MINUTES

MONTANA SENATE
57th LEGISLATURE - REGULAR SESSION
COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on March 21, 2001 at 9:03 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:
Sen. Lorents Grosfield, Chairman (R)
Sen. Duane Grimes, Vice Chairman (R)
Sen. Al Bishop (R)
Sen. Steve Doherty (D)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Walter McNutt (R)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)

Members Excused: None.

Members Absent: None.

Staff Present: Anne Felstet, Committee Secretary
Valencia Lane, Legislative Branch

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

Committee Business Summary:
Hearing(s) & Date(s) Posted: HB 109, SR 21, 3/19/2001
Executive Action: HB 109, HB 214, HB 295, SR 21

HEARING ON HB 109

Sponsor: **REP. JEFF MANGAN, HD 45, GREAT FALLS**

Proponents: **Pam Bucy, Assistant Attorney General with Department of Justice**

Opponents: **None**

Opening Statement by Sponsor:

REP. JEFF MANGAN, HD 45, GREAT FALLS, opened on HB 109. It directed the Department of Justice to create a curriculum regarding information about the release of sex offenders into communities. He noted the meat of the bill said the curriculum must contain: provisions in regard to violent sexual offenders including the rights of community residents; the duties and roles of the Department, law enforcement agencies, and the offender; information regarding personal safety for families and children. The information should be made available to law enforcement, other agencies such as school districts, local governments, and it could be disseminated over the web. He explained Great Falls had smaller units of local government called neighborhood councils. About two years ago, one of these communities saw an influx of released sexual violent offenders. They were concerned about how the notification should have been handled and the role of the different departments of the state. He said the reason for so much confusion was the variety of different statutes regarding the release of sexual offenders and that the notification procedures from state to local government could differ with each local government, from sheriff to police. He said the community council asked many questions of different agencies, but never got answers. He was asked to help search for some of the answers. In that process of understanding notification and the roles of the appropriate local agencies, he contacted the attorney general, a person at the Department of Corrections, the governor, and the local police chief and sheriff. He said each one of those top officials provided different answers. The confusion about the issue became clear from that research. Through time, they were able to develop a good notification procedure created by the community council along with the Department of Corrections, parole, and the local police department. However, the fact remained: confusion still existed within communities about the exact role of each department. That was the impetus of the bill. One of the suggestions from the community council recommended one source of release and notification information. Originally, he thought a curriculum of a book could be developed and provided to the communities. To cover that, the bill had an appropriation for

the Department of Justice. However, that was striped. When talking to the Department of Justice later, he found out they had a sexual and violent offender website. The Department had agreed to place the information he was requesting onto that website. This solved the money issue because the funds for the website would incorporate it. It also solved the dissemination of the information out to whoever would like to receive it: families, individuals, communities, school districts, and so forth. He understood the curriculum had already begun development. This piece of legislation allowed the Department to fulfil the project.

Proponents' Testimony:

Pam Bucy, Assistant Attorney General with Department of Justice, said the Department had assumed the role that was requested in the bill. The Department had established a database of sexual and violent offenders that had been placed on the Department of Justice website so that all communities would have access to it. There was someone who checked those addresses and uploaded new information daily. When local law enforcement provided information, the website would reflect the new information. They also had a conference for local law enforcement agencies because they were the ones who had to do the majority of the notification. A specialist from Seattle attended the conference and provided a book of information regarding notification procedures. It was a helpful tool in establishing local notification procedures. The Department was attempting to develop a curriculum to disperse to local law enforcement agencies, at their request. It could be easily changed with changes in the law. She noted it was an area of law that changed rapidly. The federal laws were always being adjusted as well as the state laws. Therefore, they had to be diligent in complying with all the necessary components. Many people throughout the state had been working to make one cohesive book/curriculum to explain how local law enforcement should handle notification. The Department was proud of the website because it provided necessary information as well as complied with the notification requirements under the current statute. She noted the link from the Department of Justice's web page. Another conference would be held with local law enforcement to provide them with current updates on both federal and state law. She noted Shelly McKenna, a program specialist for the sex and violent registration program was available to handle particular questions about the program. She closed by saying it was important to get consistency in this area of the law.

