

**MINUTES OF THE MEETING
STATE ADMINISTRATION COMMITTEE
50TH LEGISLATIVE SESSION
HOUSE OF REPRESENTATIVES**

March 5, 1987

The meeting of the State Administration Committee was called to order by Chairman Sales on March 5, 1987 in Room 437 of the State Capitol at 9:00 a.m.

ROLL CALL: Reps. Moore and Peterson were excused. All other committee members were present.

CONSIDERATION OF SENATE BILL NO. 123: Senator Harding, Senate District # 25 and sponsor of the bill, stated the purpose of the bill is to make the register of candidates maintained by election administrators and the secretary of state for partisan and nonpartisan elections discretionary, as two mandatory ledgers are already maintained forever.

PROPOSERS: Greg Jackson, Montana Clerk and Recorders Association, supported the bill and stated that a unanimous resolution was passed to make maintenance of the register discretionary.

Joanne Peres, Fergus County Clerk and Recorder, and Geraldine Nile, Rosebud County Clerk and Recorder, also supported the bill.

OPPOSERS: None.

DISCUSSION OF SENATE BILL NO. 123: Rep. Fritz asked whether the action would seriously damage the historical record. Senator Harding closed discussion on Senate Bill No. 123 by replying that two other books are permanently maintained.

CONSIDERATION OF SENATE BILL NO. 124: Senator Harding, Senate District #25 and sponsor of the bill, stated that the bill provides for the posting of election returns at the counting place rather than the polling place. Since ballots are counted at the courthouse, excess mileage is incurred to post returns at polling places.

PROPOSERS: Geraldine Nile, Rosebud Clerk and Recorder, supported the bill stating that one polling location in Rosebud County is 90 miles from the courthouse.

OPPOSERS: None.

DISCUSSION OF SENATE BILL NO. 124: Senator Harding closed discussion on Senate Bill No. 124 by urging the committee to pass the minor housekeeping bill.

CONSIDERATION OF SENATE BILL NO. 161: Senator Mazurek, Senate District #23 and sponsor of the bill, stated that the purpose of the bill is to eliminate the sunset clause that would reduce the Supreme Court judges from seven to five. In response to a backlog of cases and lengthy delays, the legislature passed a bill authorizing two additional justices, which sunsets January 1, 1989 unless affirmative action is taken. The Senate Judiciary Committee unanimously rejected Senator Mazurek's offer to place another sunset provision in the bill that would be effective in 1997.

The Montana Supreme Court must accept all appeals from any litigant appealing a district court decision. Several other states have intermediate appellate courts as an avenue of appeal. The number of filings and written opinions per justice compared with the five-member courts in North Dakota, South Dakota, and Wyoming show that Montana is a litigious state (Exhibit #1, p. 2). Idaho, Utah, and Alaska have similar economies but are not compared because those states have intermediate appellate courts. Utah just placed a five-member intermediate appellate court into operation to handle a 600-case backlog, which will take approximately two years to resolve. An intermediate appellate court will be much more expensive than continuing two additional justices.

Filings have increased because the court will be called on to interpret legislature's recent public policy decisions: 1) a new constitution; 2) the Montana Administrative Procedures Act; 3) a major facilities siting act; 4) a new State Tax Appeal Board; 5) reappraisal for which an estimated 15,000 appeals are now pending; 6) a new marriage and divorce act; 7) a new criminal code; and 8) a new youth court act. Legislation being considered this session such as tort reform, worker's compensation

legislation, and tax reform proposals will also increase the workload. The number of required opinions per justice will increase dramatically with five justices (Exhibit #1, pp. 6 & 7).

The need for two additional justices is more important now than in 1979. If the bill is not passed, it will have a very serious impact on the justice system; the effect of reducing judges will be a 30% workload increase on the remaining justices. Senator Mazurek requested the committee to rise above the \$114,000 biennium fiscal note, which reflects current level of services, and recognize the need to continue the court at its present size.

PROPOSERS: George Dalthorp, Billings attorney and member of the Montana State Bar, reported that the State Bar has a near consensus position in favor of continuing the seven-member court because a drop back to a five-member board would lead to a: 1) delay in justice as a backlog of cases will develop similar to 1979; 2) decline in the quality of decisions because the tremendous volume would increase the workload by approximately 30%; and 3) long-run decline in the quality of the justice system. In addition, the court is experiencing difficulty attracting qualified lawyers to run for the court; Montana justices are paid the lowest salary in the nation and if an absolutely oppressive workload is added, capable lawyers might not want to work for the Supreme Court. The court will have increased work and lawyers will be frustrated, but it is the citizens who will be hurt. Justice delayed is justice denied; when a person is involved in litigation it becomes all encompassing to all other activities.

Pat Melby, attorney and Montana State Bar lobbyist, stated that the State Bar has given its full support to the bill, and no bill is more important this session. The bill also has the full support of the Montana Trial Lawyers Association and the Montana Association of Defense Counsel. The Montana Supreme Court justices are the lowest paid in the nation. If workload is increased by 30%, the court will not be able to continue to attract the quality of justices needed.

Ronald Waterman, Helena attorney and past member of the American Judicial Society, supported the bill and previous testimony. Justices need the time to understand the ramifications of a case not only upon participants, but society as a whole. The time to contemplate a case is important in ensuring the quality of justice society demands. The caseload requires the justices to deliver an opinion a week yearly. The last case Mr. Waterman submitted was 20 volumes long with 348 exhibits, and required

consideration of seven major issues and multiple subissues on matter requiring time to understand the full implications of the case on the litigants and society as a whole. Returning to a five-member court is ill-advised.

