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Recent Developments--Cases

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RECENT DEVELOPMENTS — CASES

EMINENT DOMAIN AND CONDEMNATION OF PROPERTY

CITY OF HELENA v. DEWOLF

Urban renewal has been generally held to be an "area concept", and therefore a city need not prove necessity for taking property once the area boundaries have been established. *Berman v. Parker*, 348 U.S. 26 (1954). Some state courts have intervened, however, blocking a municipality from exercising its general power of eminent domain when property has been taken for speculative future use. 27 Am. Jur. 2d Eminent Domain § 404 (1966). In *City of Helena v. DeWolf*, ___ Mont. ___, 508 P.2d 122, 30 St. Rep. 372 (1973), the Montana supreme court joins those courts in the latter group. Where "property is not reasonably necessary to the clearance of the blighted area and prevention of its recurrence, the 'area concept' does not prevail." *DeWolf*, 508 P.2d at 128.

As part of its plan for urban renewal, the City of Helena condemned property, projecting that it would be used for a parking area upon the completion of redevelopment. The district court found that the defense had failed to present "clear and convincing proof that the taking is excessive or arbitrary." *DeWolf*, 508 P.2d at 128. Defendant's position was that the city failed "to show a reasonable need with the actual, or even reasonably foreseeable, ability to complete the project for which the property is needed."

The condemned property did not satisfy building code standards, but the record indicated that improvements could and would be made but for the litigation. Major emphasis was placed on the land's location. Standing at the extreme edge of the project, the property could be eliminated from the area plan without harming the project. Testimony showed that only slight interference with placement of a street would result from the property remaining unchanged. The city's need for the land, as parking area, depended on redevelopment of the entire project area. Under the federal program involved, an Urban Renewal Authority buys and clears the city lots, but redevelopment is dependent on private investment.

Quoting extensively from *Montana Power v. Bokma*, 153 Mont. 390, 397, 399, 457 P.2d 769 (1964), the court discussed eminent domain and the concept of "necessity." Necessity is judged according to the public use under the circumstances of each case. Condemnation of private property must be "compatible with the greatest public good and the least private injury." Section 93-9906, REVISED CODES OF MONTANA (1947) [hereinafter cited R.C.M. 1947]. Great weight is given to a municipality's selection of property suitable for condemnation and redevelopment. However, a city's only authority to condemn on an "area" basis is found in R.C.M. 1947, §11-3908, which refers to urban renewal projects. No conclusive presumption of necessity exists under the "area" condemnation authority such as that existing under the general power of condemnation statute, R.C.M. 1947, §11-977. R.C.M. 1947, §93-9905 defines "necessary" as meaning that:

> [T]he property taken must be reasonably requisite and proper for the accomplishment of the purpose for which it is sought under the peculiar circumstances of each case.

In *DeWolf*, the city, in order to prove necessity, had to show both the amount of parking needed and that projected parking areas and structures would be constructed. Presentation of a speculative future need for the property was not sufficient to outweight the private injury.

Property owners faced with urban renewal condemnation proceedings must still prove that the taking of the property would be excessive and arbitrary, in order to defeat a municipality's right of eminent domain, but the city will not be aided by a conclusive presumption that the taking is necessary. More than a projected need must be established; proof that redevelopment will occur to such an extent that the condemned property will be essential to fill a public use must be presented. For the property owner located on the perimeters of a redevelopment area, displaying private loss, such as that of a successful business, may outweigh the public's indefinite future need for the property.

Mike McCabe

THE ELEMENTS OF THE DEFENSE OF ENTRAPMENT IN MONTANA

HAMLIN v. DISTRICT COURT

In *State ex rel Hamlin v. District Court of the First Judicial District*, ____ Mont. ____, 515 P.2d 74, 30 St. Rep. 873 (1973), the issue presented was whether the information should have been dismissed as a matter of law on the ground that the defense of entrapment had been established. The affirmative defense of entrapment arises when the criminal intent or design originates in the mind of the police officer or informer and not with the accused, and the accused is lured or induced into committing a crime he had no intention of committing. Only when the criminal design originates in the mind of government officers, and the accused is persuaded by deceitful representations or inducement into the commission of a criminal act, can the defense of entrapment be established. *State v. Karathanos*, 158 Mont. 461, 493 P.2d 326, 331 (1972).