Opponents' Testimony:

None

Questions from Committee Members and Responses:

SEN. MIKE HALLIGAN asked the ratio of sexual offenders on the listing to violent offenders. Also, how many hits did they receive on the website. **Shelly McKenna, Program Specialist with Department of Justice,** said the website had been up for about two months. When she last checked there were 25 less violent offenders than sexual offenders. She had not reviewed the reports on the number of hits to the website. At this time, she didn't know, but would supply them.

SEN. HALLIGAN asked if they could tell who was looking at the information; was it school districts, individuals, or entities like sheriff offices. **Ms. McKenna** said from the email response pages she checked daily, most of them came from the general public. They asked about certain individuals or other questions via the website. The next group of users she spoke with over the phone were organizations such as the Boy Scouts. They ran volunteers through the system. Also, Section 8 Housing utilized the information to check the backgrounds of the housings' occupants. She noted OPI also had been interested in it.

SEN. HALLIGAN asked the detail level of the information. For example, a sex offender in Missoula had their address registered with the local law enforcement. Would that information be on the website? **Ms. McKenna** replied the website, as allowed by statute, provided all that could be provided at a minimal level. It allowed the name and address of every registered offender to be provided on the website. Depending on the tier level of a sexual offender, more information was provided. For example, level 3 sex offenders (the highest risk to re-offend) the Department was allowed by statute to provide the photograph, general age and gender of the victim, the conviction, etc. For non-compliant offenders, the Department provided generally the same information because they were basically wanted for possible registration violations.

SEN. HALLIGAN questioned how the Department learned about a violation of an address problem by a sexual or violent offender and how quickly the system was updated. **Ms. McKenna** said according to statute, the Department of Justice was required to send out annual address verification letters to each registered offender or every 90 days for the level 3 sex offenders. Beyond that, legally no one was bound to check addresses other than the offender providing a change of address. She noted the Department might not know for a year. However, most law enforcement agencies within their own department adopted their own procedures to check

addresses as often as they could. For example, Great Falls officers performed a door check every couple months.

SEN. JERRY O'NEIL said a Kalispell program treated sex offenders. From his understanding there was a 95% success rate, acknowledging the program only treated a select few. He explained the children of an offender had been teased at school after the father was returned to the home. He asked if there was any provision for removing the names of those who had successfully completed a treatment program. **Ms. McKenna** replied the website provided public information. Without court-provided information through local law enforcement, the offender was required to remain on the registry.

SEN. O'NEIL re-referred to Ms. Bucy. **Pam Bucy, Attorney General's Office,** said there was an actual process within the Sex Offender Registration act that allowed for removal from the database. As **Ms. McKenna** said, everything on the website was public information and it would not be removed without a court order.

SEN. O'NEIL asked if there was a link between the local website in Kalispell and the state website. **Ms. Bucy** said she would let **Ms. McKenna** speak to that. However, the purpose of the website was to work in conjunction. It was designed so that the local could link to the state and the state could link to the local sites. **Ms. McKenna** responded by saying that the website was provided to all agencies. To her knowledge, they were aware of the website, but then they had to make the link themselves. She wasn't sure if Kalispell was linked.

SEN. O'NEIL asked if the state website would refer to the Kalispell website. **Ms. McKenna** said not at this time. A links page existed and they could add that site. However, she was not aware of the Kalispell website as far as a registry. If they did have one, they could be linked.

CHAIRMAN LORENTS GROSFIELD said the bill was about local training for the communities. The thing about the website and registration was already contained in statute. 46-23-5 provided the requirements.

Closing by Sponsor:

REP. MANGAN closed on HB 109, reiterating the legislation was about community education and attempted to bring together a variety of information that wasn't required to be uniform across the state. Great Falls could chose to notify the neighborhoods and community differently from the Billings procedure. However, what was uniform was the number of both state and federal

statutes. The intent of the bill provided a single source to learn about the various statutes relating to sexual offenders. It was especially helpful for the communities that had not established a notification procedure. If the Department of Justice had information to provide to local law enforcement, it allowed them to establish notification procedures that worked within the law, for the individual community. If any one had any questions, they could go to the website and call the appropriate people to get further information. He noted that as laws quickly changed, the website was the perfect place to update the information on a fairly real-time basis, as opposed to printing it and mailing to a variety of people. He said **Mike Batista** of the Department of Justice indicated the registration portion of the website had been successful. There were a number of hits from a variety of people. Schools, local governments, and people of Montana had provided positive feedback. The only thing to make it better would be to have a separate section that provided Montana statutes and federal regulations as stated in the heart of the bill. He said the bill was needed even though the project was already underway in order to keep the program going. The law would indicate that state law enforcement agencies could use the internet to disseminate this public information.

