997  
Executive Action: None

#### **HEARING ON HB 352**

**Sponsor:** REP. PAUL SLITER, HD 76, Somers

**Proponents:** Chip Erdmann, as a Montana citizen  
Rod Carey, Helena attorney  
Alfred Bidwell, Weapons Collectors Society and  
Northwest Arms Collectors  
REP. MATT BRAINARD, HD 62, Missoula

**Opponents:** Tim Kuntz, Legislative Intern, Montana Trial  
Lawyers Association (MTLA)

**Opening Statement by Sponsor:** REP. PAUL SLITER, HD 76, Somers.

In a case in Yellowstone County, youth broke into a pickup and stole a gun. Ultimately, one youth was killed, and the District Court ruled that the pickup owner was liable for not locking his pickup. The Supreme Court ruled the owner could have known about the possibility of theft, but not the death. He referred to the last paragraph in the right hand column, on p. 582 and the top of p. 583 of the Supreme Court opinion (EXHIBIT #1).

In another example, a child visiting an apartment complex wandered off, fell into a ditch on the property and drowned. I see a problem in relying on case law in civil versus criminal acts, for example in Limberhand. In Montana we believe in holding people responsible for their own actions. He read Chief Justice Jean Turnage's remarks on mid-page in the right hand column of p. 585.

**Proponents' Testimony:** Chip Erdmann, as a Montana citizen. I was on the Supreme Court at the time this decision was written, and I joined the Chief Justice in dissenting. On the books at the time were three cases, which were discussed in this opinion. One goes back to 1961.

There is a rule of construction where the Courts presume interpreting law, and the Legislature is aware of the purpose of law. I don't believe we will hear arguments that this is not the right place for this discussion.

*{Tape: 1; Side: A; Approx. Time Count: #10.0; Comments: 9:15 a.m.}*

The House amendment changed the language from "taking a weapon" to "property taken". This could be too broad, but the Committee can determine this. I believe this bill is the solution Montanans want.

**Rod Carey, Helena attorney.** The recent Supreme Court decision puts hunters, and competitive shooters at risk in one form or another. Chief Justice Turnage summed it up well in the opinion in the fifth paragraph of the left hand column on p. 585.

**Alfred Bidwell, Weapons Collectors Society and Northwest Arms Collectors.** People approach me often regarding the potential problems of this recent Supreme Court decision.

**REP. MATT BRAINARD, HD 62, Missoula.** I am co-sponsor of this bill. The people need and want this bill.

**Opponents' Testimony:** Tim Kuntz, Legislative Intern, Montana Trial Lawyers Association (MTLA). We oppose this legislation (EXHIBIT 1a).

**Questions From Committee Members and Responses:** SEN. SUE

**BARTLETT.** What were the consequences of the Supreme Court decision to Mr. Susanj? **REP. SLITER.** That he wasn't negligent in not assuming someone could be killed by theft of his firearm, but that he did have a "duty of care". This bill attempts to address that a criminal can't bring an action for an "after the fact situation".

**SEN. BARTLETT.** Were there consequences to Mr. Susanj? **REP. SLITER.** No.

**SEN. BARTLETT.** Do you mean that ordinary citizens owe a duty of care to other citizens? **REP. SLITER.** No.

**SEN. STEVE DOHERTY.** I hunt and have a number of guns. If my phone rings and I lean my gun against my truck to go answer the phone, and the neighbors kids pick it up and it discharges and harms my neighbor, what's my responsibility in this scenario?

**REP. SLITER.** I believe a case could be brought in court as to whether or not this was a theft. Was the vehicle parked in the street or in the driveway? Was the gun determined to be abandoned?

**SEN. DOHERTY.** I want to establish a very clear record. This truck is in my driveway, and the kid has wanted a gun for a long time, and wants to take it and keep it. What's my responsibility for leaving my gun out in view of everyone? **REP. SLITER.** I believe it's correct that you will have no responsibility.

**SEN. DOHERTY.** In a second example, what if I park my car with the keys in it, knowing these kids like to take cars for rides, and they run a stop sign and hurt someone? Am I off the hook?