At the federal level the Ninth Circuit fell so far behind during the 1970s that it took three years between the time appeals were lodged and decisions rendered. Just before oral argument supplemental briefs had to be filed because the law had dramatically changed. The system proved to be deplorable and resulted in a doubling of the Ninth Court of Appeals at the federal appellant level. Reducing the size of the Supreme Court would be "penny wise and pound foolish".

Margaret Davis, League of Women Voters, stated that the public is generally not interested in the court system unless public attention is drawn to a specific case, or until people are personally involved either as a plaintiff or defendant. The Legislature's actions are subject to litigation. If the court's ability to deal with matters of legitimate public concern are weakened, government's ability to deal with problems is impeded. A weak judiciary does not help the legislative or the executive branch.

Steve Brown, Helena attorney, stated he originally sponsored the legislation in 1979, but there has been no statistical change in the workload to justify going back to a five-member court. The increased workload is due in part to a great number of bills that have been enacted as legislators respond to demand from constituents. Since 1973, people have insisted on writing public policy in many significant areas which has resulted in substantial litigation: 1) the 34% tax appeal issue which significantly affected businesses; 2) three stream access cases which are vitally important to farmers as well as recreationalists; and 3) initiatives from nuclear issues to lobbyist disclosure and tort reform. It would be a terrible mistake to go back to a five-member board.

Jim Oppedahl, Supreme Court Administrator, explained that exhibit # 1 is a broad historical look at the forest and not just the trees: 1) the case filings per justice are trended showing the caseload levelling in 1979 when two judges were added, and is projected to 1988 and 1989 showing a workload increase; and 2) Montana's caseload is also compared with other states and shows solid evidence that Montana's workload is heavy by comparison with workload experienced in South Dakota, North Dakota, and Wyoming. Other states have responded by adding judges, legal

support staff, or adding additional judiciary capabilities when caseload has reached the level Montana is experiencing. Utah just added an additional seven-member intermediate court of appeal to handle its two-year backlog.

Justice Weber, spoke in favor of the bill and agreed with the analysis presented. When cases sit before a court for more than three years, clients are properly so discouraged that they seek any way to resolve the issue except wait for an appeal; that is a horrible situation. Justice Weber discussed the process: 1) a case is assigned to a justice to write an appeal plan and recommend either an oral or written argument, which is brought before all seven members of the court. If time is short, the simple solution is to let one person decide; if time is too short, the law clerks may decide. The process aims at finding critical cases to be argued; and 2) a judge is assigned to write an opinion after argument is heard, which is then voted on by the group. Twenty cases were voted on yesterday, for example. Briefs are read before oral argument. If time is too short, the briefs might not be read. An adequate opportunity to think the case over is also needed. Law clerks assist in picking out relevant parts of the transcripts. If time is cut down, an opinion might be approved because the case sounds reasonable based on the facts of the law. That is called a one judge opinion and it has happened, but the process is not designed for this purpose. There is a mechanical way of getting through increased workload, but it will result in a much inferior work product.

Chief Justice Gene Turnage, supported the bill stating that the only recourse for appeal is the Supreme Court, which is not only a fundamental constitutional due process right, but a common sense right. It would be unacceptable to not have an appeal avenue for the litigant. As far as the litigant is concerned no case is frivolous, and the Supreme Court must treat all appeals carefully and with deliberation. The result of a five-member court will be delay, which is costly to the taxpayers. The hidden human cost of stress cannot be measured in dollars. Yet there is no acceptable way to crash through deliberation on a case. The internal operating rules will have to be extended. In 1986, the members of the court ruled on 374 full-blown opinions per justice; with a five-member system, approximately 75 opinions per justice will be required and is not realistic.

People who find themselves rejected at the executive level turn to the courts. Montana needs a judiciary of competence, and with the workload facing the judiciary, this will not encourage the kind of competence necessary.

Laws are made three ways: 1) through the initiative process; 2) the legislative process; and 3) the common law decision when the Supreme Court issues an opinion of precedential value. If power is concentrated into fewer hands, citizens do not receive the input they are entitled to and justice will be weakened.

Rep. Paul Pistoria, House District #36, stated that he was involved in a Supreme Court case for almost a year, which necessitated paying interest on \$30,000 in bonds. When the two justices were added, the case was heard a month later and it took another month to decide the case. Cases many times involve a citizen's lifetime savings. Rep. Pistoria urged the committee to pass the bill to protect citizens by having less delay.

OPPONENTS: None.

DISCUSSION OF SENATE BILL NO. 161: Rep. Cody asked how long decisions are taking at this time. Chief Justice Turnage replied that the operating rules allow 120 days to deliver an opinion; noncomplex cases are generally delivered earlier, and a minimal number go beyond that time span. Rep. Cody asked whether alternative financing has been considered to fund the bill. Sen. Mazurek replied that he had not addressed the question because the biennium impact is only \$114,000, and the alternative is to increase justices' workload by 30% while being the lowest paid in the nation. Sen. Mazurek suggested that other programs absorb the loss before wiping out the Supreme Court.

Rep. Fritz asked how Montana's system compares with Nebraska's. Jim Oppedahl responded that Nebraska has a constitutional provision allowing the court to call in district court judges, so it essentially has ten members. The Nebraska court system does not work very well because additional travel expenses are incurred, and districts don't have close ties to opinions delivered. As a result, judges alternatively have been adding lawyers, and presently have nine attorneys on staff. Rep. Fritz asked whether Montana would have a better system with an intermediate appeals court if money were no object. Chief Justice Turnage replied that an intermediate court would be helpful and may require two systems because of the size of the state, but it is difficult to state how the system would work in the real world.