EXECUTIVE ACTION ON HB 109

Motion/Vote: **SEN. HALLIGAN** moved that **HB 109 BE CONCURRED IN. Motion carried 6-0. SEN. STEVE DOHERTY, SEN. RIC HOLDEN, SEN. DUANE GRIMES** excused. **SEN. MIKE HALLIGAN** would carry the bill on the Senate Floor.

{Tape : 1; Side : B}

EXECUTIVE ACTION ON HB 295

Valencia Lane, Legislative Staffer, provided amendments SB029502.avl, **EXHIBIT(jus64a01)**. She said they added a section to the bill, a definitional section. It provided that snowmobiles would be included in the bill, except in the interlock ignition devices section.

SEN. MIKE HALLIGAN said one of the issues of the hearing concerned the ways-open-to-the public. He wanted to know if the intent was that groomed trails would be acceptable places to receive a D.U.I. **REP. LARRY JENT** said yes. He provided a memo to **SEN. GRIMES** regarding way-of-the state open to the public.

SEN. HALLIGAN clarified that groomed trails would be included in the bill. **REP. JENT** responded that Montana had a comprehensive

system of stickers, taxes, and revenue generated from grooming trails that were open to the public. The trails groomed with public money were open to anyone with a snowmobile able to get to the trail head. He didn't think there was resistance enforcing the snowmobile law on a groomed trail. As a practical matter, only a couple places in the state were eligible for D.U.I. testing on a groomed trail: West Yellowstone, Lincoln, and the Cook City area. The reason was the sheriffs' in those areas were equipped with the testing equipment on their snowmobiles to give the field sobriety test. Without a sheriff's deputy on the trails, the law would not be enforced on the trails. He said sometimes trails and roads were intertwined. The distinction could be unclear. The way-of-the-state open to the public discussed state law regarding what it was. There were three operative words the Supreme Court used: 1) adapted, 2) fitted, 3) common use. Only where trails were adapted and fitted for common use by the public did they qualify as ways-of-the-state open to the public. It removed the problem of someone getting a D.U.I. on a four-wheeler in a private field or snowmobiling on private land. In Title 23, it governed reckless driving on a snowmobile. It was more expansive than the D.U.I. law before the committee. A person could be cited for reckless driving on private property open to public snowmobiling.

SEN. HALLIGAN asked if the rights-of-way alongside roads such as in Lincoln were open to the public. **REP. JENT** replied yes. These were adapted and fitted for common use by the public.

SEN. RIC HOLDEN asked if the amendment addressed operating a snowmobile on private property after having some alcohol. **REP. JENT** said D.U.I.'s could not be given on private property because the property was not adapted and fitted for common travel by the public. It was not in the bill because it was current D.U.I. statute. The amendments did not amend what was or was not a public way.

SEN. HOLDEN clarified the bill allowed snowmobile drivers to be cited with a D.U.I. on groomed trails. **REP. JENT** replied on groomed, public trails, which were usually public roads.

Motion/Vote: SEN. HALLIGAN moved that **AMENDMENT HB029502.AVL BE ADOPTED. Motion carried 7-0. SEN. STEVE DOHERTY** AND **SEN. DUANE GRIMES** excused.

Motion: SEN. HALLIGAN moved that **HB 295 BE CONCURRED IN AS AMENDED.**

Discussion:

SEN. HOLDEN thought the real reason the bill was pulled from the Senate Floor was because the overlying feeling was the members didn't like the bill at all. It seemed like they were beginning to micro-manage everything. He felt the snowmobilers didn't want to be more managed. He thought it was a snowball effect. He realized the bill had a good intent, but the Senate didn't want the bill to go through. He thought the bill should be tabled.