**REP. SLITER.** We live in Montana, and I believe I can leave my vehicle with the keys in it, unlocked, and that I should not be held responsible for the act of another person. The parents of the kids should be responsible.

**SEN. DOHERTY.** Aren't you confusing the duty that's owed? If I'm entirely irresponsible for my property, don't I owe my neighbors a responsibility? **REP. SLITER.** Yes. For example, if I left a loaded pistol in my home, and invited people over and their child picked it up off the coffee table, then I'm liable. But, I'm not liable if the child was not invited and I would not be responsible for the outcome.

**SEN. DOHERTY.** In the facts of the case in this decision, if I left my gun leaning against a vehicle on a busy street in Great Falls, would this responsibility not fall on me, and would I not be stupid not to remove it when I went to answer the phone? **REP. SLITER.** To what extent should I expect a crime against me? For example, do I need a body guard to walk from home to the Capitol? The bottom line is, did a theft occur? I believe a judge will take all this into account.

{Tape: 1; Side: A; Approx. Time Count: #32.4; Comments: 9:37 a.m.}

SEN. RIC HOLDEN. What was the third reading vote in the House?  
REP. SLITER. It was 71-29 in favor of the bill.

SEN. HOLDEN. Was there some money paid out in the Susanj case?  
Chip Erdmann. One youngster in the case reached a settlement prior to the trial.

SEN. HOLDEN. How did the liability insurance work in this instance? Chip Erdmann. The insurance company probably wrote coverage based on prior Montana case law. With this determination, they'll have to look at a broader scope of coverages, and costs could increase. The question is, should they be liable?

{Tape: 1; Side: A; Approx. Time Count: #35.9; Comments: None.}

The policy decision for the committee is, should criminal acts be foreseeable?

SEN. HOLDEN. Don't the Courts deal with children more leniently?  
Chip Erdmann. The standard that would be applied is "a reasonable child".

SEN. SHARON ESTRADA. We're talking about the unlawful taking of property. If a youth goes to SEN. DOHERTY's vehicle and unlawfully removes a weapon or steals his vehicle, we can't give a youth or anyone else the right to steal, even though he was doing something most adults in Montana don't approve of. How would the Courts deal with this? Would they consider that he's done a foolish thing, especially if a juvenile is involved? Chip Erdmann. You can always push a scenario to make a theft attractive. The question is once the theft occurs, will we make the owner liable? Under this bill, the act of the theft says that if a criminal act occurs, the owner won't be liable.

SEN. ESTRADA. Is it correct that you are not to touch anyone else's property, and if you do, you will be held responsible?  
Chip Erdmann. Yes, that is correct.

{Tape: 1; Side: A; Approx. Time Count: #42.4; Comments: 9:47 a.m.}

Closing by Sponsor: REP. SLITER. We have moved away from personal responsibility over the years. Last week we heard the State of the Judiciary address. He read from part of Chief Justice Turnage's address concerning individual responsibility.

This bill speaks to personal responsibility. The person that took the property should be held responsible. SEN. TAYLOR will carry the bill if it is passed out of committee.

{Tape: 1; Side: B; Approx. Time Count: #00; Comments: 9:50 a.m.}

HEARING ON HB 343

Sponsor: REP. DUANE GRIMES, HD 39, Clancy

Proponents: Judy Wang, Assistant City Attorney, Missoula, and  
for Warren Little, Diane Trip, Karen Oraick,  
and Matthew Robinson  
John Conner, Department of Justice  
Michelle Doyle, Montana Law Enforcement Academy  
(MLEA)  
Robert Heinle, Missoula Police Department  
Betty Waddell, Montana Association of Churches  
Kathy Sewell, Public Outreach Coordinator, Montana  
Coalition Against Domestic Violence  
Kelly Slattery-Robinson, Missoula YWCA  
Gene Kiser, Montana Board of Crime Control  
Kate Cholewa, Montana Women's Lobby  
Sharon Hoff, Montana Catholic Conference  
Mike McGrath, Lewis and Clark County Attorney;  
President, Montana County Attorneys; and Vice  
President, Board of Friendship Center of  
Helena  
Laurie Koutnik, Montana Christian Coalition

Opponents: None

Opening Statement by Sponsor: REP. DUANE GRIMES, HD 39, Clancy.