Chairman Sales asked if there is a less expensive way to handle the situation, as the proposal may be too expensive considering Montana's population. Chief Justice Turnage replied that

increasing caseload is academic in the nation as well as the state. The American citizen seeks resolution in the courts when dissatisfied with the executive branch, and the Constitution provides access to the courts, due process, and equal protection under the law.

Sen. Mazurek closed discussion urging the committee to keep the human cost of delay in mind on this quality-of-justice issue. The matter is very important and is not a big-ticket item; the bill continues current level spending while preserving the status quo so that even greater sums of money will not be needed for an intermediate level court.

CONSIDERATION OF SENATE BILL NO. 264: Sen. Hims1, Senate District # 3 and sponsor, stated that the bill is an act requiring that the terms, conditions, and details of any compromise or settlement agreement entered into or approved by a governmental entity be subject to public inspection. The bill deals with public sector claims against the state or political subdivisions such as counties, cities, and school districts. When claims are settled by court action the results are made public, but when agreements are reached by compromise or negotiation the public has no way of knowing what happens; the public has a right to know. Liability questions cannot be answered because the information is confidential. Tort claims from 1976 through February 1986 settled against the state are in significant amounts; the Department of Administration paid \$6,459,769 to settle cases, individual agencies settled 51 claims for \$792,700, and one claim was over \$500,000. The bill does not require publishing the terms and conditions of settlements, but makes them available for public inspection. This is a reasonable, sensible, forthright requirement for all stewards of the public trust.

PROPOSERS: George Moore, Montana Press Association, stated that the bill would accomplish two primary things: 1) the public would be better informed about the performance of its officials; and 2) the public would have an opportunity to judge whether the government and insurer have mounted responsible defenses for claims on the public purse. The quality of defense has a direct bearing on availability of insurance and premiums. Information is being withheld needlessly.

OPPOSERS: None.

DISCUSSION OF SENATE BILL NO 264: Rep. Cody asked if the bill would be a violation of any rights of privacy. Sen. Himsl replied that the government has no right to privacy, and when the individual brings an action against the state, he surrenders the right to privacy in that proceeding. Sen. Himsl closed discussion on Senate Bill No. 264 by stating that justice may be blind but it ought not play hide-and-seek.

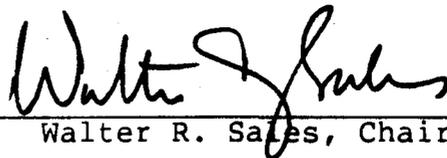
DISPOSITION OF SENATE BILL NO. 123: Rep. Cody moved the bill BE CONCURRED IN, seconded by Rep. Campbell. The motion passed unanimously (18-0).

DISPOSITION OF SENATE BILL NO. 124: Rep. Campbell moved the bill BE CONCURRED IN, seconded by Rep. Phillips. The motion passed 17-1 with Rep. Peterson voting no. Rep. Nelson will carry the bill.

DISPOSITION OF SENATE BILL NO. 161: Rep. O'Connell moved the bill BE CONCURRED IN, seconded by Rep. Pistoria. The motion passed 14-3 with Reps. Sales, Campbell, and Phillips voting no, and Rep. Jenkins abstaining. Rep. Mercer will be requested to carry the bill.

DISPOSITION OF SENATE BILL NO. 264: Rep. O'Connell moved the bill BE CONCURRED IN, seconded by Rep. Pistoria. The motion passed unanimously (18-0). Rep. Whalen volunteered to carry the bill.

ADJOURNMENT: There being no further business to come before the committee, the meeting adjourned at 11:10 a.m.



Walter R. Sales, Chairman

DAILY ROLL CALL

State Administration COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date 3-5-87

NAME	PRESENT	ABSENT	EXCUSED
Walt Sales	✓		
John Phillips	✓		
Bud Campbell	✓		
Dorothy Cody	✓		
Duane Compton	✓		
Gene DeMars	✓		
Harry Fritz	✓		
Harriet Hayne	✓		
Gay Holliday	✓		
Loren Jenkins	✓		
Janet Moore		✓	
Richard Nelson	✓		
Helen O'Connell	✓		
Mary Lou Peterson		✓	
Paul Pistoria	✓		
Rande Roth	✓		
Tonia Stratford	✓		
Timothy Whalen	✓		