SEN. JERRY O'NEIL said he wasn't sure he wanted to limit a snowmobilers fun by limiting their alcohol consumption. He hadn't seen any drunk snowmobilers. He felt they were generally responsible drivers.

CHAIRMAN LORENTS GROSFIELD pointed out that the bill didn't prohibit someone from having a beer. It was about D.U.I. and 0.1 blood alcohol level.

SEN. WALT McNUTT reiterated the point. If someone stopped for a few beers then drove the trail back home, the driver was fine. However, if the driver was inebriated and caused an accident, the driver would pay the price.

CHAIRMAN GROSFIELD said he thought that was the point of the bill.

Vote: Motion **carried 5-4 with Bishop, Grimes, Holden, and O'Neil voting no.**

EXECUTIVE ACTION ON HB 214

Motion: **SEN. MCNUTT** moved that **HB 214 BE CONCURRED IN.**

Discussion:

SEN. RIC HOLDEN asked if there were amendments to the bill.

CHAIRMAN LORENTS GROSFIELD said he didn't think so, but the House committee put some on to change from appointed to elected.

SEN. HOLDEN said **SEN. GRIMES** had mentioned to him that the bill should have been left the way it was. He wanted to know why the bill shouldn't be passed so the Governor appointed the judges.

CHAIRMAN GROSFIELD preferred that route, but the House had already spoken on the issue. He didn't know if there would be much point in sending it back. He thought part of the issue was the question of the timing and when it would start. It began a year later and saved a year of money. He referred to line 24 which was 2002, but the new language indicated 2003.

SEN. HOLDEN said he studied the sheet that Chief Justice Gray provided on the judges and their workloads. It also included the square miles of the districts, which were quite large in some cases. He thought that if public policy was to get some judges on-line to handle the cases, there was no reason to delay it. Originally, he wasn't going to support the bill, but the caseload information had changed his mind. He felt a person could successfully argue the need for judges and the bill addressed it. He wanted to return the bill to its original text to get the judges on-line to cover the over-loads. He thought the complaints stemmed from the over-load, and this got at the root because it put judges in the district courts to grind out the work. Without the players in the district courts, the rest of the system faltered. He didn't think the House really cared one way or the other.

Motion: **SEN. HOLDEN** moved that the **ORIGINAL BILL TEXT BE ADOPTED.**

Discussion:

SEN. WALT McNUTT asked if the bill would have to return to Finance as well if they adopted the amendment. It appeared that there could be some maneuvering with the appellate court and this bill, maybe there was a reason why they postponed it. He didn't like the idea that it would be addressed next session with Financing.

CHAIRMAN GROSFIELD said regardless it would go to finance. He asked if anybody recalled if the money was already covered in the budget.

SEN. MIKE HALLIGAN replied **REP. SHOCKLEY** indicated it was in the budget.

SEN. JERRY O'NEIL said it seemed to him that if it went with the election it would fall under a different year. It also seemed that since it was a necessary thing, they should be willing to pay to provide justice to the citizens.

{Tape : 2; Side : A; Approx. Time Counter : 0}

If the judges were having trouble getting their caseloads caught up. Since the money would be spent, it should be sooner rather than later because the problem was now.

SEN. HALLIGAN said the problem with the appointment gave a preference to the incumbent that secured them with a position for life. Once a governor appointed a judge, he felt it was rare that an attorney would go after the judge. At least the election

process allowed the best of the defense, plaintiffs, and whatever other kind of bar to be able to run. Otherwise, the nomination went to the one with the political chips. He thought that was not the way to run things. He felt it would die in the House if the appointment process was reapplied.

CHAIRMAN GROSFIELD noted **Ms. Lane** reminded him that another issue came out of the hearing. That involved the renovation of the courthouse and some districts weren't ready to house the judge.

SEN. O'NEIL agreed with **SEN. HALLIGAN** that the current situation had judges appointed for life, however, another session could see a bill that would bring in more competition, which could alleviate that problem.