This is an extremely important bill concerning an extremely critical problem - domestic abuse. The danger is real, but some statutes are ambivalent and hostile to those in the midst of assault in family homes. We are now trying to clarify additional problems and improve the situation.

Section 1, 25-1-201, MCA, deals with fees. Section 4, 40-15-202, MCA, addresses what can be admitted in issuing orders of protection - especially that the judge doesn't have to allow the abuser to disparage the victim in court.

Section 8, 46-6-311, MCA, is the primary aggressor statute. Currently it can happen that we can't determine who the primary aggressor is, and both have been arrested. So, the bill gives some direction/guidance in arresting the primary aggressor. This was thoroughly addressed in the House and gives room for officer discretion.

Section 10 pertains to advocate privilege, and allows confidentiality so the victim feels freer to call for help. The last section allows for a treatment and family fund account for shelters. These shelters are a breath of fresh air, and do good for these victims who have nowhere else to go. So, these shelters are in dire need of funding.

**Proponents' Testimony:** Judy Wang, Assistant City Attorney, Missoula, and for Fred Unmark, Warren Little, Diane Trip, Karen Oraick, and Matthew Robinson (EXHIBIT 2). I have also been a prosecutor in Missoula the past ten years and have done many domestic violence cases. The primary aggressor section gives discretionary guidelines when both parties allege aggression, as the law is now unclear.

The victim has the privilege of confidentiality concerning information shared with a shelter worker, but can waive this privilege. If the victim dies, confidentiality is waived. This is similar to the rape shield law, and we are asking that the same language be applicable to civil hearings.

Shelter funding would come from a divorce surcharge, and would be disbursed by the Department of Public Health and Human Services (DPHHS). There was a housekeeping amendment to the "no bail" statute that aggravated and felony assault also be a no bail offense, and that old abuse convictions would remain even though this act has been renamed.

I have letters from Fred Unmark, Dawson County Attorney, Warren Little, a retired attorney in Missoula, Diane Trip, Karen Oriack, and Matthew Robinson.

*{Tape: 1; Side: B; Approx. Time Count: #20.0; Comments: 10:10 a.m.}*

**John Conner, Department of Justice (EXHIBIT #2a).** This seems to be the "crime de jour". In homicide we don't have to prove motive, and often it seems there is no motive in domestic violence cases. I could see violence in a man as he talked about his wife being a wonderful person, yet he was the primary aggressor.

**Michelle Doyle, Montana Law Enforcement Academy (MLEA)** read from prepared testimony (EXHIBIT #3). I teach the domestic violence training program at MLEA.

**Robert Heinle, Missoula Police Department** read from prepared testimony (EXHIBIT #4). I have been on street patrol for six years. We had a case where a man took all but \$10 following a verbal confrontation with a woman. He left and the woman found him in a casino and told him to move out. She went and packed his things, then took it to where he was passed out in his vehicle. He awoke and threatened her, and she slapped him. Then he hit her in the back of the head with force sufficient to knock her down on her pregnant stomach, causing false labor. The police officer arrested the man as the primary aggressor, although he didn't think it was right, nor did the city attorney and the arrested man. We ask your support to make this legislation more fair.

**Betty Waddell, Montana Association of Churches.** She rose in support of HB 343 and urged passage of the bill.

**Kathy Sewell, Public Outreach Coordinator, Montana Coalition Against Domestic Violence (EXHIBIT #4a).** We have a program in 53 of 56 counties and on all Indian reservations, 20 safe homes, 11 shelters and 2 trainers in Montana. We also have served more than 170 battered men in the past year. The proposed changes will help. Choking gets used a lot as it gives complete control of the victim, and the victim always fights back against choking.

