

MINUTES OF THE MEETING OF THE APPROPRIATIONS SUBCOMMITTEE ON
ELECTED OFFICIALS AND HIGHWAYS
January 13, 1983

(Tape 10, Side A
and Tape 11)

The Appropriations Subcommittee on Elected Officials and Highways met at 9:00 a.m. on January 13, 1983 in Room 437 with Chairman Quilici presiding. The following members were present:

Chairman Quilici
Rep. Connelly
Rep. Lory

Senator Dover
Senator Stimatz

Also present: Cliff Roessner, LFA, and JanDee May, OBPP.
Representing the Department of Justice: Attorney General Mike Greely, Fritz Behr and Herb Bruning.

HEARINGS

DEPARTMENT OF JUSTICE

Attorney General Greely addressed the committee. He told the committee of the anti-crime package. In June of 1981 the Criminal Justice System got together and looked over the needs, wants and deficiencies in the Criminal Justice System in the State of Montana. They came up with 550 suggestions for improving the system. The Board of Crime Control took those suggestions, put them in identifiable categories and put together a task force. It was broken into 15 subject areas, such as criminal information, criminal investigation, criminal intelligence information, improvements of jails, improvements in the judicial system, etc. As a result of this, certain pieces of legislation were presented to the Board of Crime Control during the first part of December. Approximately 30 members of the Legislature met to listen to the presentation of those programs. As a result, an anti-crime package has been introduced by Senator Hazelbaker in the Senate and Rex Manuel in the House. These bills will, in some respects, affect the Dept. of Justice's budget. However, these bills will be presented before the full Appropriations Committee. The Attorney General wanted this committee to be aware that these bills would have some effect on his budget.

One of the items involved in this package would be a fingerprint machine which would be purchased and maintained by the Identification Bureau. This machine would cost \$1 million, and the maintenance for this machine would be \$100,000 each year.

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The second bill sponsored by the Criminal Justice System through the Crime Caucus would be a bill to enhance Montana's abilities to handle narcotics, fencing and stolen property matters. This would involve the hiring of additional FTE's for the Criminal Investigation Bureau to do covert activities (long-term undercover investigation activities). The Department of Justice supports both of these programs but also recognizes the problem of availability of funds. The Attorney General said the bills would be introduced on their own merits. However, he wanted the committee to be aware of these matters for the committee's attention and discussion because they do involve a considerable amount of money. He also noted that their budgets were submitted before this anti-crime legislation package.

In answer to a question from Senator Dover, Mr. Greely said the bill, as it is coming in, is asking for 14 FTE's for the covert operation. It has covert criminal investigators, special agents, one or two supervisors and one or two secretaries. If this passed, it would go as a section in the Criminal Investigation Bureau.

He also explained that they cannot identify an unidentified print at the present time without manually going through all the files, which is next to impossible. The machine would be a dramatic improvement of modern technology in the criminal investigation area. He also said that if they had this machine they would have all the fingerprints of known or suspected criminals in the state on that machine.

Mr. Herb Bruning, Bureau Chief of the Identification Bureau was introduced to the committee.

Identification Bureau (123) (Exhibit 1)

Mr. Bruning told the committee that the Identification Bureau's objective is that of maintaining a complete state identification system, collecting, processing, preserving and disseminating criminal history, record information for law enforcement agencies within the state, and cooperating with identification bureaus in other states and the FBI, to develop and carry on a complete interstate and international system of criminal identification and investigation and to maintain a latent print service for law enforcement agencies within the state.

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During the last legislative session the ID Bureau projected a 45% increase in fingerprint card receipts. During FY82 and FY83 the actual increase they realized was 44.6%. In 1980 they had received 6,679 cards and in calendar year 1982 they received 9,164 cards. The latest service noted a similar increase over the biennium of 41.8%. They were able to handle these increases because the resources necessary to do so were appropriated to them during the last legislative session. At the present time they are asking for appropriations at current level. They are not asking for any modifications. The ID Bureau presently has 7 FTE's. Mr. Bruning explained that, in addition to his administrative duties, he also assists the latent examiner in doing some latent identification work, also crime scene work, and he does teaching for the Law Enforcement Academy or any other agencies within the state that want identification training. He has one latent examiner, two fingerprint technicians who classify incoming cards and three clerks who do manual entry into the filing system. During calendar year 1982 the ID Bureau was called to 40 crime scenes.

In answer to a question from Senator Stimatz, Mr. Bruning explained how the training schedules are set up. In answer to a question by Senator Stimatz, Mr. Behr explained the difference between manual fingerprinting on cards which are processed and the latent prints which are prints lifted at the scene of the crime (one print, a partial print, left by unknown people). He explained that Mr. Bruning was one of only three experts in the State of Montana who are recognized by the courts in dealing with latent prints. Mr. Behr explained to the committee that in addition to Mr. Bruning's training program he is also called upon to appear in court as an expert witness.

In answer to a question by the Chairman, Mr. Bruning explained that "Contracted Services" includes costs to the automation systems such as accessing the host computer, insurance and bonds, printing, photo service, consultant and professional services.

The Chairman asked JanDee May the reason for the difference between the Executive Budget and the LFA. She said they should finish the automation this year so next year they should be going into full automation costs. They requested approximately \$29,000 as opposed to \$24,000. It is anybody's guess. The

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OBPP took the conservative side. Mr. Bruning told Senator Dover, in answer to a question, that Data Processing had come up with the figure that the LFA is using.

In answer to a question by Rep. Lory, Mr. Bruning explained that the expense under "Supplies" included a new method in developing latent prints. They use Super Glue to develop prints on plastic bags. This process hasn't been used in the past. The tubes of Super Glue are very expensive.

Crime Investigation Bureau

Gary Carrell, Chief of the Montana Criminal Investigation Bureau, addressed the committee. (335) (Exhibits 2 - 6)

The Criminal Investigation Bureau consisted of three investigators in 1978. Since that time their caseload has increased approximately 375%. They received 83 requests for assistance in 1978, and in 1982 they received 314 requests for assistance. Today there are still only three agents assigned to that bureau, funded by the state general fund, capable of responding to the request of any city, county, state or federal law enforcement agency in Montana to assist with investigation of felony crimes.