STANDING COMMITTEE REPORT

March 5

19 37

Mr. Speaker: We, the committee on STATE ADMINISTRATION

report Senate Bill No. 123

do pass

do not pass

be concurred in

be not concurred in

as amended

statement of intent attached

Walter R. Sales

Chairman

REGISTER OF CANDIDATES OPTIONAL

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STANDING COMMITTEE REPORT

March 5

19³⁷

Mr. Speaker: We, the committee on STATE ADMINISTRATION

report SENATE BILL 124

do pass
 do not pass

be concurred in
 be not concurred in

as amended
 statement of intent attached

Walter R. Sales

Chairman

POST ELECTION RETURNS AT PLACE OF COUNTING PAPER TORN AT POLLING PLACE

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STANDING COMMITTEE REPORT

March 5

19 87

Mr. Speaker: We, the committee on STATE ADMINISTRATION

report SENATE BILL 161

- do pass
- do not pass

- be concurred in
- be not concurred in

- as amended
- statement of intent attached

Walter R. Sales

Chairman

REPEAL SUNSET PROVISION OF TWO SUPREME COURT ASSOCIATE JUSTICE POSITIONS

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STANDING COMMITTEE REPORT

March 5

19 87

Mr. Speaker: We, the committee on STATE ADMINISTRATION

report SENATE BILL 264

do pass
 do not pass

be concurred in
 be not concurred in

as amended
 statement of intent attached

Walter R. Sales

Chairman

GOVERNMENTAL SETTLEMENT AGREEMENTS SUBJECT TO PUBLIC INSPECTION

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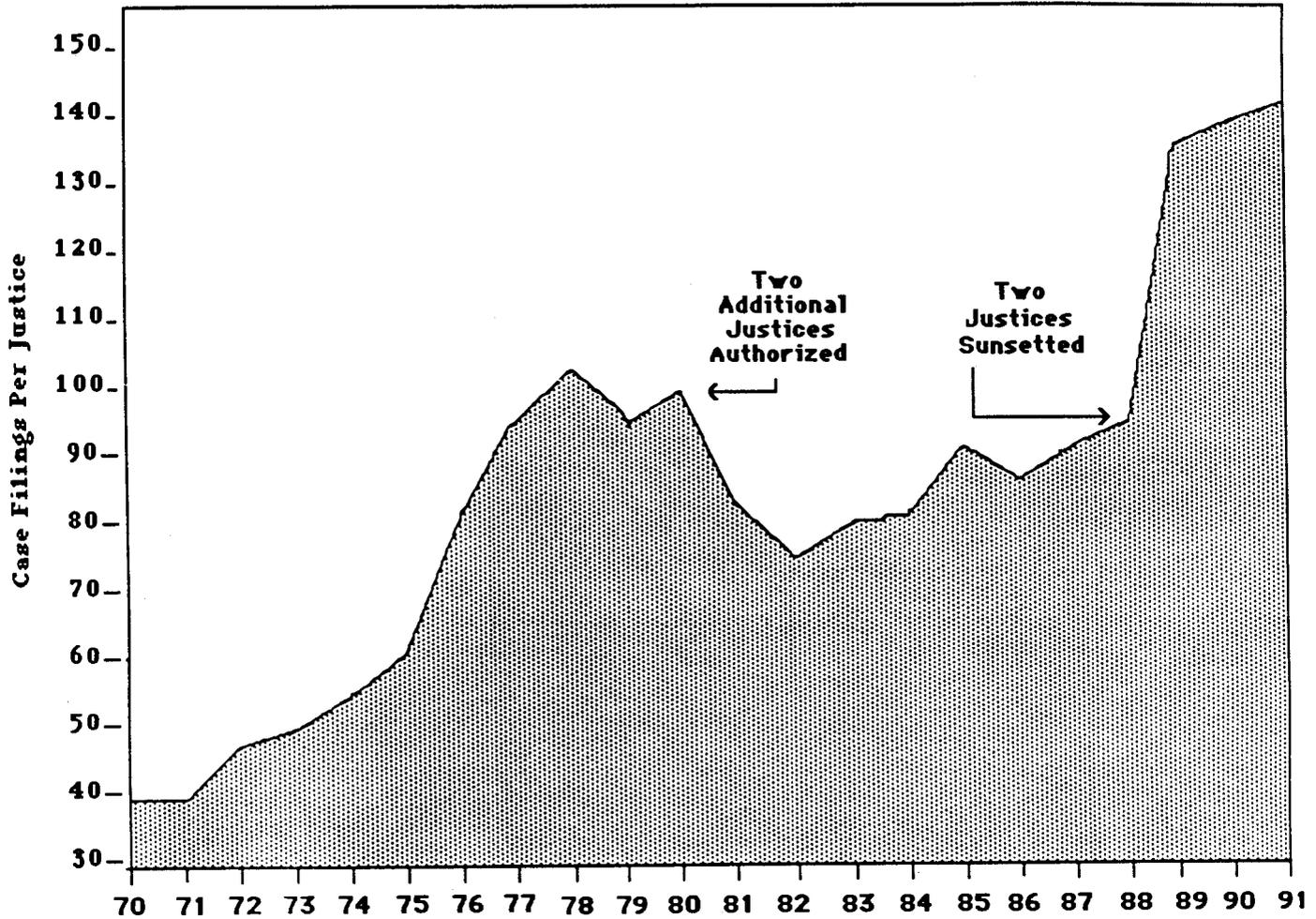
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3-5-87