**Kelly Slattery-Robinson, Missoula YWCA (EXHIBIT #5).** Victim privilege of confidential information is very essential to keep, even though many working in this field don't have counseling degrees, and are volunteers. Although the target is usually just the victim, we would also like to keep shelter locations and worker names confidential. Many crisis-line shelters are understaffed, and Missoula is the only one with a specially trained and paid children's advocate.

**Gene Kiser, Montana Board of Crime Control.** We support this legislation.

**Kate Cholewa, Montana Women's Lobby.** We support this legislation.

**Sharon Hoff, Montana Catholic Conference.** We support this legislation.

**Mike McGrath, Lewis and Clark County Attorney, President, Montana County Attorneys, and Vice President, Board of Friendship Center, Helena.** We support this bill.

**Laurie Koutnik, Montana Christian Coalition.** We support this legislation.

Opponents' Testimony: None

Questions From Committee Members and Responses: SEN. BRUCE CRIPPEN. I have a letter from a Missoula Deputy City Attorney in opposition to this bill. **Judy Wang.** I haven't seen the letter, and he hasn't shared his thoughts with me.

SEN. CRIPPEN. It's about the possibility of arrest of the larger of the two aggressors where both have been hurt. **Judy Wang.** Officers look at this, but it isn't the determining factor or the only one. We're not asking for gender factor, but for officers to use the same judgement as in other assault situations.

*{Tape: 2; Side: A; Approx. Time Count: #00.; Comments: None.}*

**SEN. ESTRADA.** Are there any other situations requiring defendants to go to jail without bail? I'm looking at the title and page 9. **John Conner.** I believe it's in 46-9-302, MCA.

**SEN. ESTRADA.** Are people posting bail with the arresting officer now? **John Conner.** If you look at Section 7 of the third reading copy, it says "must first appear before the judge before being released for any assault". So, it is a clarification rather than a change.

**SEN. HOLDEN.** Concerning the \$30 fee on page 2, the state would essentially collect this for a treatment fund. Do we have a statewide assault treatment program now? **REP. GRIMES.** This would be the creation of a new trust fund.

**SEN. HOLDEN.** How do you envision helping all of Montana, including rural areas? **REP. GRIMES.** A lot of cases do occur in rural areas, and these would probably be referred to friendship centers in urban areas. **Kathy Sewell.** The handout explains the DPHHS program of about \$346,000, of which \$200,000 is federal money, \$111,000 is general fund money, and \$35,000 is state special revenue from fines and court fees. Right now, it funds about 20 programs across the state, but we have 35 programs. The newest is in Glasgow, and is all volunteer right now, so these dollars would help in these situations.

**SEN. HOLDEN.** How will you cover these temporary orders of protection on page 4? I am asking that you contact the Dawson County Attorney as to why he thinks this bill is good. **Kathy Sewell.** SB 54, by the Montana Board of Crime Control, works on that issue, and so we left it with them.

**SEN. ESTRADA.** How will this bill affect the Gateway House in Billings? **Kathy Sewell.** The DPHHS already has the requests for proposal (RFPs) going out now to handle the extra funding through the current domestic violence area of the Department. The average cost per program is about \$16,000 per year.

**SEN. ESTRADA.** In Billings we have domestic violence crisis lines and shelters. **Kathy Sewell.** They access the money as well as anyone else does.

**VICE CHAIRMAN LORENTS GROSFIELD.** I question the language concerning the officer determining the primary aggressor when they receive a complaint from more than one person. What does that mean? Do both husband and wife have to call in separately? **Robert Heinle.** For example, if both are fighting and both are injured, we separate them, and take separate statements to try to ascertain the truth. No arrest were made in one case, but the female should have been arrested as primary aggressor. This was called in by a neighbor.

**VICE CHAIRMAN GROSFIELD.** The language says the complaint must come from a family members. Is that what you want it to say?



**Robert Heinle.** If you read further down it says, "based on evidence available", so I don't see where it eliminates me from including the primary aggressor.

**VICE CHAIRMAN GROSFIELD.** Does Section 8 only apply to employees and volunteers of shelters and crisis lines, and not the first call to the police station? **Kathy Sewell.** Yes.