This bureau does not have a secretary of its own. Mr. Carrell told the committee that they do not have enough agents or clerical help to respond to all the requests for assistance. During the past two calendar years the three agents have completed 79 major cases. Mr. Carrell told the committee of two major cases in Montana which required a great deal of time and travel.

This bureau received 524 requests for assistance in calendar years 1981 and 1982. They received 213 requests in 1981 and 314 requests in 1982 which shows a 47% increase in total volume in just one year. They have had to turn down approximately 90% of the requests, particularly drug-related requests, for undercover assistance and it has been necessary for them to limit their time spent on some other cases.

(Exhibit 2) Under "Personal Services" this will be worked out by the LFA and OBPP. Under "Contracted Services" Mr. Carrell recommended that \$626 be appropriated for FY84 and \$628 be appropriated for FY85. That money is spent for automobile insurance and bonds.

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Mr. Roessner explained the difference between the LFA's figures and the agency's figures under "Contracted Services." This is another program where vacancy savings funds were used to fund expenditures other than "Personal Services." The LFA's philosophy is that "Operating Expenses" are reduced by a like amount, (to bring this to the committee for discussion) as the committee appropriated money for "Personal Services" and not for "Operating Expenses." Rather than pro-rate the amount throughout the categories under "Operating Expenses", the LFA put it all in one category, thinking the committee would want to put that back into the base. Mr. Carrell said that rather than cut services or put in for a supplemental, they decided to go ahead and spend the money in "Personal Services."

Mr. Roessner explained that this program did revert to the general fund. Mr. Carrell said it was hard to predict travel expenses for this program because in the last biennium they did have to go long distances. They never know from year to year just what demands will be made on their travel budget. (Exhibits 4 through 6 were distributed to the committee.) In answer to a question from the Chairman, Mr. Carrell said that all three agents are now stationed in Helena.

Budget Modification (Exhibit 3)

Mr. Carrell distributed to the committee the Budget Modification for two general criminal investigators and a secretary, funded by the general fund for \$89,165 for FY84 and \$94,600 for FY85. Mr. Carrell referred to Exhibits 5 and 6. Mr. Carrell showed the committee Exhibit 5 which is a result of a survey completed by the Board of Crime Control in June 1982 which documents the need for additional investigators. Exhibit 6 is a comparison of state investigation bureaus in contiguous rural states (Idaho, South Dakota, North Dakota and Wyoming). Mr. Carrell concluded that three investigators cannot begin to address the problem in Montana.

(Tape 11, Side A, beginning at step 62) (Inadvertently over-recorded from 1 through 62--end of Indian Jurisdictional Project discussion.)

After some discussion Mr. Carrell said that it would take about six weeks to recruit, interview and hire investigators.

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Senator Van Valkenburg asked if there was another .5 secretarial position within the department that could be utilized for the additional investigators (if they were requested and approved) rather than adding another full FTE. This would raise them to the level of the other states with regard to secretarial ratios and not go beyond that with a full-time secretary for this purpose.

Mr. Behr replied that his secretary has been functioning as a part-time secretary for this bureau. This creates a tremendous backlog among the criminal investigative reports and also a backlog in the Division correspondence and reports. Mr. Behr said what he would envision would be a full-time secretary for the Investigative Bureau and then he would have his secretary back to keep up the work of the Division and they could become current. Mr. Carrell would end up with one secretary and Mr. Behr could have his secretary back full-time. Mr. Driscoll replied that there are times when the Legal Division can do some work for this bureau, but their pool is overworked and they cannot do this on a regular basis. They have not been able to identify other secretarial help within the Department.

Senator Van Valkenburg asked about the department submitting a budget amendment which enabled it to utilize coal tax funds to put on an undercover investigation operation in the eastern coal counties. The Department brought this to the Finance Committee and made this presentation. Senator Van Valkenburg's question was whether Mr. Carrell provides administrative supervision of this operation and if they also provide clerical support. Mr. Carrell replied that he did supervise the people in Hardin. There is one supervisor in Hardin, three agents and one secretary all located in Hardin. Mr. Carrell added that none of his salary is paid by the Coal Board.

Mr. Carrell explained Exhibit 4 to the committee which details this five-county operation. Mr. Carrell requested authority to continue to use Coal Board funds for this purpose.

The Eastern Coal Counties Task Force encompasses five eastern counties: Yellowstone, Big Horn, Powder River, Rosebud and Treasure. Mr. Carrell gave the committee background information on this Special Investigation Section which is detailed in Exhibit 4. Mr. Carrell requested that the committee grant

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authority to expend Coal Board funds in the amount of \$221,011 in FY84 and \$240,337 in FY85. Mr. Carrell pointed out the difference in the operations of the staff in Helena and the project in Hardin detailed on page 2 of Exhibit 4.

In answer to a question by Senator Van Valkenburg, JanDee May explained that this is the first biennium that the Governor has requested that the analysts do not review the modifications for elected officials.

It was noted that a portion of Mr. Carrell's administrative time was part of the match for the grant.

Jim Sekora, County Attorney for Big Horn County, gave the committee some background material on the grant and its application. The five counties have entered into an agreement with the Department of Justice. Their money was given to the Department of Justice and funneled through them. They got the agents and were paid through the department.

Mr. Sekora said that the counties picked up 20% and the coal board is furnishing 80% of the funding. The exception is that Treasure County had nothing so the other counties picked up that county's proportional share. This is for a three-year period.

Senator Van Valkenburg suggested that since Mr. Carrell is spending a large percentage of his time on this special project and that the Legislature might want his salary expenses to reflect money expended from "other funds" rather than a 100% general fund appropriation.

Attorney General Greely said that these counties are entitled as much as other counties to Mr. Carrell's services even though this is admittedly a special project. The Attorney General felt there was not a disparity in the services Mr. Carrell renders to any county requesting his services.

Senator Van Valkenburg said that since Mr. Carrell cannot respond to all requests for assistance and has told the committee that he cannot respond to all requests, the five-county area is receiving preference for his services by the fact that his salary reflects that he spent 25 to 30 percent of his time on this special project. He felt these five counties are receiving preferential treatment because of the special project and the bureau's commitment to it.

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The Attorney General pointed out that the counties are paying for the entire operation except for that portion of Mr. Carrell's salary. He said that Mr. Carrell, now that the project is operating, supervises the supervisor in that area, and if the project hadn't been started he would have been spending much more time in those counties than he is under the current project.