SB 161

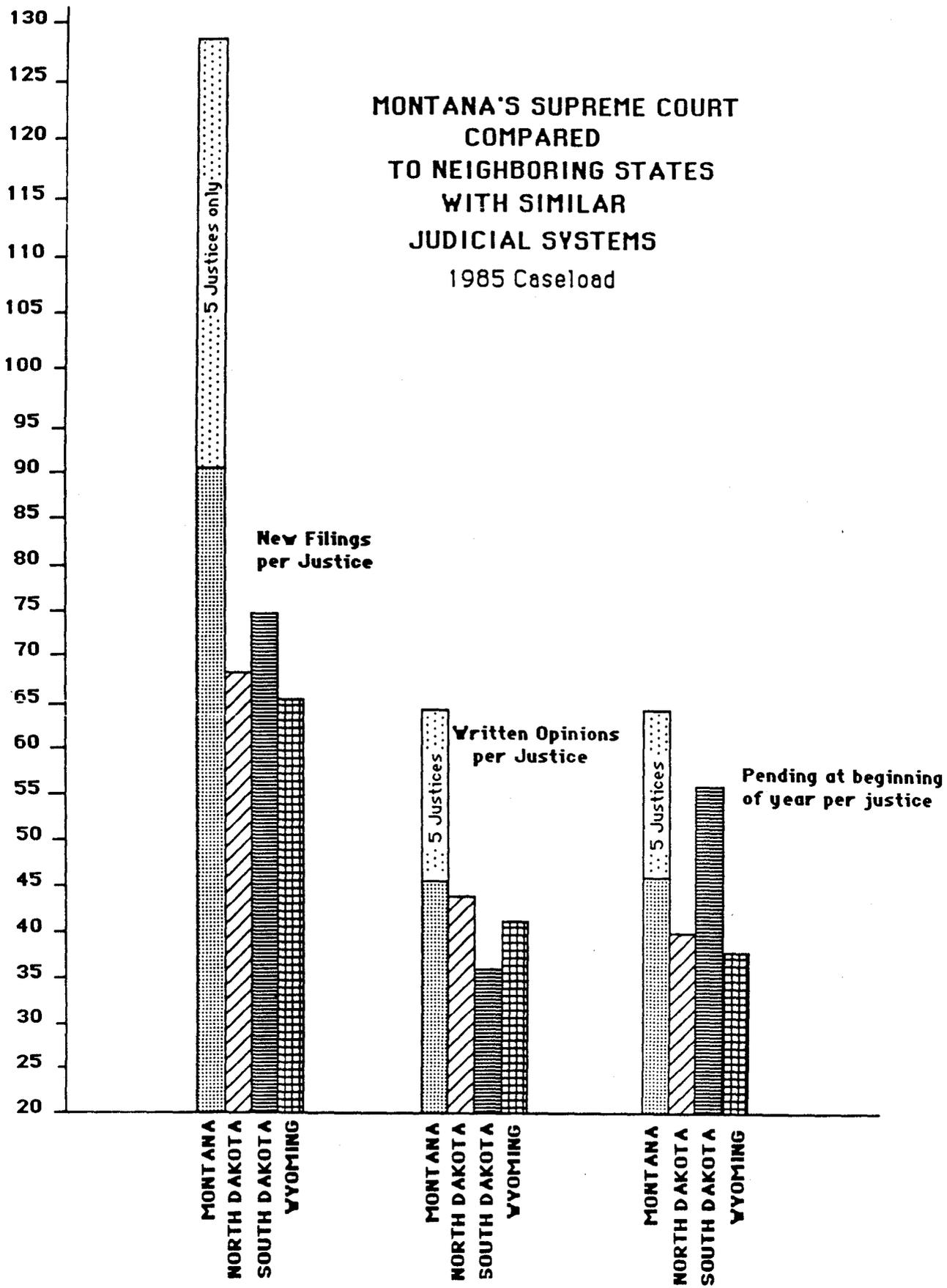
MONTANA SUPREME COURT

ACTUAL AND PROJECTED CASE FILINGS PER JUSTICE 1970 TO 1991



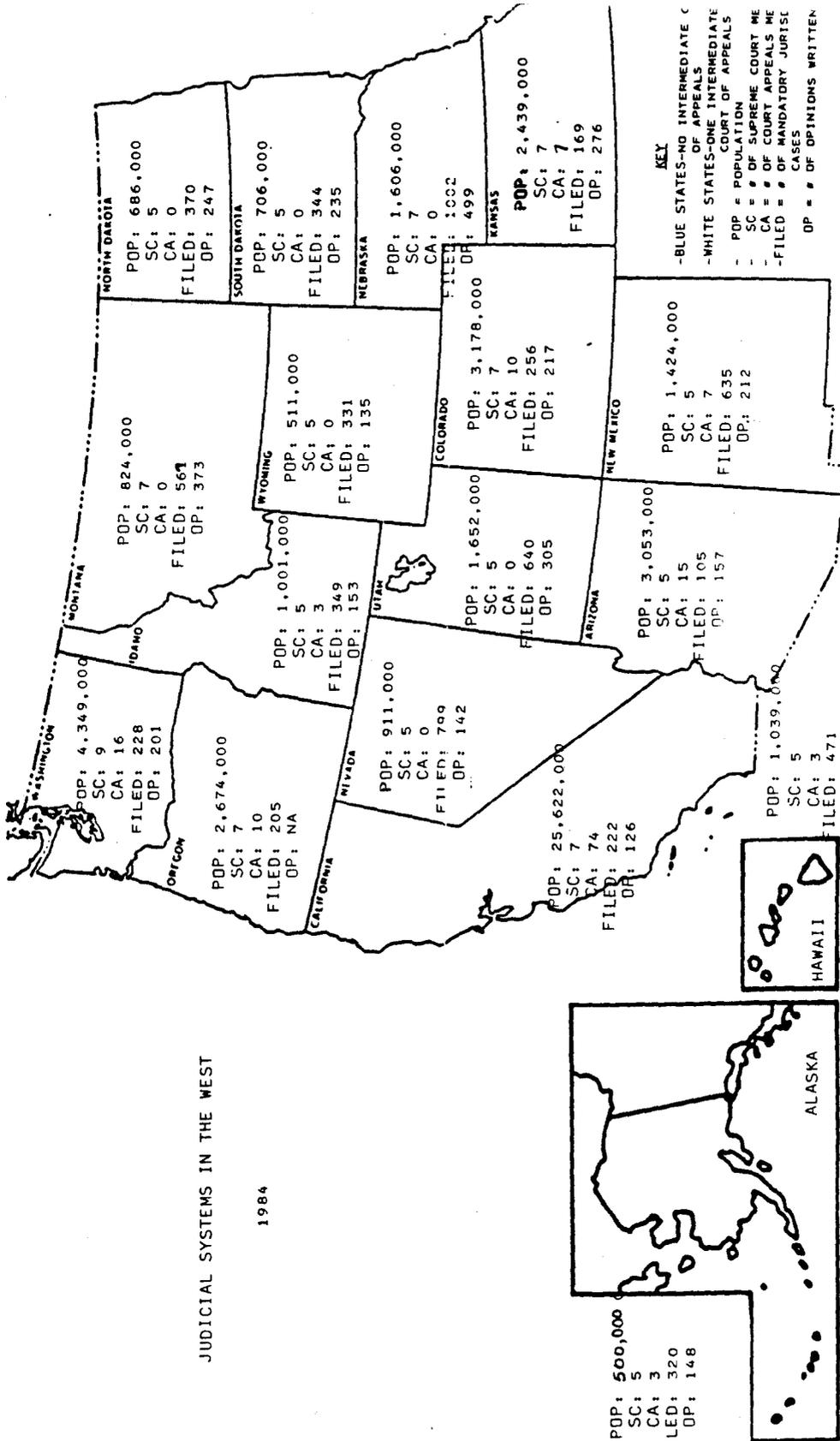
PROJECTIONS PAST 1986 ARE ESTIMATES DONE BY THE
NATIONAL CENTER FOR STATE COURTS, WILLIAMSBURG, VA.