SEN. HOLDEN closed on his motion. He felt courthouses would work around not having the space for the judge. If they were able to have another judge, they would find a temporary spot. The issue now was whether the statistics and the facts justified the need for a judge to handle the caseload. He thought the **Chief Justice** made a valid point that the facts and figures did support the claim. He wanted to adopt the amendment to get the issue rolling.

Vote: Motion **had a 4-3 vote with Grosfield, Halligan, and Pease voting no**. The vote was held open for **SEN. STEVE DOHERTY** AND **SEN. DUANE GRIMES.**

HEARING ON SR 21

Sponsor: **SEN. AL BISHOP, SD 9, BILLINGS**

Proponents: **Ed Bartlett, Chief of Staff, Governor's Office**
Karla Gray, Chief Justice of MT Supreme Court

Opponents: **None**

Opening Statement by Sponsor:

SEN. AL BISHOP, SD 9, BILLINGS, opened on SR 21. He said it was an honor to offer Greg Todd as a District Judge. He noted Governor Racicot appointed him to succeed a retiring judge from the 13th District. He said he'd known Mr. Todd's family for a long time. As a lawyer, he had occasion to know Mr. Todd in his profession as well as socially. He said Mr. Todd was a credit to the Billings community.

Proponents' Testimony:

Ed Bartlett, Chief of Staff, Governor's Office, said he sought confirmation of Mr. Todd's appointment. He had reviewed Mr. Todd's file and Mr. Todd had a tremendous reputation as an attorney. Mr. Bartlett understood Mr. Todd enjoyed serving on the bench already. Mr. Todd had attended judges' school and was a recent graduate. With the committees' confirmation, he would soon gain a positive reputation as a sitting judge. Mr. Bartlett thought Mr. Todd had been active in community projects, especially with youth activities and the church. He noted Mr. Todd had been practicing law in Montana since 1977. He requested confirmation of Judge Todd.

Karla Gray, Chief Justice of MT Supreme Court, asked for a unanimous confirmation of Judge Todd. She noted the Mr. Todd had a broad legal practice including a large component of family law, which was an area the district courts spent a lot of time with. She said few district judges had experience in family law, so that was a plus. Mr. Todd also belonged to all three of the major lawyer associations in Montana. He had been and would continue to be an active community and church citizen in the Billings area. At this point, he was almost a seasoned veteran of the bench. She read from his application for the position. The question asked the district courts' judges place in the system and how they made decisions. "The Constitution, the legislature, and the Supreme Court provide the framework under which a district court operates. Great deference must be paid to precedent so that all people can go on about their daily activities with some assurance of continuity and predictability. A district court must not go to far afield from precedent, but it must not be locked into decisions when the facts and justice justify a distinction. The key is to recognize the role of a district court in our entire system and do justice within that system." She had heard informally from many conversations with lawyers and judges since he had been on the bench that he made an early and successful transition from being an advocate to a judge. She heartily recommended his confirmation.

Opponents' Testimony:

None

Remarks by Judicial Nominee:

Greg Todd, recently appointed judge of the 13th judicial district, said he returned from a two-week judge's course that was extremely helpful. The other seven newly-elected Montana judges were also there. Out of a class of 62, there were eight from Montana. He said it was pleasant to know that things they did were done well, or better than in other places. He

acknowledged there was room for improvement, but the judges were able to compare and contrast the way the variety of jurisdictions around the country handled various problems. He welcomed the opportunity to answer any questions. He stated he was enjoying his time on the bench; it was a daily challenge. He noted he had very good colleagues within the courthouse, but also around the state who were able resources. He felt he had a sufficient background from his private practice to deal with the various areas. He was confident he would continue to do the best job possible.

Questions from Committee Members and Responses:

SEN. DUANE GRIMES asked **Mr. Todd** to discuss his judicial philosophy. From what the Chief Justice read, he thought he tended toward strict constructionism. **Greg Todd** replied first he wanted to make a distinction between his personal view and the oath he took. He believed the role of the district judge was to make decisions based on the cases, its facts, and the applicable laws, statutes, and previous case law. If that made him a strict constructionist, then that could be. He didn't think a district judge had his/her hands tied by precedent if the facts dictated deciding something different. At the same time, great deference needed to be made to the statutes and case law that might be applicable. He said it was a case-by-case basis.