Senator Van Valkenburg said he would like to know the state's liability in the shooting and death of the person involved in this activity and what control, if any, are in place now to avoid a reoccurrence.

Mr. Sekora said they have written policies which are similar to all investigators. (Tape 11, Side B)

The Chairman noted that the committee has another hearing scheduled and that this subject could continue in the subsequent work session. Attorney General Greely said he would talk with Senator Van Valkenburg and the subcommittee about this incident and would provide any answers to questions the committee has regarding this incident.

Mr. Carrell told the committee that they have a federal grant that ends January 31, 1983. They don't know if or when they will receive additional federal funds. If they do receive additional funds they will have to request spending authority either from the Legislature or the OBPP.

The committee recessed briefly.

SUPPLEMENTAL

Indian Jurisdiction

Rep. Asay from District 50 gave the committee a little background on the Indian Jurisdiction Project. He said it is extremely difficult for a non-specialist to represent the state in these matters. Therefore, some outside interests have had to be brought in. Most of the expenses are for the Crow Tribe of Indians vs. Montana. (More background information is available in Exhibit 7.) The supplemental funds (\$149,000) will allow the Governor's office to continue to contract with a Billings legal firm to prepare and present the state's side in this case, and will pay for other associated costs.

Dave Wanzenried distributed Exhibit 7 to the committee which contains most of his testimony. There is an unprecedented level and unanticipated level of litigation in the federal court system that was not anticipated. Many of the cases germinated into major cases where the state has had to actively represent itself.

In answer to a question from Senator Van Valkenburg, Mr. Wanzenried said the way the supplemental is presented, it would be a general fund appropriation, but the possibility of using severance tax receipts to cover that portion of these cases can be discussed.

Helena Maclay, one of the contract attorneys working for the Governor, addressed the committee. She has been working on these matters since 1978. She and Ms. Boggs have been working under contract in addition to their private practices. She explained that the cases have germinated in the last year and a half. All of the cases they are involved in they are representing the state as a defendant. It is not possible, for the most part, to ever sue an Indian Tribe. So the state is in the position of having the tribes on Montana's seven Indian reservations pick and choose special issues and litigate those issues to the best of their abilities. The Indian Tribes have all retained sophisticated counsel; they all communicate among themselves and pick and choose the issues. They have set up test cases for Montana. The Crow case was first filed in 1978. During the initial period there were two staff attorneys and two contract attorneys. These staff attorneys were eliminated and the contracted attorneys, who initially worked fewer hours, have had their workload increased in the last year.

History and Significance of the Crow Case:

Ms. Maclay continued: "The case was filed in 1978. In 1979 Judge Battin accepted our arguments that the tax was being paid by Westmoreland Resources on a mine that was off of the Crow Reservation on what is called the ceded strip. Judge Battin accepted the argument that the tax was not being paid by the Crow Tribe; there was no tribe or Indian property being taxed and the tax was legal. At that time there was good case law in the Ninth Circuit Court of Appeals to support that. The Crow Tribe appealed and between the time of filing the appeal and having appeal argued in 1981, before the Ninth Circuit, there have been major changes in the law from the United States Supreme Court.

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The Ninth Circuit Court of Appeals issued its first decision in July of 1981 and there were motions for rehearing which the Ninth Circuit Court of Appeals finally decided in January of 1982. There we lost. The Ninth Circuit said that Judge Battin was wrong; that the State of Montana was taxing in a fashion which had an economic impact on the Tribe (even though the Tribe's property was not really being taxed); and that under the law, as it read the United States Supreme Court Opinions, the State of Montana was required to justify DOLLAR FOR DOLLAR every amount of tax gotten from Westmoreland as contrasted to the services which we render, either to Westmoreland or the Tribe. Nobody reading the Ninth Circuit's Opinion is quite sure of what tests were used.

This is the same kind of case which was involved in Commonwealth Edison where a coal tax was challenged and where the United States Supreme Court said, on the very same tax, that the dollar for dollar justification is an impossible task for the state; that states are entitled to have general revenue taxes and states are not required to do that kind of justification. And so a trial was never required in Commonwealth Edison.

Here, the Ninth Circuit has said, 'Indians are different. And when you are dealing with Indian-owned property we are going to enter into the balance in tax.' Now because the mine is located off the reservation and because that area, for all intents and purposes, is a part of the State of Montana and not subject to the Crow Tribe's jurisdiction, we believe that the state will ultimately prevail, at least with respect to the off-reservation mining. The case does involve the on-reservation tax question also, and we can't give you as good a prognosis on that.

The case involves not only the coal severance tax but the gross proceeds tax which goes all through Big Horn County where the mines currently operate. We have already collected, in severance tax from this mine, approximately \$48 million. We have, since 1976, collected, in gross proceeds taxes, which Big Horn County has collected, approximately \$10 million in gross proceeds tax.

The annual collection from this mine for 1983 is projected at about \$10 million in coal severance tax alone, about \$1.5 million in gross proceeds.

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Because the case was of great import to the state, we filed Petition for Certiorari in April of 1982. Up until that time, I understand that the Indian Jurisdiction Project had adequate funds during the last fiscal year to accomplish all of that. That process of filing something before the U.S. Supreme Court is not only incredibly time-consuming from the point of view of attorneys and other people's time, but just the printing costs are phenomenal. We're required to (Ms. Maclay distributed some examples) file before the Court about 40 copies of this kind of little booklet. For the water cases we ordered enough copies for the interested parties and complied with all the rules."

Ms. Maclay said these booklets or briefs are printed at a specialty printing place which does only this kind of printing. These briefs cost the State of Montana \$8,000. This compares favorably with the same briefs which cost the State of Arizona \$12,000. They are at least cutting the printing costs.