The court in *Hamlin* presented the following three essential elements of entrapment: (1) Criminal intent or design originating in the mind of the police officer or informer; (2) absence of criminal intent or design originating in the mind of the accused; and (3) luring or inducing the accused into committing a crime he had no intention of committing. *Hamlin*, 515 P.2d at 76.

The facts of the case are as follows: On May 29, 1973 an undercover narcotics agent attempting to find illegal drug activity went to a bar in East Helena. Shortly after his arrival, he approached a table where the accused was sitting, and proceeded to buy him a drink. The agent inquired whether Hamlin knew where he could get some "stash." Hamlin replied that he did, and made a phone call. After the agent purchased another drink for the accused, they made plans to drive to a house where Hamlin

said he believed they could get some narcotics. Hamlin then drove to the motel where the agent was staying, parked his car, got into the agent's car and drove to the house. After arriving at the house Hamlin introduced the agent to another man who sold the agent an L.S.D. pill for two dollars. Later that night the man who originally answered the door asked if anyone else wanted more L.S.D., and everybody, including the agent, indicated that he did. The accused and this man left, returning ten minutes later, and distributed some L.S.D. to the others, including the agent. Later that morning the agent arrested Hamlin and charged him with the criminal sale of L.S.D., a dangerous drug.

The motion to dismiss the information on the grounds of entrapment was denied despite the defendant's argument that where a law enforcement officer has no prior suspicion or information that an individual has a propensity to commit an offense and implants the idea in his mind, the officer has in fact persuaded the accused to commit a crime he had no intention of committing, thus establishing the defense of entrapment.

The court in rejecting this argument found that the testimony fell short of establishing that the idea of procuring and selling L.S.D. was implanted in Hamlin's mind by the agent. The court held that the testimony simply revealed that the agent purchased the accused two drinks, made an inquiry, and then passively followed the initiative of the accused. A casual offer to buy, even if accompanied by persuasion, is not sufficient to constitute entrapment, absent pleading, begging or coercing of the accused. *Hamlin*, 515 P.2d at 75.

Section 94-3-111 of the REVISED CODES OF MONTANA (1947), which went into effect after this decision, codifies the law of entrapment in Montana. According to this statute if the agent merely affords the accused the "opportunity or facility for committing an offense" which originated in the mind of the accused, then entrapment is not established. Again, the agent's activity must be something more than passive persuasion and closer to active encouragement.

Most of the cases in which the defense of entrapment has been raised have involved a crime in which there was a continuous course of conduct resulting in repeated violations of the same nature, such as illegal drug activity. In these kinds of situations the defense of entrapment becomes very difficult to establish since the offense is usually committed secretly, and it is extremely difficult to secure the evidence necessary to convict by any means other than the use of decoys. This underlying rationale may partially explain why the court in *Hamlin* was reluctant to dismiss on the basis of entrapment.

Dana L. Christensen

CREDIT FOR TIME SPENT INCARCERATED PRIOR TO REVOCATION OF AN ORDER DEFERRING IMPOSITION OF SENTENCE

MALDONADO, BOVEE, and GRAY

If there were ever any question whether section 95-2215(a), REVISED

CODES OF MONTANA (1947) [hereinafter cited as R.C.M. 1947] was applicable to a defendant requesting credit for time spent incarcerated prior to a revocation of a deferred imposition of sentence, the Montana supreme court rested such speculation in three 1973 decisions: *Maldonado v. Crist* ___ Mont. ___, 510 P.2d 887, 30 St.Rep. 576; *State ex rel. Bovee v. District Court*, ___ Mont. ___, 508 P.2d 1056, 30 St.Rep. 437; and *Petition of Gray*, ___ Mont. ___, 517 P.2d 351, 30 St.Rep. 1126.

Section 95-2215(a), R.C.M. 1947, provides in pertinent part:

> Any person incarcerated on a bailable offense and against whom a judgment of imprisonment is rendered shall be allowed credit for each day of incarceration prior to or after violation.

The petitioner in *Maldonado* originally pleaded guilty to second degree assault, and the district court, pursuant to R.C.M. 1947, §95-2206, deferred imposition of sentence, placing the defendant on probation for three years. Eleven months later the district court modified the order deferring imposition of sentence on condition the defendant spend six months in a county jail on a work release program. Subsequent to this six month jail sentence, but prior to completion of his probation, the defendant was charged with burglary. A hearing was held and upon finding that the petitioner had violated the conditions of his order deferring imposition of sentence, the court revoked the order and sentenced him to five years and nine months in the state prison for his original crime. Maldonado filed a writ of habeas corpus alleging that the six months in the county jail should be credited against his prison sentence. The Montana supreme court agreed.