**VICE CHAIRMAN GROSFIELD.** Will **SEN. NELSON** carry this bill? **REP. GRIMES.** Yes.

**VICE CHAIRMAN GROSFIELD.** We had an earlier bill pointing at how much a disaster this section of law is. How was this received in the House? **REP. GRIMES.** We did discuss this. The issue of why we're assessing a fee came up, and it was generally concluded that "where else would we apply the fee, if not here?" I believe the House thought the \$30 fee to be legitimate. I do understand your concerns.

**VICE CHAIRMAN GROSFIELD.** The policy issue is, do these fees directly relate to the program being funded? I believe it is a bit of a stretch.

Closing by Sponsor: **REP. GRIMES.** I want to thank the Committee for a good hearing. Many families with kids have been assisted by this program. This is a victim's rights bill.

{Tape: 2; Side: A; Approx. Time Count: #24.4; Comments: 10:52 a.m.}

In the House we addressed the primary aggressor. A representative said his brother was chased by his wife with a kitchen knife, so the brother grabbed her wrists which resulted in bruises to her, and he was arrested, too. We can also include statements by witnesses.

I have the same opinion of earmarking you have, so we have looked at other alternatives, but couldn't seem to find one. The shelters need funds, and there were 700-plus actual convictions occurring in Montana last year. It is essential and cost-effective to have a minimum level of support in these shelters, so I asked you to discuss that issue as severable from the rest of the bill.

**SEN. CRIPPEN RESUMED THE CHAIR AT THIS POINT IN THE HEARINGS.**

{Tape: 2; Side: A; Approx. Time Count: #29.5; Comments: 10:57 a.m.}

#### HEARING ON HB 325

Sponsor: **REP. MATT BRAINARD, HD 62, Missoula**

Proponents: **REP. DEB KOTTEL, as a citizen**

Mike Collins, Helena  
Kamala Webb, Helena, Northwest Regional Director,  
Fully Informed Grand Jury Association

Opponents: Russell Hill, Montana Trial Lawyers Association,  
(MTLA)

Informational Testimony: John Conner, Department of Justice  
Mike McGrath, President, Montana County  
Attorneys

Opening Statement by Sponsor: REP. MATT BRAINARD, HD 62,  
Missoula. This is a constitutional amendment to provide for a  
grand jury upon petition by the people. Article II, Section 1  
dealing with popular sovereignty; Section 2 dealing with self-  
governing; and Section 3 are implicitly involved in this  
legislation. Other states have provisions for grand juries.  
Montana hasn't provided for citizens to petition a judge to do  
so. I want to draw your attention to Nevada, Nebraska, Oklahoma,  
North Dakota, and New Mexico information (EXHIBITS #6, #7, #8,  
#9, #10, #11, #12, and #13).

Proponents' Testimony: REP. DEB KOTTEL, as a citizen. I am here  
as a professor at the University in Great Falls in political  
science, concerning the philosophy of law and the creation of  
positive civic space. The point is, what is wrong with a  
citizen's right to call a grand jury in certain situations.  
There are times in any society when one branch of government acts  
to excess. So, how are people to create this civic space? It is  
not often used in other states, but is a necessary release, a  
safety valve.

{Tape: 2; Side: A; Approx. Time Count: #37.4; Comments: 11:05  
a.m.}

I don't believe we will be manipulated by the right or the left,  
and ask the Committee to consider this legislation.

Mike Collins, Helena. I believe this bill would have been  
useful, if it had been available in prior situations.

Kamala Webb, Helena, Northwest Regional Director, Fully Informed  
Grand Jury Association. This bill coincides with Article V of  
the Montana Constitution, and we believe it will be helpful.

{Tape: 2; Side: A; Approx. Time Count: #40.4; Comments: None.}

Opponents' Testimony: Russell Hill, Montana Trial Lawyers  
Association (MTLA). We have incredibly weak opposition to this  
bill. Our only objection is that it doesn't specify the  
threshold levels for those situations. I was asked to consider a  
legal analysis of this bill by Native Americans, as they're very  
interested in it.