Ms. Maclay said that upon denial of the certiorari in October of 1982 the case comes back to Judge Battin for trial in light of what instructions the Ninth Circuit has given. At that point their workload on other cases had burgeoned to such a point and, with the tasks which the Ninth Circuit is requiring them to apply with the dollar to dollar justification, are so awesome that Ms. Maclay recommended to the Governor's office that they had to employ additional attorneys, preferably in Billings, so there would not be the costs of going to Judge Battin's Court. She said she and Ms. Boggs could not ever do all this work alone. However, most of the lawyers in Billings are representing oil and gas companies who have a real conflict of interest in defending the coal severance tax. They finally ended up with a litigation-oriented firm, Anderson-Brown Law Firm in Billings. In the meantime there was a flurry of activity. The Crow Tribe hired new lawyers and they asked Judge Battin in October to impound the fund the state had been collecting. There was a \$2.5 million severance tax payment due October 31. They had extraordinary problems because Judge Battin wanted to hold the hearing in San Francisco. They convinced him they were entitled to a hearing in Montana and the Crow Tribe backed off of their request. The Tribe then proceeded to amend their complaint. Their new attorneys claimed the Tribe was entitled to a refund of the entire \$58 million. They have moved for impounding the funds, depositing them in Court. They have

succeeded in whittling out an agreement with Westmoreland Resources where Westmoreland now agrees that they will pay the Crow Tribe 30% of the value of the coal, less whatever they have to pay to the state.

Ms. Maclay said that last week, after a full hearing which the Anderson-Brown Firm very capably handled, Judge Battin ruled that the funds are to be put into interest-bearing funds. They are not going now to the State of Montana. The gross proceeds tax is continuing to be paid to Big Horn County. This has not been protested although refund is being requested. Big Horn County's budget is being significantly impacted by that. The state has been the lead counsel on this. Big Horn, Treasure and Yellowstone Counties are defendants in the case also.

Ms. Maclay said that over a period of five years this case is finally coming back to trial and in this fiscal year there had to be funding appropriated somehow to get somebody to defend the case. If the state chooses not to fund the defense of that case, we are very vulnerable to losing it. Ms. Maclay said that she and Ms. Boggs would never be able to handle this case in addition to the others.

Ms. Maclay briefed the committee on other cases pending. (See Exhibit 8.)

In answer to a question from Senator Dover, Ms. Maclay said that the state never recovers any of its court costs in Indian cases.

Mary Jo Murray of the Governor's office said that in FY83 the Indian Jurisdiction Project was only \$65,698. As of today they have committed or spent the entire amount of their appropriation. In addition to that amount the Governor's office Executive Budget has agreed to pick up \$12,900 of what they call immediate costs for some of Ms. Maclay's costs. The remainder would carry this project from January 1 to June 30 of this year. She said Ms. Maclay's fee is \$50 an hour and the other contracted attorney charges \$40. The breakdown for this supplemental request is contained on page 2 of Exhibit 7.

In answer to a question from the Chairman, Ms. Murray said the fee for Mr. Randolph is \$150 an hour, and they do use Agency Legal Services whose fee is \$35.

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Ms. Maclay told the committee that the Indian Tribes have excellent attorneys. In some cases the firms representing them in these cases are nationally famous and prestigious.

Mr. Wanzenried told the committee that they have not overspent at this point. They are asking for the supplemental to carry them to the end of the fiscal year.

In answer to a question from Senator Van Valkenburg, Mr. Wanzenried said that a rough estimate of the amount of money spent on the Crow Tribe of Indians v. Montana from this budget would be about \$90,000.

Senator Van Valkenburg noted that in the last biennium there was an appropriation of about \$500,000 for coal tax defense of coal tax money. That was primarily with respect to the Commonwealth Edison case which was decided in the course of the biennium and there was about \$350,000 of that money that was not expended. Senator Van Valkenburg said that during this period it was his understanding that the Budget Office determined that some of that money could be expended on this Indian Legal Jurisdiction problem which had been general fund-supported during the biennium. The issue came to the Finance Committee by virtue of the Fiscal Analyst's saying that this was an inappropriate utilization of that money. Senator Van Valkenburg said that he thought it was appropriate that this money come from the coal tax severance funds as opposed to general fund support, because this is coal severance tax defense that is involved here.

Mr. Wanzenried said there was a balance left and during FY82 they were going to run short, and they made a request of the Attorney General's office to cover about \$16,000 to \$17,000 of related costs in the Crow coal case which they acceded to. He said the request they are making before this committee, the way the bill is drafted, would be a general fund appropriation. However, Mr. Wanzenried said they wouldn't resist funding from whatever source, but that it does need to be funded.

The committee discussed funding sources.

Mr. Driscoll of the Attorney General's office said that about \$50,000 was reappropriated at the end of the last biennium of the \$350,000 that Senator Van Valkenburg referred to earlier. He said the Attorney General had determined that this was

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appropriate and just wanted the Finance Committee to be aware of it.

The Chairman asked Mona Jamison, legal counsel for the Governor, why the Governor's office is litigating this rather than the Attorney General. Ms. Jamison said the Tribe sues a state agency for example, "Crow Tribe v. State of Montana and Department of Revenue, Ellen Feaver." What happens historically, it goes to the origination of the project, and the agency asks for some consistency in terms of legal representation on these projects where the state is sued.

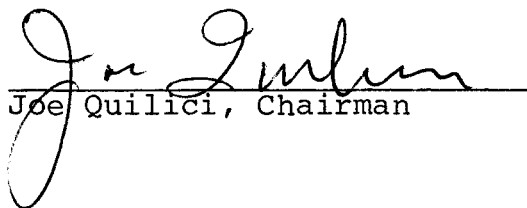
(Tape 11, Side A, inadvertently recorded over prior tape)

Ms. Jamison said there has been much discussion on the project and where it should be placed. In the executive budget it is proposed that this project should be in the Attorney General's office as chief legal officer of the state.

In answer to a question from Rep. Lory, Mr. Wanzenried said that there is roughly \$33,000 remaining in the coal tax account. Mr. Driscoll said he thought there were other expenses in there and the reversion was between \$20,000 and \$25,000. Ms. Cohea told the committee that in the First Special Session the \$300,000 was reverted and released for other programs. It was noted that this was all general fund money.

Helena Maclay, in answer to a question from Senator Keating, gave the committee the history of the ceded strip of land that is the subject of the Crow case. Ms. Maclay concluded that they now have a checkerboard of homestead parcels, some of which contain mineral rights and some which do not.

The meeting adjourned at 11:30 a.m.


Joe Quilici, Chairman

DEPARTMENT OF JUSTICE

PROGRAM: Identification Prog.