In *Bovee*, the petitioner had served four months in the state prison as a pre-condition to a deferred imposition of sentence for possession of dangerous drugs. After serving the four months, the petitioner was released on probation under an order deferring imposition of sentence. This order was later revoked and the petitioner was sentenced to five years in the state prison. The court held that the petitioner under R.C.M. 1947, §95-2215(a), was entitled to credit the four months he served as a pre-condition to the deferred imposition of sentence against his five year sentence.

The credit for time previously spent cannot be applied until judgment has been entered. Under an order deferring imposition of sentence, judgment is not imposed until the order is revoked. This point was illustrated in *Gray*. Having been incarcerated for a month after his arrest, the petitioner was entitled to credit the month of incarceration against his sentence after the order deferring imposition of sentence was revoked, but he could not credit the month against his probation period. Gray contended that the month he had spent in jail prior to his entering a plea of guilty for robbery should have been credited against his three years of probation. Had the court accepted the petitioner's argument, he would have fulfilled his three years of probation and would have been entitled to a new trial for an offense commited during the last month of his probation. In rejecting the argument, the court held that the month petitioner served would not be credited until a judgment of imprisonment had been imposed. This did

not occur until the court revoked the order deferring imposition of sentence.

R.C.M. 1947, §95-2215(a), as interpreted by the Montana supreme court in *Maldonado, Bovee,* and *Gray*, therefore, is applicable to a defendant who spends time incarcertated after arrest and prior to imposition of sentence. This time must be credited against any sentence that is subsequently imposed for the original crime for which the defendant was found guilty.

A. Rogers Little

Arrest as a Prerequisite of Montana's Implied Consent Statute

STATE v. MANGELS

Implied consent statutes provide that a person is deemed to have given his consent to an intoxication test in exchange for the privilege of driving on public roads. However, implied consent statutes in most states require a valid arrest to trigger the consent provision prior to the administration of an intoxication test. *Note*, "Arrest Requirement For Administering Blood Tests," 1971 *Duke L.J.* 601, 613. With its decision in *State v. Mangels*, ___ Mont. ___, ___ P.2d ___, 32 St. Rep. 177 (1975), the Montana supreme court construed Section 32-2142.1, *Revised Codes of Montana* (1947) [hereinafter cited as R.C.M. 1947] to require an arrest prior to administering an intoxication test only when the person is capable of refusing consent, but in so doing set such high standards for establishing incapacity to consent that for practical purposes Montana will still follow the majority position.

In *Mangels*, the defendant was injured in a two-vehicle collision and taken to the hospital. Having detected the odor of alcohol on his breath, the investigating officer requested that the nurse take a blood sample for determining the defendant's blood alcohol level. Defendant was not arrested nor informed of the purpose of the test. A blood alcohol level of .19 was recorded. Defendant was then arrested for driving while under the influence of intoxicating liquor.

The district court granted defendant's motion to suppress the blood test for lack of a preceding arrest. On appeal the Montana supreme court held that no arrest was required if the defendant were incapable of refusal, but affirmed the district court ruling because the facts were insufficient to show that the defendant was incapacitated.

The court rejected the rationale employed in *State v. Mitchell*, 245 So.2d 618 (Fla. 1971), which granted broad discretion to investigating officers in determining capacity to refuse an intoxication test. The court in *Mangels* sought to avoid the potential for abuse. The court held that incapacity is to be determined on the basis of the best evidence available to the officer. However, the court noted that even the odor of alcohol, a confused appearance, and an unstable condition, taken together, did not warrant a finding of incapacity to refuse a blood alcohol test.

In contrast, the burden of establishing probable cause to arrest as set

forth by the United States Supreme Court in *Schmerber v. California*, 384 U.S. 757, 768-70(1966) is less than the burden of establishing incapacity to refuse a blood alcohol test as established in *Mangels*. The symptoms of drunkenness in *Schmerber, supra* at 769, were that Schmerber's breath smelled of alcohol and his eyes were bloodshot, watery and glassy appearing. The United States Supreme Court held that on these facts there was "plainly probably cause for the officer to arrest petitioner (Schmerber) and charge him with driving an automobile while under the influence of intoxicating liquor." *Schmerber, supra* at 768. It follows that in Montana when an investigating officer is in doubt as to the capacity of the person to refuse a blood alcohol test, yet ascertains the test of probable cause to arrest for driving while under the influence of intoxicating liquor is met, an arrest must be made pursuant to paragraph (a) of R.C.M. 1947 §32-2142.1 in order for the blood alcohol test to be admissible.

