

claims or the court system, could you perhaps help me to understand what happens in those cases and why the...in the original bill it's allowing for a jury and in the committee amendments it strikes that.

SENATOR LINDSAY: I should point out first that as you were asking that saying that you weren't real familiar with how trials worked, Senator Kristensen was looking at me like, well, don't ask him, he's not real familiar with how trials work either, so...(laughter). Yeah, the bill, right now under current law, under the Tort Claims Act, a jury trial is not allowed. That's...that is the law as it exists right now without any change. If nothing passes this session, that is the law. The bill, as originally drafted, sought to eliminate that prohibition on jury trial in this type of a suit. Practically speaking, the votes simply weren't there to make that big of a change in this area so that concept was withdrawn in favor of this type of a concept because there simply wasn't enough steam to get...to put jury trials back into this area.

SENATOR PREISTER: I can understand that. I guess I would like to have a little more insight into the reasons or the rationale. If this bill were brought forward to have a jury there, what's the advantage of the jury over just having the judge or the other way around?

SENATOR LINDSAY: There are some...there are some who believe that juries tend to award larger awards or are inflamed more easily and not as tied to the law as would be the bench...would be a judge, and that when the bill was originally...when the Tort Claims Act was originally drafted I assume was the reason for doing that, as the...if you go back to the old theory of sovereign unity, you can't sue the king unless the king says you can. And that's how we get into the question of whether a subdivision or the state can...we can only sue the state or a subdivision if the state says you can sue them and these are the...these are the rules if you are going to sue the state or the...or a subdivision. And when it was originally passed, one of the concepts was we don't want heard by a jury, we want heard by a judge. The reasoning for it is, I believe, is because they just felt at that time that juries would tend to award larger awards and that a judge would be able to capture all the particular nuances of a particular claim.

SENATOR PREISTER: Thank you. Thank you.