CURRENT LEVEL SERVICES

1984 REQUEST

1985 REQUEST

	Agency Request	Exec. Budget	LFA Budget	LFA-Ex Diff.	Agency Request	Exec. Budget	LFA Budget	LFA-Ex Diff.
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F.T.E.

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7.0

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Personal Services

Salaries	113,286	113,286			112,853	112,853		
Employee Ben.	22,875	22,875			23,005	23,005		
Subtotal	136,161	136,161	137,364	1,203	135,858	135,858	137,163	1,305

Operating Expenses

Contracted Svs.	34,392	28,428	34,118	5,690	36,455	30,124	36,162	6,038
Supplies & Mat.	8,088	7,875	7,219	(656)	8,641	8,415	7,688	(727)
Communications	8,448	8,153	8,151	(2)	9,413	9,100	9,097	(3)
Travel	2,634	2,191	2,190	(1)	2,676	2,233	2,232	(1)
Rent	8,063	8,964	8,336	(628)	8,547	9,908	8,835	(1,073)
Utilities	-	-	-	-	-	-	-	-
Rep. & Maint.	6,226	5,364	6,186	822	6,600	5,686	6,555	869
Other Exp.	182	182	177	(5)	193	193	186	(7)
Subtotal	68,033	61,157	66,377	5,220	72,525	65,659	70,755	5,096

Equipment

15,875

11,309

-

-

4,027

4,027

-

Total Program

220,069

208,627

215,050

208,383

205,544

211,945

6,401

Funding

General Fund

220,069

208,627

215,050

208,383

205,544

211,945

6,401

Other funds

TOTAL

220,069

208,627

215,050

208,383

205,544

211,945

6,401

ADJUSTMENTS TO LFA BUDGET RECOMMENDATIONS:

1. Personal Services - To be discussed by Agency/LFA/OBPP representatives. Request no vacancy savings in this small program.
2. Contracted Services - Request LFA contracted services budget since it is based on current projections.
3. Supplies and Materials - Increase LFA FY84 budget \$656. Increase LFA FY85 budget \$727. Gasoline for travel to crime scenes and to testify in court; chemicals.
4. Rent - To be adjusted to meet Department of Administration charges.

CURRENT LEVEL SERVICES

DEPARTMENT OF JUSTICE

PROGRAM: Criminal Investigators 1984 REQUEST

1985 REQUEST

	Agency Request	Exec. Budget	LFA Budget	LFA-Ex Diff.	Agency Request	Exec. Budget	LFA Budget	LFA-Ex Diff.
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F.T.E.

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3.0 3.0

Personal Services

Salaries	77,706	79,704	76,871	(2,833)	77,409	79,399	76,576	(2,823)
Employee Ben.	14,458	11,876	11,240	(636)	14,546	11,965	11,396	(569)
Subtotal	92,164	94,460	90,991	(3,469)	91,955	94,244	90,852	(3,392)

Operating Expenses

Contracted Svs.	661	626	(1,620)	(2,246)	700	628	(1,718)	(2,346)
Supplies & Mat.	5,364	5,109	5,356	247	5,868	5,585	5,856	271
Communications	3,837	3,783	3,829	46	4,194	4,137	4,182	45
Travel	10,543	9,428	9,729	301	10,816	9,666	9,966	300
Rent	7,665	5,996	6,270	274	8,125	6,636	6,646	10
Utilities	-	-	-	-	-	-	-	-
Rep. & Maint.	1,402	984	979	(5)	1,485	1,043	1,033	(10)
Other Exp.	766	766	764	(2)	812	812	809	(3)
Subtotal	19,128	26,692	25,307	(1,385)	16,896	28,507	26,776	(1,733)

Equipment

- - -

-

855

7,165

Total Program

141,530 121,152 116,298

(4,854)

140,851

123,606

125,646

2,040

Funding

General Fund
Other Funding

141,530 121,152 116,298

(4,854)

140,851

123,606

125,646

2,040

TOTAL

141,530 121,152 116,298

(4,854)

140,851

123,606

125,646

2,040

ADJUSTMENTS TO LFA BUDGET RECOMMENDATIONS:

1. Personal Services - To be discussed by Agency/LFA/OBPP representatives.
2. Contracted Services - Appropriate \$626 for FY84. Appropriate \$628 for FY85. Automobile insurance and bonds.

CRIMINAL INVESTIGATION - ADD'L AGENTS
BUDGET MODIFICATION - 1985 BIENNIUM

	<u>FY 84</u>	<u>FY 85</u>
FTE	3.00	3.00
<u>Personal Services:</u>		
Salaries	57,292	57,292
Employee Benefits	<u>9,675</u>	<u>13,196</u>
Total	66,967	70,488
<u>Operating Expense:</u>		
Contracted Services	494	524
Supplies & Materials	7,838	9,148
Communications	2,101	2,317
Travel	7,710	7,825
Rent	2,605	2,761
Repairs & Maint	1,450	1,537
Other Exp	-	-
Total	<u>22,198</u>	<u>24,112</u>
<u>Equipment:</u>		
Total Program:	89,165	94,600
<u>Funding:</u>		
General Fund	89,165	94,600
Other Funds		
Total	<u>89,165</u>	<u>94,600</u>

Narrative:

This modification would add two general criminal investigators to the three who presently comprise the Criminal Investigation Bureau, and would provide a secretary to handle the Bureau's clerical work. The Bureau presently has no secretary and relies on clerical help provided by the Law Enforcement Services Division.

Comments:

STATE
OF
MONTANA
DEPARTMENT OF JUSTICE
CRIMINAL INVESTIGATION BUREAU
303 Roberts, Helena, Montana 59601 (406) 443-2769

Request approved

JUSTIFICATION, CRIMINAL INVESTIGATION BUREAU
5 FTEs

- 1 Supervisor
- 3 Undercover Agents
- 1 Secretary

Several months ago Big Horn County Attorney Jim Seykora contacted MCIB Chief Carrell and asked if MCIB would be interested in hiring and supervising personnel to staff an undercover investigative operation in the "coal impact area" if county officials were able to obtain funding for the operation. I advised Mr. Seykora that MCIB would be interested in assisting them in the matter.

I subsequently attended several meetings in which county attorneys, county commissioners, and local law enforcement officials from all five (5) counties participated.