John Hollow

Right to a Speedy Trial

STATE v. SANDERS

There is no constitutional basis for holding that the right to a speedy trial can be quantified into a specified number of days or months. Further, a claim that a defendant has been denied his right to a speedy trial is subject to a balancing test, in which the conduct of both the prosecution and the defendant are weighed. Some of the factors which courts should assess in determining whether a particular defendant has been deprived of his right to a speedy trial are the length of the delay, the reason for the delay, the defendant's assertion of his right and the prejudice to the defendant. *Barker v. Wingo*, 407 U.S. 514 (1972). With its decision in *State v. Sanders*, ____ Mont. ____, 516 P.2d 372, 30 St. Rep. 1044 (1973), the Montana supreme court not only accepts this balancing test but further clarifies it, holding that a delay of slightly more than six months from supreme court remand to trial is not prejudicial delay.

In *Sanders* the defendant was convicted of second degree assault. The court imposed a deferred imposition of sentence which was subsequently revoked and a four year sentence imposed. One of the grounds upon which Sanders based his subsequent appeal was denial of a speedy trial.

The critical time sequence in *Sanders* began on October 18, 1971, when the supreme court issued remittitur after reversing Sander's earlier conviction of three counts of second degree assault. Trial was set for April 3, 1972. Defendant claimed on April 11 that he had not known of the trial date. Trial was reset for April 19, but was finally held on May 10. At that time a new conviction on one count of second degree assault was returned. The court deferred imposition of sentence for three years. Subsequently, the defendant pleaded guilty to disturbing the peace, and a petitition for revocation of deferred imposition of sentence was filed. The deferred imposition was revoked on October 17, nearly one year after the original remittitur, and defendant was sentenced to four years in prison.

In denying Sanders' allegation of a lack of speedy trial, the Montana supreme court first quoted the balancing test and the four factors laid down in *Barker*: (1) length of delay (2) reason for delay (3) waiver of right to speedy trial and (4) prejudice from the delay. The court then summarily rejected defenses on both the third and fourth factors, saying that the defendant made no assertion of his right to speedy trial and that no actual prejudice was shown.

Regarding the first factor the court found no excessive delay. The court said that the critical time period was from the date of remittitur (October 18) to the date of trial (May 10)—six months and twenty-two days. The court relied on the position of the American Bar Association Project on Minimum Standards for Criminal Justice, Speedy Trial, section 2.2 (Approved Draft 1968) which provides that the time for determining speedy trial after appeal begins when the order for the new trial is received by the lower court.

Further, the court did not feel that the second factor, reason for the day, was relevant in this case. The court said, "it appears the district court gave the cause the reasonable prompt calendar consideration required . . . The delays that followed, if not chargeable to defendant, certainly cannot be charged to the state." It pointed out that the first delay was chargeable to defendant's counsel, the second flowed fromt he first and the third was unexplained.

The prime consideration of the Montana supreme court in this area concerned the time period involved. It held that a delay of six months, twenty-two days, was not excessive without a showing that such delay was caused by the state, that the defendant had asserted his right to a speedy trial, or that the defendant had been prejudiced by the delay.

Mayo Ashley

Waiver of Defenses Upon Plea of Guilty

STATE v. TURCOTTE

A plea of guilty, in order to be valid under the requirements of the Due Process Clause, must be voluntarily made without coercion and must be entered with an understanding of the charges and the consequences of entering the plea. *Boykin v. Alabama*, 395 U.S. 238, 242-244 (1969). It is the well-established rule that when these conditions are satisfied, a plea of guilty constitutes a waiver of all but jurisdictional deficiencies in the proceedings against the accused. Cook, Constitutional Rights of The Accused—Pre-Trial Rights § 113 (1972). With its decision in *State v. Turcotte*, ____ Mont. ____, ____ P.2d ____, 31 St. Rep. 547 (1974), the Montana supreme court places itself squarely with this majority rule and answers the question of whether any deficiencies may be preserved before entering a guilty plea with a resounding "NO."