SEN. GRIMES noted **Mr. Todd's** resume indicated trial lawyer experience as well as a few human rights commission cases. He asked with regard to the human rights commission cases if **Mr. Todd** felt there were sufficient remedies for a defendant in those cases. He noted there was concern that there was not and a railroad kind of thing could occur. He asked about the fairness or equity issues involved in human rights issues. **Mr. Todd** replied that he didn't think his role as a judge was to create new remedies. It was to interpret the current laws or present cases and the remedies that were allowed by law. In his experience prior to the human rights commission, he was on the side of the defendant many times. In the preface regarding trial lawyers, the biggest thing he offered was a balance and a great variety. In the personal injury field, he had represented more plaintiffs than defendants, but the last four or five years of his practice was almost exclusively in the personal injury area for the defense, the insurance people. He prosecuted at the beginning of his career and represented criminal defendants throughout the remainder of his career. He had the variety of family law practice. In whatever area he would deal with, he had represented people on both sides of the fence. He didn't have an agenda or a particular philosophy other than to do what was just and right.

SEN. JERRY O'NEIL said there were several law schools in California that were not accredited with the American Bar Association. He asked if a graduate from a non-accredited law school should be allowed to take the Bar examination in Montana. **Mr. Todd** agreed with the current system, which he assumed required graduation from an accredited law school.

SEN. O'NEIL asked his justification for refusing to allow a non-accredited graduate to take the bar exam. **Mr. Todd** said it was not his decision. It had been a worthy, studied decision. The basic rational was that there was some degree of confidence that a person who had graduated from an accredited law school had received sufficient and satisfactory instruction. There was not that same check, balance, and knowledge from the non-accredited law school. It then called into question that person's ability to practice law.

SEN. O'NEIL wondered if he thought the bar exam had any validity to showing whether someone would be a good attorney or not. **Mr. Todd** said there was great debates on that as well as the value of the S.A.T. as to a predictor. That was the chosen method and he thought it was certainly a good indication. It might not be the end all, but it was a reasonable method for choosing and selecting someone to become a member of the bar.

SEN. O'NEIL asked if the bar exam was a reasonable method for choosing someone to practice law, why weren't graduates from non-accredited schools allowed to take the examination to show they were capable of being an attorney. **Mr. Todd** said obviously **SEN. O'NEIL** had his opinions on that and many people would disagree with him that there was not just one criteria. He noted years ago people learned from a current lawyer, but times and the demands had changed. He thought the legal profession as well as the public could expect a higher level of education, a higher level of quality. The current requirements were reasonable and rational.

SEN. O'NEIL noted poor people were unable to hire attorneys. Paralegals prepared papers for these people, especially divorce papers. As a judge, would he be willing to accept the papers prepared by someone other than a licensed attorney in order to help the poor people. **Mr. Todd** clarified if the question was if he condoned the unauthorized practice of law, he didn't. Provisions existed for pro se litigants. On a regular basis in his law-and-motion time people who came before him for a divorce. Two different segments existed: 1)with children, 2) without children. The clerk of court provided forms to help people. Avenues were available to help people, direct legal services or through referrals. He acknowledged many times he would not know

if a person was legal to practice law. It was a difficult process for financially disadvantaged people to get legal services. However, that needed to be balanced with the need to protect people from those who didn't have the minimum degree of study and education.

SEN. O'NEIL questioned if a pro se litigant sought divorce with papers in good order prepared by a known paralegal, would Mr. Todd accept the papers or reject them because they weren't prepared by a licensed attorney. **Mr. Todd** said usually he didn't ask that question. He had many people lined up and he obviously needed to review the documents before he signed them. If there was an indication that there was a problem, he wouldn't sign them. However, he frequently didn't know who had prepared them.

SEN. O'NEIL pursued asking if he did know they were prepared by a paralegal, would he accept them if they were in good order. **Mr. Todd** said the remedy may not be regarding those people. It may be about the person who prepared the document.

{Tape : 2; Side : B}

If the question was whether a person knowingly practiced law in an unauthorized manner, he had duties to report that person.

SEN. O'NEIL said that was fine, but would the paperwork be accepted. **Mr. Todd** responded if the paperwork was in order, then he may well accept it.