**MONTANA'S SUPREME COURT
 COMPARED
 TO NEIGHBORING STATES
 WITH SIMILAR
 JUDICIAL SYSTEMS
 1985 Caseload**



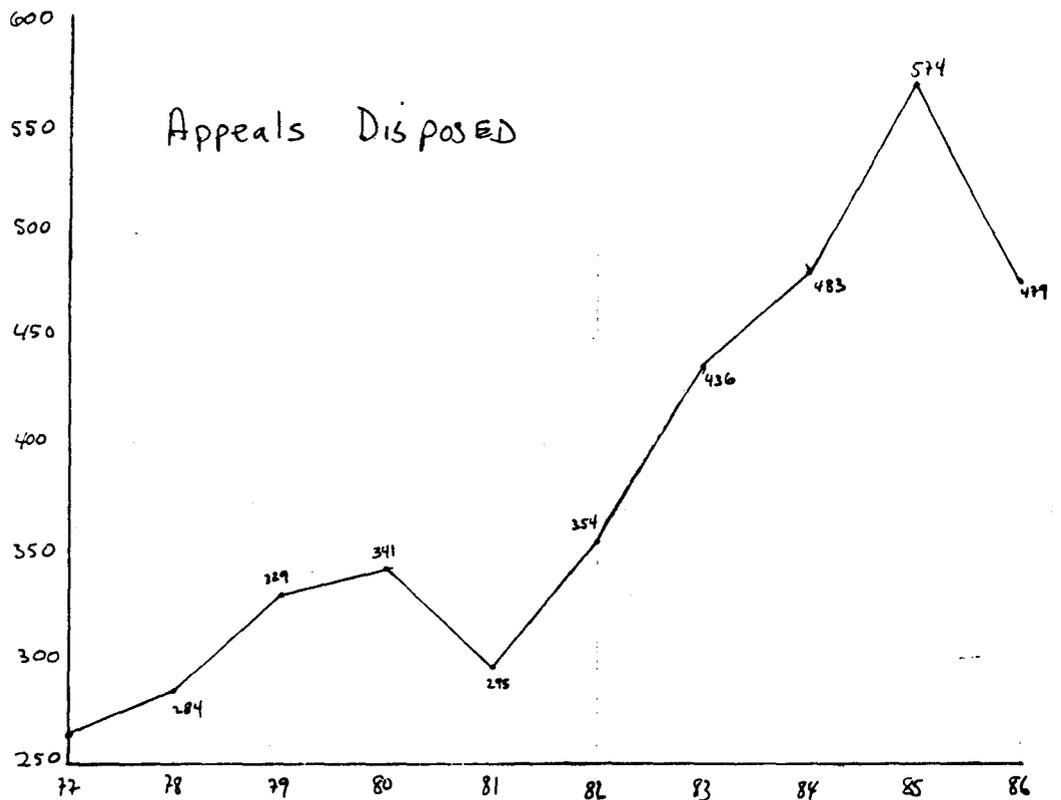
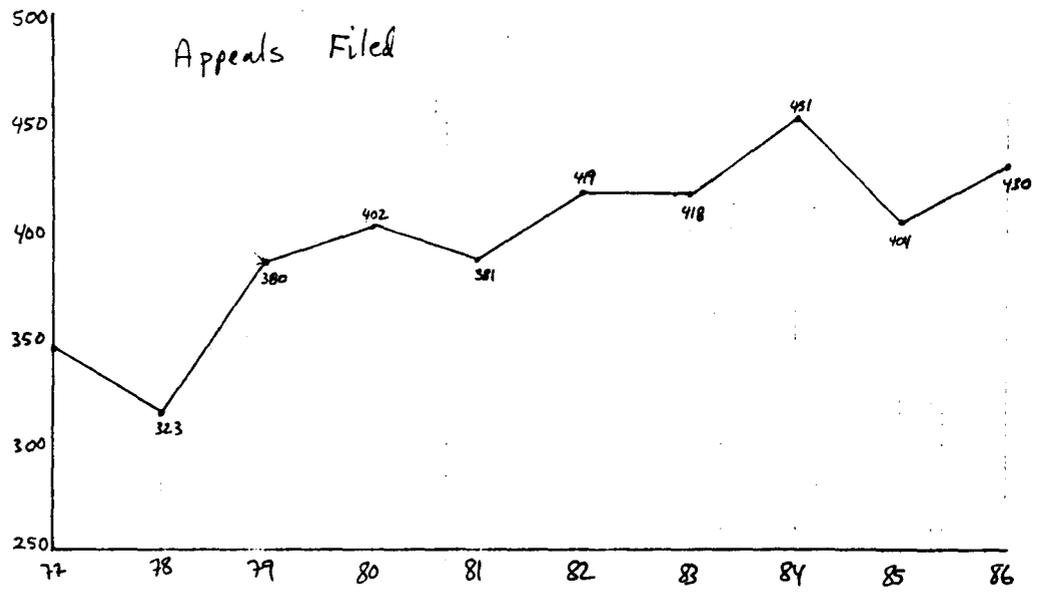
JUDICIAL SYSTEMS IN THE WEST