In *Turcotte*, the defendant was charged with criminal possession of dangerous drugs on evidence found in his residence under a search warrant. The defendant moved to suppress the evidence, but his motion was denied by both the trial judge and the supreme court. On the day set for trial, the

defendant entered his plea but before doing so advised the court that he was preserving his right to raise the illegal search issue upon appeal. The court in *Turcotte*, 31 St. Rep. at 549, denied the appeal stating that:

> . . . A plea of guilty voluntarily and understandingly made constitutes a waiver of nonjurisdictional defects and defenses, *including claims of violations fo constitutional rights prior to the plea* . . . (Emphasis added.)

The holding was based upon the theory that the defendant is convicted on his plea and not upon the evidence, thus any challenge to the admissibility of the evidence backing up the charge is immaterial. The court noted that section 95-1606 of the REVISED CODES OF MONTANA (1947), does not provide for conditional pleas and held, in effect, that in order to raise questions of inadequacies in the pre-trial proceedings, the defendant must stand trial, be convicted, and appeal on the record. There can be no intentional preservation of pre-trial procedural or constitutional questions in a plea of guilty.

It should be noted, though, that the defendant is not entirely foreclosed from appealing a conviction based on a plea of guilty. In citing *Tollett v. Henderson*, 411 U.S. 258 (1972), the court reaffirmed that the defendant may attack the voluntariness of the plea by showing coercion or inadequate advice from counsel concerning the nature and effect of the plea. Additionally, it has been recently held by the Ninth Circuit that a defendant may challenge the constitutionality of the statute under which he was convicted after pleading guilty. *Jellum v. Cupp*, 475 F.2d 829 (9th Cir. 1973). Otherwise, however, a plea of guilty is a bar to any appeal in Montana.

Staff

SEARCH OF AN AUTO PURSUANT TO A LAWFUL ARREST

STATE v. TURNER

It is well-settled that a search incident to a lawful arrest is an exception to the warrant requirement of the Fourth Amendment of the United States Constitution. This exception has been formulated into two distinct categories. The first is that a search may be made of the person of the arrestee, and the second is that a search may be made of the area within the control of the arrestee. While the validity of a search of the person has been regarded as settled from its enunciation, the validity of the search in the second category has been subject to differing Supreme Court interpretations as to the extent of the area which may be searched, as well as on what occasion it may be searched. *United States v. Robinson*, 414 U.S. 218 (1973). It is this second area of search that the Supreme Court of Montana dealt with in its recent decision of *State v. Turner*, ____ Mont. ____, 523 P.2d 1386, 31 St.Rep. 494 (1974). Although the United States Supreme Court has been less than clear in its decisions about this question, the Montana supreme court appears to stretch to its outer limits the scope of search of an automobile pursuant to an arrest.

Police officers arrested Turner for operating a motor vehicle while under the influence of alcohol. Defendant was driven to the station in the police car while another police officer drove the defendant's car to the station. In driving the car to the station, the officer noticed a beer bottle and near it on the floor a small paper bag containing marijuana. The officer took the bag and the bottle as evidence, returned to the car, made a complete inspection without a warrant, and found a marijuana cigarette in the ash tray. The defendant was then charged with the additional offense of possession of marijuana. The district court suppressed the use of these two items of marijuana as evidence, and the Montana Supreme court found such suppression to be error.

The court seemed to base its holding on the proposition enunciated in *Robinson* that police officers may make a complete body search pursuant to lawful arrest in a traffic violation. The court in *Turner*, 523 P.2d at 1387, cited *Robinson* and its companion case *Gustafson v. Florida*, 414 U.S. 260 (1974), as stating the rule applicable to this case:

> . . . Thus the broadly stated rule and the reasons for it, have been repeatedly affirmed in the decisions of this court since *Weeks v. United States* nearly sixty years ago. Since the statements in these cases speak not simply in terms of an affirmative authority to search, they clearly imply that such searches must also meet the 4th Amendment's requirement of reasonableness.

The court stated that the real issues of the case was whether the actions of the police were reasonable, and then concluded by looking at the Montana statute on searches, REVISED CODES OF MONTANA, §95-702 (1947), that indeed the actions were reasonable. It is unquestionable that all searches and seizures, even those without warrants, must be reasonable. In auto search cases reasonableness implies a weighing of the interests presented in each case, and the "exigent circumstance" requirement implies not just a police need, but a police need sufficient to override the interests of a private citizen. Note, *Warrantless Searches and Seizures of Automobiles*, 87 HARV. L. REV. 835 (1.74).