SEN. RIC HOLDEN noted **SEN. GRIMES** touched on the human rights issue. **SEN. McNUTT** carried the human rights reform a few years ago. He said it was a concern to them how far the issue had gone. His questioning concerned the criminal aspects, especially the death penalty. The death penalty had been dealt with by the legislature for many sessions. The hanging statute had been changed and they had tried to make things tougher for those the juries felt should be put to death. They also took away some of the rights of appeal to free up the court. It had been disturbing to see some of the plaintiff attorneys come before them to justify why someone who had received the death penalty shouldn't receive it. He felt the convicted were using the rules and regulations to prolong the ultimate sentence provided by the judge. He wanted to know **Mr. Todd's** thoughts on the death penalty in Montana and how secure he was in ruling to support a jury if they found the death penalty was warranted. **Mr. Todd** said he didn't believe it was his place as a judge to invade the legislative process. It was their job to make the laws. He had not faced, and hoped he wouldn't face, the prospect of looking someone in the eye saying that they would die. It was an easier

task to talk about it theoretically. However, the laws and procedures were already on the books. In the appropriate setting with the right facts and circumstances, he considered it part of the oath, part of the job, and if it were appropriate, he felt he could do it. It would not be easy even in the most heinous case. He knew that he already faced the possibility because one man was appealing and if those ran out, he would be the one to set that man's death time. It would be hard, but if the remedies were exhausted in the state and federal courts, then he believed his oath was to follow the law and he would do that.

SEN. HOLDEN said last session, they confirmed Judge Simonton. He was asked the same death penalty questions and responded in much the same way. Now he would be considering some death sentence situations of drug dealers and point-blank shootings. He cautioned that the legislature had to face the questions first, before the judges. People would argue that the death penalty was not the thing to do, then present a variety of reasons why the convicted should be let-off. The legislature had stepped up to do the people's will. He told Mr. Todd to remember that when he was on the bench by himself, that many people had discussed the merits of the legislation. **Mr. Todd** said he appreciated the comments, but he believed the death penalty statute provided for discussion and consideration of a great deal of factors that needed to come into play. It was an awesome task to know that he or any judge had that power. He would not take it lightly. In the appropriate setting, he would follow the laws.

SEN. GRIMES asked if in his trial lawyer experience he used any evaluation tool or litmus test in choosing the client. **Mr. Todd** replied the first test was economic. A good trial lawyer screened cases much more thoroughly than a defense lawyer. He noted he had two civil jury trials in his tenure, both of which resulted in defense verdicts and were pretty obvious they would go that way. The number one reason for taking a case was economic; would he make money on it. He was in the business to make money to pay his family's bills. For most of his practice, he didn't have corporations that would hire him, so he took the cases he could. His philosophy was to do the best he could for any client he had.

SEN. GRIMES questioned what if the client had a dubious issue surrounding the case. The trial lawyer experience caused concern, and questions about the ethical framework. **Mr. Todd** said the initial conference with the client was key; he wanted to find out what happened to the client. He said he did not use a litmus test nor an agenda. He purely wanted to be able to support his family.

SEN. GRIMES said a number of issues came before the legislature then went to the courts. For example, the reclamation laws. The

legislature made decisions about what reclamation would be; he felt their intent was clear in all presentations and discussions. It was about feasibility, economic feasibility. As it entered the court system, the judiciary did not look at intent, but the plain meaning of the law. In this case, there wasn't a plain meaning without the intent. Therefore, from his perspective, there was some interpretation they applied without looking at legislative intent. Provided that he didn't fully appreciate all the legal ramifications, he was wondering how Mr. Todd would evaluate a recently applied law that was subject to a great deal of litigation. Did the plain meaning of the law exclude legislative intent outright? **Mr. Todd** said he wasn't familiar at all with the specifics because he hadn't dealt with reclamation law. He thought his job should be the same whether the subject was reclamation law, a criminal statute, or the uniform commercial code. As a judge, he needed to hear the facts of the particular case then apply the applicable law. Unfortunately, the law appeared to be many hues of gray rather than black and white. It depended on the perspective of the proponent or opponent. He had seen very few, if any, laws that were able to cover every particular situation. He didn't think it would ever happen; therefore, there was always a gray area. The judge came in at that point: given the facts and the law before him, he had to make a ruling.