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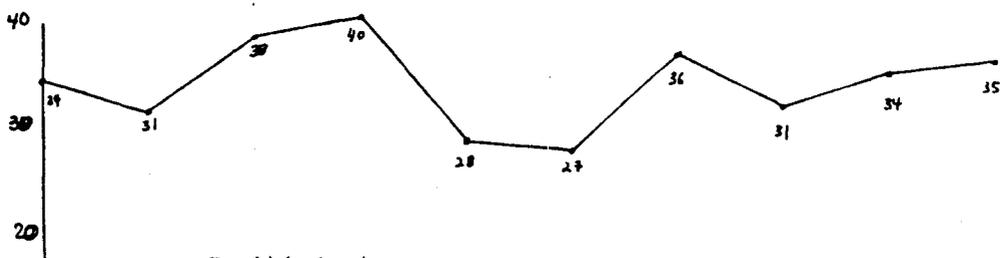
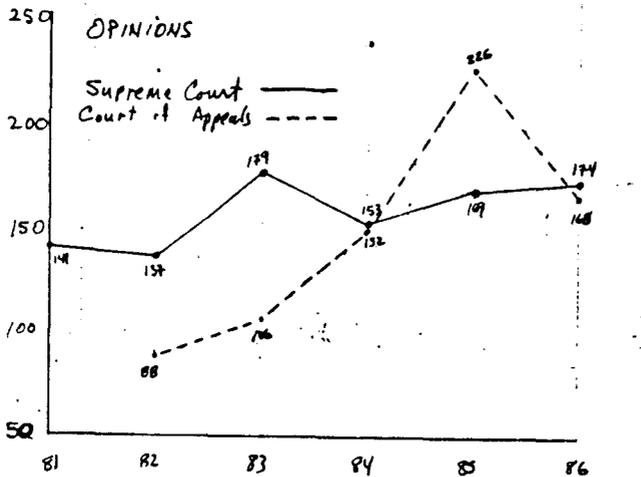
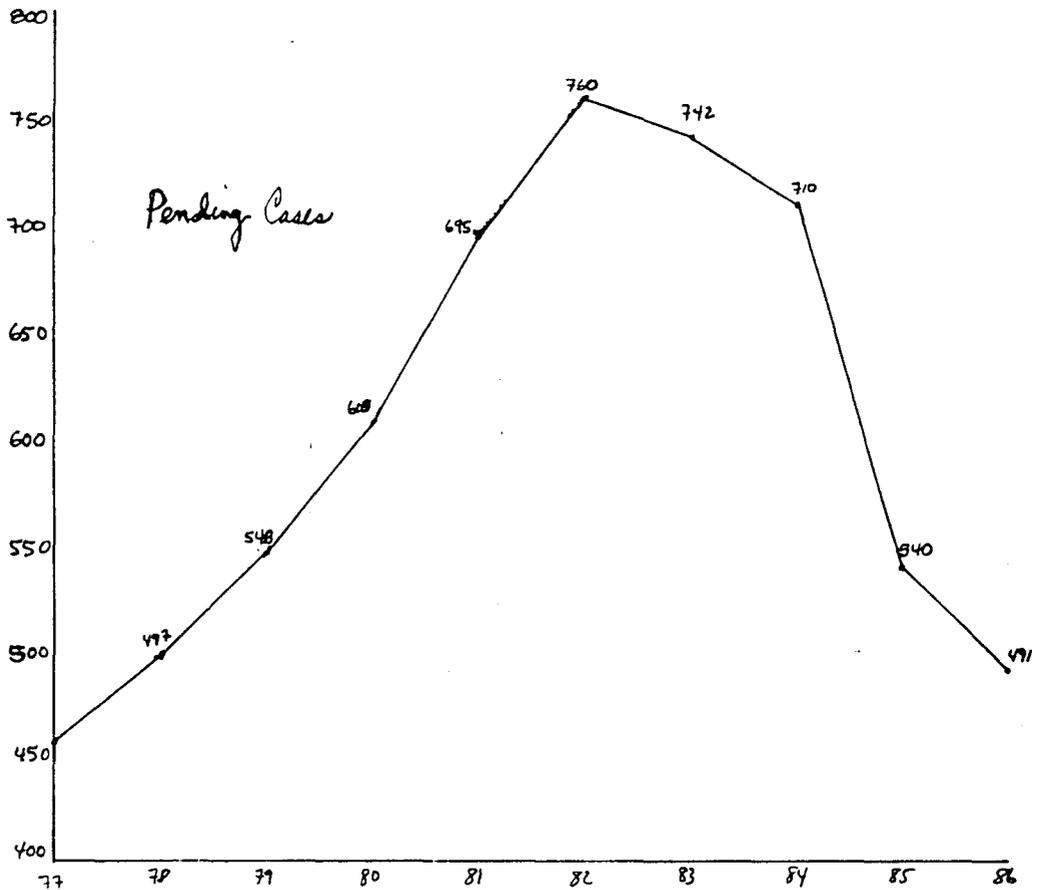