It is both puzzling and troublesome that the decision did not contain any mention of the United States Supreme Court cases dealing with the warrantless search of an auto, nor did it contain any mention of the circumstances or guidelines used by the Court in determining when the actions of police officers are reasonable. *Coolidge v. New Hampshire*, 403 U.S. 433 (1971); *Chambers v. Maroney*, 399 U.S. 42 (1970); *Chimel v. California*, 395 U.S. 752 (1969), *Preston v. United States*, 376 U.S. 364 (1964); *United States v. Carroll*, 267 U.S. 132 (1925).

While the Burger Court has been gradually strengthening the hands of law enforcement officials in searching autos pursuant to an arrest, the Court still recognizes a balancing of the interests involved and whether the police could have obtained a warrant before the search. In spite of the moving automobile and exigent circumstances exceptions to the warrant requirement, the Court in *Chambers* did say that neither *Carroll*, nor other cases "require or suggest that in every conceivable circumstance the search of an auto even with probable cause may be made without the extra protec-

tion for privacy which a warrant affords." 399 U.S. 42, 50 (1970). The most recent United States Supreme Cmurt case, *Roaden v. Kentucky*, ____ U.S. ____, 93 S. Ct. 2796, 2802 (1974) states that:

> Only in exigent circumstances will the judgement of the police as to probable cause serve as sufficient authorization for a search. Exigent circumstances are those in which police action must literally be now or never to preserve the evidence of the crime.

The federal decisions in this area have been so often cloudy and contradictory that the Montana supreme court's failure to clearly analyze the issues in the *Turner* case is understandable. The only readily identifiable principle in these cases has been that warrants-when practicable is the best policy. Some of the justices of the United States Supreme Court have called for an overhauling of the law of search and seizure, and such a revamping would hopefully provide law enforcement officials, county attorneys and state judges with rules that can be easily understood and readily applied.

Mae Nan Robinson Ellingson

Remedy for Discharge for Wage Garnishment

STEWART v. TRAVELERS CORPORATION

A Montana employee is presently protected, under both federal and Montana law, from being discharged for a single garnishment of his wages. *Consumer Protection Act*, 15 U.S.C. §1674(a) (1968); *Revised Codes of Montana*, §41-305.1 (1947) [hereinafter cited as R.C.M. 1947]. The extent of the protection afforded an employee who has been discharged in violation of the law depends, however, upon the remedy available to him.

R.C.M. 1947, §41-305.1 was enacted into law in 1969. No express remedies were provided in the statute, and there are presently no reported cases construing it. Therefore, the protection it affords an employee discharged in violation of this law is not presently clear. Two express remedies were provided to enforce the federal statute. 15 U.S.C. §1674(a) establishes a criminal penalty for employers who wilfully violate the federal statute in discharging an employee for a single garnishment of his wages. Secondly, the Secretary of Labor is given the duty of enforcing the federal statute, 15 U.S.C. §1676. These remedies were of little utility to a wrongfully discharged employee, however, for the administrative enforcement was nonexistent and the criminal penalty required the proof of a "willful" discharge.

In *Stewart v. Travelers Corporation*, 503 F.2d 108 (9th Cir. 1974), the court greatly broadened the protection afforded an employee under the federal statute. In that case the Ninth Circuit ruled there is an implied private civil remedy available under 15 U.S.C. §1674(a), which allows an employee who was discharged in violation of the statute to sue in his own right for reinstatement, back-pay, punitive damages, and attorney's fees. This ruling is contrary to prior district court rulings in other circuits hold-

ing that there was no private civil remedy under the statute. *Western v. Hodgson*, 359 F. Supp. 194 (S.D.W.Va. 1973); *Oldham v. Oldham*, 337 F. Supp. 1039 (N.D. Iowa 1972); *Simpson v. Sperry Rand Corp.*, 350 F. Supp. 1057 (W.D. La 1972). The reason the Ninth Circuit gave for implying such a remedy was to more fully effectuate the congressional intent expressed in the statute.

The effect of this recent ruling is to give a Montana employee full protection against discharge for a single garnishment of his wages under the federal law.

Staff