**Informational Testimony: John Conner, Department of Justice.** I believe this bill is trying to address a problem that doesn't exist. Or if it does, it could be handled by current law. We found it very difficult to work with grand juries because of the secrecy of the process. Our process is very open and responsive to the electorate, and is subject to rules. I'm not clear as to why the proponents think there are so many problems to address. In the mid to late 1970s, there were unsolved homicides in Missoula, and there were the workers' compensation cases a number of years ago.

{Tape: 2; Side: B; Approx. Time Count: #00.; Comments: 11:15 a.m.}

**Mike McGrath, President, Montana County Attorneys.** I'd call this the Montana Freeman Relief Act. Many evidentiary questions would be reviewed and decided by elected officials in this bill, and it would be secretive. The county attorney presents the secret information to the grand jury. What if the problem involves him or her?

Last week in Helena we had a man accused of extortion. We dismissed the state's case after we found out about the secret grand jury indictment. We don't need this legislation.

**Questions From Committee Members and Responses: SEN. MIKE HALLIGAN.** Did you discuss the percentage for the petition in the House? And are you focusing the grand jury on specific areas such as organized crime? **REP. BRAINARD.** The concept problem is what this amendment doesn't specify detail, but I suspect if the bill were to pass we would have an extensive discussion of the role and percentages. This is a very complex subject. Most states have standing grand juries and impanel them once per year. Investigatory grand juries have served a vital part around the U.S.

**SEN. HALLIGAN.** To the issue of "if it ain't broke, don't fix it", what do you see as needing fixing? **REP. BRAINARD.** Sometimes things limp along, but are not quite "broken". In **SEN. MCCARTHY's** district the County Attorney didn't prosecute an election violation, and I think action could have been taken. The system is not working as it should be. Other states don't seem to have a problem with witch hunts.

{Tape: 2; Side: B; Approx. Time Count: #11.9; Comments: None.}

**SEN. DOHERTY.** Since we adopted the new Constitution in 1972 we would have had a grand jury at the option of a district judge or by petition in this bill. How many times since then have judges failed to call for a grand jury in your estimation? **REP.**

**BRAINARD.** We need to go back further in history. This was used 900 years ago in England, and during the American Revolution. Grand juries serve two functions: 1) indictment process; and 2)

investigation. For example, the Tweed ring in New York City, and the scandals in Chicago.

There was a movement in the 1850s and on into the 1900s to get rid of grand juries as they were too costly and it was hard to do in rural states, so they moved to the information system which is used for more than 99 percent of crimes in Montana.

{Tape: 2; Side: B; Approx. Time Count: #15.9; Comments: 11:27 p.m..}

In Montana, since 1889, we have had a number of situations where grand jury investigations would have been beneficial. In the 1970s in the workers' compensation case, the Attorney General was denied by a district judge, but was later approved by the Supreme Court, for instance. I believe we're not familiar enough with operating procedure to make it effective.

**SEN. DOHERTY.** What difference would there be under this bill with the so-called "sordid affairs down in Butte?" **John Conner.** That is a good question. I was the one working on the situation in Butte. One aspect is still under investigation. These were assumed to be criminal violations, and I concluded there was no basis upon which to charge anyone. There is nothing in the law to preclude white-out on ballots. So, there was no probable cause in the law. I am assuming that a grand jury would come to a more secretive, and more costly, but similar conclusion.

**SEN. DOHERTY.** Why is better to have secret proceedings than the open proceedings we have now? **REP. BRAINARD.** We have various levels of secrecy at the county level in investigations right now, especially relating to not defaming character by false accusations, etc.. A great deal of reform is going on in grand jury proceedings. People are allowed to bring in counsellors. In grand jury proceedings the witness, etc, are protected until actual indictment.

**SEN. REINY JABS.** What is the procedure for grand jury? **Mike McGrath.** I have not had the opportunity to request a grand jury.

**SEN. JABS.** How is a grand jury handled? **Mike McGrath.** I'm not sure, but I believe people are summoned to serve, and that defendants and judges are not allowed to be present - only prosecutors and grand jurors. This is done via a U.S. District Court Judge. In the federal system, they meet every third week.