STATE COURT CASELOAD: ANNUAL REPORT, 1984
 SOURCE: NATIONAL CENTER FOR STATE COURTS (WILLIAMSBURG, VA.: 1986)

IDAHO SUPREME COURT ½ COURT OF APPEALS



IDAHO (Continued)



MONTANA SUPREME COURT CASELOAD

	<u>FILINGS</u>	<u>STILL ACTIVE</u>	<u>OPINIONS</u>
1991	712		
1990	694		
1989	675		
1988	657		
1987	639		
-----*PROJECTED-----			
1986	602	379	374
1985	639	320	322
1984	567	251	373
1983	561	330	285
1982	522	350	313
1981	574	357	298
1980	490	369	292
1979	481	375	323
1978	516	350	269
1977	469	303	255
1976	408	207	210
1975	301	191	210
1974	265	150	153
1973	243	174	195
1972	230	135	147
1971	198	146	149
1970	194	110	130

* Projections are those made by the National Center for State Courts, Williamsburg, Virginia, using the period from 1976 to 1986.

MONTANA: CASELOAD PER JUSTICE

	<u>FILING PER JUSTICE</u>	<u>STILL ACTIVE PER JUSTICE</u>	<u>OPINIONS PER JUSTICE</u>	
5 Justices	1991	142	81	
	1990	139	79	
	1989	135	77	
5 Justices	1988	94	53	
	1987	91	52	
-----PROJECTED-----				
7 Justices	1986	86	54	53
	1985	91	46	46
	1984	81	35	53
	1983	80	47	40
	1982	75	50	44
	1981	82	51	43
	1980	98	53	42
5 Justices	1979	96	75	65
	1978	103	70	54
	1977	94	61	51
	1976	81	41	42
	1975	60	38	42
	1974	53	30	30
	1973	49	35	39
	1972	46	27	29
	1971	39	29	30
	1970	39	22	26

EXHIBIT # 2
EXHIBIT
DATE 3-5-87
DATE
SB 161

WITNESS STATEMENT

NAME Margaret S Davis BILL NO. SB 161
ADDRESS 874 Florence Helena MT DATE 5 Mar 87
WHOM DO YOU REPRESENT? League of Women Voters
SUPPORT X U OPPOSE U AMEND U

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

The League supports effective, timely administration of justice. Justice delayed is justice denied. Adequate personnel includes an adequate number of justices and the flexibility to allocate cases to panels of less than the full Supreme Court.

The League position on the judicial system in Montana was arrived at in the early 70's. It is important to note that at that time the statistical information that supports the need for a seven member court was not available. In terms of getting a handle on court administration matters, Montana is just getting started. Citizen confidence in the third branch of government is keyed to how this branch of government is regarded by the other 2 branches. It is not a matter now are perhaps more

well aware than others of the necessity
for reasoned, thoughtful judicial opinions
on legal questions arising out of new
~~principles~~ laws and interpretations
of the statutes or the constitution.

EXHIBIT #3
DATE 3-5-87
SB 264

SENATE BILL #264

HIMSL

SETTLEMENTS ARE PUBLIC RECORD

Senate Bill #264 deals only with public sector, compromise or settlement of claims against the state and compromises or settlements of claims against political subdivisions, such as counties, cities and school districts.

When claims are settled by some court action, the settlements are public but when agreements are reached by compromise or negotiation, the public has no way of knowing yet pays the insurance bill that compensates the winner.

It has become not only fashionable but profitable to sue; the action makes the headlines -- then time drifts on -- eventually there is an announcement of a settlement but no one knows what it is. The public - the taxpayer has a right to know.

Our county business manager responded to questions on liability settlements that such information was confidential! I know of several cases where the press could not get the information.

Some of these tort claims against the state are of significant amounts. In the period from 1976 to Feb. 1986, the Dept. of Administration paid \$6,459,769 in settlements.

Individual agencies settled 51 claims for \$796,700. One claim was for over \$500,000.

This bill does not require publishing the terms or conditions of settlement but make them a matter of public record available for inspection.

Surely this is a reasonable, sensible, and forthright requirement for all stewards of the public trust and I respectfully ask for your support for a "do pass" recommendation on Senate Bill #264.

*Gov't has no right of privacy!
Justice may be blind but
ought not play hide and seek*

WITNESS STATEMENT

NAME George W. Woods BILL NO. SB 264
ADDRESS 1900 N. Main, Suite 2 DATE 3/5/07
WHOM DO YOU REPRESENT? Int. Press Assn.
SUPPORT X OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

VISITORS' REGISTER

STATE ADMINISTRATION COMMITTEE

BILL NO. SB 161

DATE 3-5-87

SPONSOR _____

NAME (please print)	REPRESENTING	SUPPORT	OPPOSE
<i>J. A. Turney</i>	<i>Supreme Ct</i>	✓	
<i>Fred W. Baker</i>	<i>Supreme Court</i>	✓	
<i>Jim Appelbalt</i>	<i>Supreme Ct Admin</i>	✓	
<i>George H. Galt</i>	<i>State Bar of Mont</i>	✓	
<i>Karl W. Winters</i>	<i>Self</i>	✓	
<i>Margaret Strain</i>	<i>League of Women Voters</i>	✓	
<i>HELE Brown</i>	<i>Self</i>	✓	
<i>Pat Melby</i>	<i>State Bar of Montana</i>	✓	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM
PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