CHAIRMAN LORENTS GROSFIELD said he appreciated Mr. Todd's candor and thoughtful answers. He noted they heard a lot of criticism of the judiciary, both district and supreme court systems. They heard about the problems and where that problem might be. He noted Mr. Todd just returned from training. He questioned the effectiveness of that training; was it good, worthwhile, should it be funded more? He asked Mr. Todd to speak about the training issue. **Mr. Todd** welcomed any training and assistance; be it formal through schooling or from colleagues. He noted solitary judges in a district might not have the luxury of having another judge to rely on as readily as he did in his district. He believed the course was helpful and that judges should have some experience before they attended the school. Otherwise, it was pure theory and some practical application was needed before they attended. For him, he had three months of experience. Virtually all the judges had less than a year's worth of experience. The training was geared to that. The National Judicial College was founded almost 30 years ago, and one of the major forces behind it was a federal judge based in Billings. He noted Montana's presence was felt from the very start. The training aspect depended on a person's background. He felt he had a good long practice and it was varied, so the transition to the bench was a bit smoother, but it was still a jolt. He noted the course provided substantive training. They needed to be up-to-date on the latest laws. They also were taught a variety of more

practical situations a judge could experience; dealing with pro se clients, unruly lawyers, a variety of situations. For a two-week course, it was excellent for a beginning judge and he recommended it continue for all new judges. There were other courses available at that institute and it could be helpful. He would consider taking some of them. He didn't feel anyone should ever stop learning, stop asking questions. If they thought they knew all the answers, they were asking for trouble. He mentioned the yearly conferences that would also allow them to keep improving and learning to give better service to the public.

Closing by Sponsor:

SEN. BISHOP closed on SR 21. He said he was especially pleased with **Mr. Todd's** answers to the questions. He also appreciated the candor. He noted the members all had the biographical data in their files, **EXHIBIT(jus64a02),** and he didn't think there was much more he could say. However, it was a good day for the 13th Judicial District, its people, and the state of Montana when Judge Todd took the bench. He felt it would be another great day when they voted for his confirmation.

EXECUTIVE ACTION ON SR 21

Motion: SEN. HALLIGAN moved that **SR 21 BE ADOPTED.**

Substitute Motion: SEN. O'NEIL made a substitute motion **SR 21 BE POSTPONED A DAY.**

Discussion:

SEN. JERRY O'NEIL said he wanted to postpone the decision because he had been working for 30 years to increase the access of low-income litigants to the judicial system in Montana, and this nominee seemed unwilling to expand the pool of attorneys by dis-allowing graduates of non-accredited law schools from taking the bar exam. Mr. Todd also seemed interested in finding out who prepared the papers then taking them before the Bar Association. He wanted to vote for Mr. Todd, but it would be hard to do today.

CHAIRMAN LORENTS GROSFIELD said it was their protocol that if anybody wanted to delay action for a day, it was always done. He asked **SEN. HALLIGAN** to withdraw his motion to take it up tomorrow.

SEN. MIKE HALLIGAN was reluctant to do that because **Mr. Todd** was required to follow the law, and he stated it correctly during the questioning. Mr. Todd could not solve **SEN. O'NEIL's** problem. By

voting tomorrow, it wouldn't change the law to allow paralegals to function in a different fashion from their current practice. It also would not allow non-accredited individuals to practice law. That was a big issue. Delaying a confirmation in respect to something the judge couldn't solve was not the way to resolve the issue.

{Tape : 3; Side : A}

SEN. RIC HOLDEN supported **SEN. O'NEIL's** motion.

CHAIRMAN GROSFIELD said the bill would be decided later.

SEN. HALLIGAN withdrew his motion.

CHAIRMAN GROSFIELD said he agreed with SEN. HALLIGAN, but he wanted to respect the wishes of the committee members who wanted to hold off on this particular resolution.

ADJOURNMENT

Adjournment: 11:58 A.M.

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SEN. LORENTS GROSFIELD, Chairman

_____
ANNE FELSTET, Secretary

LG/AFCT

EXHIBIT(jus64aad)