These five (5) counties drew up a legal document (inter-local agreement) establishing a legal entity called the Eastern Coal Counties Task Force which consists of a Board of Directors (5 members, 1 from each county, appointed by the county commissioners). This document has been filed with the Montana Attorney General and the Montana Secretary of State.

The Eastern Coal Counties Task Force (ECCTF) decided to make application to the Coal Board for funding for the project with the intention of contracting with MCIB to handle the budget and hire and supervise five (5) FTEs (1 Agent Supervisor, 3 undercover investigators, and 1 secretary) necessary to make the project operational. The pre-application hearing of the Coal Board concerning this grant was held on January 22, 1982. The Coal Board voted 6-1 to approve allocating the money for five (5) FTEs to the ECCTF.

On March 16, 1982 the Criminal Investigation Bureau received spending authority from OBPP to expend Coal Board funds provided by ECCTF to hire five (5) FTEs and an operational budget through June 30, 1983 conditioned upon the approval of ECCTF's final application to the Coal Board and a contract between ECCTF and the Department of Justice requesting that the Criminal Investigation Bureau hire and supervise the FTEs. (See attached memo)

The full application hearing concerning this grant was held on March 18, 1982 and approved by the Coal Board unanimously.

An inter-local agreement between the Eastern Coal Counties Task Force (ECCTF) and the Montana Department of Justice was signed on March 12, 1982. (See attached document)

The requested FTEs are functioning as undercover agents whose purpose is to obtain evidence necessary to arrest and convict individuals involved in organized criminal activity (dangerous drug operations, fencing of stolen merchandise, or other criminal activity that normally transcends city and county boundaries) originating in the above described five (5) county area.

As you know, MCIB is also requesting two (2) agent positions and one (1) secretary position during the 1983 legislative session to assist in responding to requests from local, state, and federal law enforcement agencies into the solution of all types of felonies and requests for investigative assistance from the legislative auditor as provided by MCA 44-2-115 and MCA 5-13-204. The five (5) FTEs that work in the coal impact area are performing a different function than those other FTEs being requested at the 1983 legislative session and a different function than those FTEs currently assigned to the CIB office in Helena:

1. The general agents requested during the 1983 legislative session by Department of Justice would be overt (as opposed to covert) investigators. In other words, there would be no attempt to disguise their occupation and they would be free to interview victims, witnesses and suspects in crimes during which it would be necessary to identify themselves.

The agents assigned to the coal impact area are covert (undercover) investigators in which it is necessary to conceal their actual occupation as long as possible.

Obviously, it is next to impossible to do both types of investigation for any length of time without becoming recognized. If a criminal recognizes an individual as a peace officer, he is not likely to solicit his involvement in future crimes he has planned or give him any details of that planned criminal activity.

2. The general agents requested at the 1983 legislative session by Department of Justice would conduct primarily reactive investigations. In other words, they would respond to a request for investigative assistance into a crime that had already been discovered and attempt to prove how it was done and by whom. (Most law enforcement agencies in Montana work reactively).

The agents assigned to the coal impact area primarily conduct proactive investigations. They, in an undercover capacity, attempt to directly discover information about crimes before they are committed so as to either prevent the crime or catch the criminal in the act. (Very few law enforcement agencies in Montana have the time or capability to spend on proactive investigations into drugs, conspiracies, continuing criminal enterprises. It is extremely difficult to do on the local level in a rural area like Montana).

3. The other FTEs requested at the 1983 legislative session by Department of Justice would respond to a request from a local, state, or federal law enforcement agency for investigation of any type of felony or a request from the legislative auditor into an apparent crime discovered as a result of one of their audits.

The FTEs assigned to the coal impact area are limited to investigating organized criminal activity (dangerous drug operations, fencing of stolen merchandise, organized theft rings, etc.).

4. The other FTEs requested at the 1983 legislative session by Department of Justice would respond to requests from any local, state, or federal law enforcement agencies in Montana.

The FTEs requested for the coal impact area are limited to investigating crimes committed in that five (5) county area.

5. The other FTEs requested at the 1983 legislative session by Department of Justice would be based in Helena.

The FTEs assigned to the coal impact area are based in the five (5) county area in south-eastern Montana.

6. The other FTEs requested during the 1983 legislative session by Department of Justice would be paid for by general funds.

FTEs assigned to the coal impact area are funded entirely with coal board funds.

7. The source of the request for the other FTEs during the 1983 legislative session comes from a department of state government (Department of Justice).

The source of the request for the FTEs assigned to the coal impact area ultimately originated within the five (5) counties impacted by coal development.

8. The other additional agents requested by Department of Justice at the 1983 legislative session will not cost the counties any money.

The coal impact counties are contributing approximately 20% matching funds to the coal board grant for the FTEs assigned to the coal impact area.

9. The CIB request to the 1983 legislature for other additional FTEs does not include a request for "buy money/flash money" (needed for covert operations by agents to obtain evidence).

The Coal Board Grant provides for "buy money/flash money".

The Coal Board Grant has been approved for a period of three (3) years (July 1, 1982-June 30, 1985) subject to annual review by the Coal Board.

OFFICE OF THE GOVERNOR
BUDGET AND PROGRAM PLANNING



TED SCHWIDEN GOVERNOR

CAPITOL BUILDING

STATE OF MONTANA

14061449 3616

HELENA MONTANA 59620

March 16, 1982

To: Gary Carroll, Chief
Criminal Investigation Bureau
Department of Justice

From: Teresa Olcott Cohea
Budget and Management Analyst

Re: COAL BOARD APPLICATION

Thank you for your letter of March 11, 1982, enumerating the differences between:

- 1) the ECCLETF application to the Coal Board for undercover agents; and
- 2) the Department of Justice's budget modification request to the 1981 legislature for two general investigators.

Based on the enumerated differences, we will approve a budget amendment for one year if:

- 1) the Coal Board approves ECCLETF's final application; and
- 2) ECCLETF contracts with the Criminal Investigation Bureau to hire and supervise the agents.