{Tape: 2; Side: B; Approx. Time Count: #27.4; Comments: 11:38 a.m.}

**SEN. ESTRADA.** What was the House vote? **REP. BRAINARD.** There were 69 votes in favor of the bill.

**SEN. ESTRADA.** Why do you object to a vote of the people? **John Conner.** I object to initiation of a concept which will require

creation of a parallel process which I don't believe is necessary. I'm a constitutional conservative, and I don't want to see it change. I have no problem with giving people a chance to be heard, and I believe they're being heard now.

**CHAIRMAN CRIPPEN.** What is the definition of an unusual situation? **REP. KOTTEL.** For example, a woman living off the Blackfeet Reservation has contacted me concerning a problem with a non-Indian person not being charged in the death of her Native American son. In another example, when I worked in Chicago, we won a case at trial, but it was appealed, so we were approached to give the judge \$30,000 to win, but we didn't do it. Later on a major investigation of Cook County resulted in dismissal of some judges.

**CHAIRMAN CRIPPEN.** You see this bill as a Freeman Relief Act?

**REP. KOTTEL.** No. They wanted to call for their own grand jury and run it, and the bill requires a pivotal number of signatures. Usually extremists don't amount to 25 percent of the population.

**CHAIRMAN CRIPPEN.** Could a grand jury be impaneled in Libby where there might be sympathy for the Freeman, for instance? **REP. KOTTEL.** That would be a question of venue. I believe local citizens would have to sign the petition. Multiple sites of venue would result from multiple similar situations.

*{Tape: 2; Side: B; Approx. Time Count: #38.3; Comments: None.}*

**CHAIRMAN CRIPPEN.** What if the county attorney then plays a major role? Would it be the same as if it were called by the people? How would you handle it if the county attorney were involved?

**REP. KOTTEL.** Nebraska allows for appointment of a special prosecutor. If the bill passes, we would look at these special provisions.

*{Tape: 3; Side: A; Approx. Time Count: #00.; Comments: 11:52 a.m.}*

**CHAIRMAN CRIPPEN.** If we had a situation and a grand jury met and indicted someone, could the attorneys dismiss it? **John Conner.** That is correct. According to 46-11-332, MCA, it would be my understanding that the case would proceed as we prosecute on a case now.

**CHAIRMAN CRIPPEN.** Can you give me the scenario of the tenure of a grand jury? **John Conner.** That is a good question. I'm not sure it has an estimable tenure.

**SEN. CRIPPEN.** If a county pays the cost, how will it be limited?

Closing by Sponsor: **REP. BRAINARD.** Originally, I brought a statute to John MacMaster in Legislative Services to draft. He suggested it should be a constitutional amendment, instead. Do we want to be able to petition a district court judge to impanel

a grand jury? If so, we will work out the details by looking to other states. Funding would also have to be addressed in statute.

This petition process is not necessarily going to be easy, but each state with a grand jury has more people than we do to petition for an initiative. We have a copper-king legacy in Montana, so I don't believe a grand jury process was left out be accident.

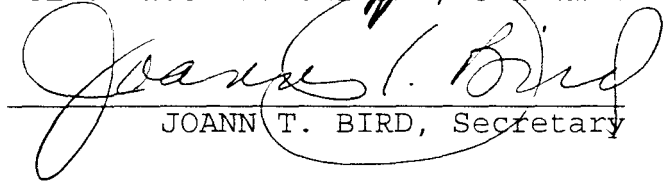
We have good government in Montana, but we can't count on this in the future. In the 1920s in Butte, an organizer named Frank Little was dragged behind a vehicle and then hung, and the newspapers had a full account by the next morning. Five thousand miners showed up for the funeral, yet they never found out who killed him. With a grand jury, I think they would have.

ADJOURNMENT

Adjournment: 11:35 a.m.

A handwritten signature in black ink, appearing to read "Bruce D. Crippen", written over a horizontal line.

SEN. BRUCE D. CRIPPEN, Chairman

A handwritten signature in black ink, appearing to read "Joann T. Bird", written over a horizontal line.

JOANN T. BIRD, Secretary

BDC/JTB