The department will, of course, have to seek legislative appropriation for the other two years of the grant.

cc: Dave Lewis

Bob Kuchenbrod

INTERLOCAL AGREEMENT

This agreement is made and entered into between Eastern Coal Counties Task Force, hereinafter called the "Task Force," and the State of Montana, Department of Justice, hereinafter called the "Department", for the purpose of providing assistance by the Department to the Task Force and its member counties. This interlocal agreement during its term is to be considered a request for investigative assistance under section 44-2-115, MCA, by the law enforcement agencies in each Task Force county. The Task Force is the organization of counties created by the interlocal agreement dated October 19, 1981, a copy of which is attached hereto for reference, and designated Appendix "A".

For and in consideration of the mutual covenants and agreements contained herein and pursuant to the Interlocal Cooperation Act of Title 7, Chapter 11, Part 1, MCA it is agreed as follows:

DURATION

This agreement shall remain in full force and effect for three (3) years from the date of its execution by both parties to the agreement or until terminated upon sixty (60) days written notice by either party. This agreement may be renewed by mutual agreement of the parties.

ORGANIZATION

The parties acknowledge and agree that no separate legal entity need be created for the implementation or continuance of this agreement. The Bureau Chief of the State Criminal Investigation Bureau or his

successor is by this agreement, designated Task Force Executive and shall serve as such until termination of this agreement.

PURPOSE

The purpose of this agreement is to provide investigative services to the Task Force to combat organized felony criminal activity occurring in any multi-county area which includes a Task Force member county, and to provide assistance to the Task Force in collecting criminal activity information in southeastern Montana and to provide assistance in coordination and supervision of cooperative law enforcement efforts among the Task Force member counties.

Specifically the Department agrees to provide the services of the Bureau Chief of the State Criminal Investigation Bureau to act as Executive of the Task Force operations. The Task Force shall employ or contract four (4) investigators to act under the supervision and control of the Task Force Executive. Such Task Force Investigators will serve as Special Agents in the Bureau of Criminal Investigation of the Department pursuant to appointment by the Attorney General under section 44-2-112, MCA.

BUDGET AND FINANCE

The services of the Task Force Executive will be provided free of charge to the Task Force by the Department along with other in-kind services, all of which may be used as in-kind match by the Task Force for appropriate grant applications.

The Task Force, acting through its Executive, will employ or contract and compensate Special Agent/Investigators and provide other supportive services to the Task Force Executive and Special Agent/Investigator as specified by the operations budget dated

_____ and attached hereto for reference designated Appendix "B".
The operations budget may from time to time be amended by mutual agreement of the parties.

ADMINISTRATION

Policy shall be determined by the Task Force.

Operational control to effectuate policy shall be the responsibility of the Task Force Executive who shall have authority to hire, supervise and terminate the contractual or employment activities of Special Agent/Investigators, and will exercise that authority in regular consultation with the Department and Task Force Board of Directors consistent with the demands of confidentiality occasioned by on-going operations.

The Task Force Executive shall confer and consult with the Task Force when requested.

PROPERTY

All personal property and equipment provided to the Task Force Executive and Special Agent/Investigators for operations will remain the property of the loaning agency. Upon termination of this agreement such property and equipment will be returned immediately to the agency of origin. Task Force property will be disposed of pursuant to the separate Task Force agreement attached hereto.

DATED this 12th day of March, 1982.

EASTERN COAL COUNTIES TASK FORCE

By: _____

Its _____

Robert J. Brown
President

ATTEST:

Secretary

State of Montana

Department of Justice

By:

Its

Mike Beely

BOARD OF CRIME CONTROL

INVESTIGATIVE SUPPORT SURVEY

JUNE 1982

The following is a list, by type of agency, of need for assistance in order of priority.

SHERIFFS

	%
1. narcotics	73.7%(8)
2. organized criminal activities	46.9%(7)
3. stolen property	40.7%(6)
4. white collar crime	35.4%(7)
5. assistance in crime scene investigation	34.3%(6)
6. gambling	24.3%(6)
7. prostitution	6.2%(7)

POLICE

	%
1. narcotics	94.0%(8)
2. stolen property	76.7%(7)
3. organized criminal activities	59.6%(7)
4. assistance in crime scene investigation	58.4%(6)
5. gambling	55.6%(7)
6. white collar crime	40.4%(7)
7. prostitution	33.3%(7)

COUNTY ATTORNEYS

	%
1. narcotics	84.5%(7)
2. assistance in crime scene investigation	53.5%(6)
3. stolen property	51.1%(6)
4. organized criminal activities	47.6%(7)
5. gambling	46.3%(6)
6. white collar crime	39.6%(7)
7. prostitution	7.2%(5)

FEDERAL

	%
1. narcotics	100.0%(8)
stolen property	100.0%(6)
organized criminal activities	100.0%(8)
white collar crime	100.0%(7)
2. assistance in crime scene investigation	75.0%(7)
3. gambling	50.0%(7)
prostitution	50.0%(6)

ALL AGENCIES COMBINED

	%
1. narcotics	85.4%(8)
2. stolen property	60.2%(6)
3. organized criminal activities	54.0%(7)
4. assistance in crime scene investigation	50.4%(6)
5. gambling	44.4%(7)
6. white collar crime	41.3%(7)
7. prostitution	18.0%(6)

% is the percentage of those surveyed that indicated a need for assistance of 5 or above on the scale of 1 to 8.
() - Average level of need for the percentage indicated.

BOARD OF CRIME CONTROL

INVESTIGATIVE SUPPORT SURVEY

JUNE 1982

<u>TYPE OF AGENCY</u>	<u>POPULATION (in 1,000's)</u>	<u>NARCOTICS</u>	<u>GAMBLING</u>	<u>PROSTITUTION</u>	<u>STOLEN PROPERTY</u>	<u>ORGANIZED CRIMINAL ACTIVITIES</u>	<u>WHITE COLLAR CRIME</u>	<u>ASSISTANCE IN CRIME SCENE INVESTIGATION</u>
Sheriffs	1 - 10	73.8%	30.3%	0.0%	36.9%	40.0%	30.0%	40.9%
"	10 - 25	77.8%	0.0%	0.0%	55.5%	62.5%	50.0%	37.5%
"	25 - UP	66.7%	40.0%	40.0%	40.0%	60.0%	40.0%	16.7%
Police	1 - 5	97.1%	53.1%	25.1%	79.4%	54.6%	35.3%	67.7%
"	5 - 10	83.3%	33.4%	20.0%	83.3%	66.7%	50.0%	50.0%
"	10 - UP	87.5%	87.5%	75.0%	57.1%	75.0%	75.0%	75.0%
County Attorneys	1 - 10	79.4%	38.5%	7.6%	51.9%	37.0%	37.0%	60.7%
"	10 - 25	100.0%	44.4%	10.0%	70.0%	55.5%	30.0%	50.0%
"	25 - UP	83.3%	83.3%	0.0%	16.7%	83.3%	66.7%	16.7%

(Percentage of replies indicating need of 5 and above)

EXHIBIT "A"

[illegible]

BOARD OF CRIME CONTROL
INVESTIGATIVE SUPPORT SURVEY

JUNE 1982

TYPE OF AGENCY	NARCOTICS	GAMBLING	PROSTITUTION	STOLEN PROPERTY	ORGANIZED CRIMINAL ACTIVITIES	WHITE COLLAR CRIME	ASSISTANCE IN CRIME SCENE INVESTIGATION
Sheriff's	73.7% (6)	24.3% (3)	6.2% (2)	40.7% (4)	46.9% (4)	35.4% (3)	34.3% (4)
Chiefs of Police	94.0% (7)	55.6% (5)	33.3% (3)	76.7% (6)	59.6% (5)	40.4% (4)	58.4% (5)
County Attorneys	84.5% (7)	46.3% (4)	7.2% (2)	51.1% (4)	47.6% (4)	39.6% (4)	53.5% (5)
Federal	100.0% (8)	50.0% (5)	50.0% (4)	100.0% (6)	100.0% (8)	100.0% (7)	75.0% (6)
All Agencies Combined	85.4% (7)	44.4% (4)	18.0% (2)	60.2% (5)	54.0% (5)	41.3% (4)	50.4% (4)

% -- Percentage of replies indicating need of 5 or above

() -- Average level of need for assistance on scale of 1 to 8

WOULD SUPPORT LEGISLATION: (All Agencies)	Yes	No	Undecided	WOULD UTILIZE SERVICE: (All Agencies)	Yes	No	Undecided
	76.1%	10.1%	13.8%		81.2%	5.8%	13.0%

- 56 Sheriffs were surveyed with 38 responding for a return of 68%.
- 86 Police Chiefs were surveyed with 49 responding for a return of 57%.
- 56 County Attorneys were surveyed with 46 responding for a return of 82%.
- 5 Federal Agencies were surveyed with 5 responding for a return of 100%.

In total, 203 agencies were surveyed with 138 responding for a return of 68%.

*These would come
use confidential material
to pay*

COMPARISON OF
STATE INVESTIGATION BUREAUS

<u>Rural Contiguous States</u>	<u>Number of Investigators</u>	<u>Investigators Per 100,000 Population</u>	<u>Number of Clerical Support</u>	<u>Clerical Support Per Investigator</u>
*Idaho	40	4.20	9	.23
*South Dakota	21	3.05	4	.19
*North Dakota	26	4.00	6	.23
*Wyoming	<u>16</u>	<u>3.40</u>	<u>4</u>	<u>.25</u>
Average for above States	25.75	3.66	5.75	.23
Montana	3	.40	.5	.167

Projecting the average for the above states against Montana's population indicates we should have 28.5 investigators and 6.5 clerical support to be on a compatible level with our sister states.

*The above states were selected for the comparison because they are contiguous to Montana, geographically similar, rurally populated and have similar enabling legislation.

OCTOBER, 1982

STATE	DUTIES AND POWERS	ORGANIZATIONAL DIFFERENCES	NUMBER OF INVESTIGATORS	NUMBER OF CLERICAL SUPPORT
<p>MONTANA:</p> <p>Population-781,592</p> <p>Area-147,138 sq. mi.</p> <p>Department of Justice</p> <p>Bureau of Criminal Investigation</p>	<ol style="list-style-type: none"> 1. Shall assist local, state, and Federal law enforcement at their request in the investigation of felonies committed in the state. 2. Assist law enforcement schools held in the state when requested. 3. Act as a peace officer, as defined by state law, when assisting other law enforcement agencies. 	N/A	<p>3</p> <p>(.4) investigators per 100,000 population</p>	<p>.5</p> <p>(.167) clerical support per investigator</p>
<p>WYOMING:</p> <p>Population-468,954</p> <p>Area-97,914 sq. mi.</p> <p>Office of the Attorney General-Division of Criminal Investigation.</p>	<ol style="list-style-type: none"> 1. With the approval of the Attorney General may assist upon request any state, county, or local law enforcement agency. 2. With approval of the Attorney General may assist county attorneys in the preparation and prosecution of any criminal case. 3. Shall investigate suspected violations of Wyoming's Controlled Substance Act. 4. Shall investigate organized crime which cuts across jurisdictional boundaries. 5. Agents shall be vested with the power of peace officers in the state with concurrent jurisdiction. 6. Investigate mostly felonies. 	<p>Bureau is divided into a general investigation unit (reactive after the fact) special investigation (Pro-active undercover), crime lab, and intelligence unit.</p>	<p>16</p> <p>(3.4) investigators per 100,000 population.</p>	<p>4</p> <p>(.25) clerical support per investigator.</p>
<p>IDAHO:</p> <p>Population-943,629</p> <p>Area-83,557 sq. mi.</p> <p>Department of Law Enforcement-Investigative Services Bureau</p>	<ol style="list-style-type: none"> 1. Responsible for enforcing all of the penal and regulatory laws of the state and to preserve order. 2. Investigators shall have any and all powers, duties and authority of any sheriff or other peace officers of the state. 3. Investigate Medicaid and welfare fraud. 4. Investigate felonies only. 	<p>Bureau is within the Department of Law Enforcement. Bureau has one main office and five regional offices.</p>	<p>40</p> <p>(4.2) investigators per 100,000 population.</p>	<p>9</p> <p>(.23) clerical support per investigator.</p>

STATE	DUTIES AND POWERS	ORGANIZATIONAL DIFFERENCES	NUMBER OF INVESTIGATORS	NUMBER OF CLERICAL SUPPORT
<p>NORTH DAKOTA:</p> <p>Population-652,437</p> <p>Area-70,665 sq. mi.</p> <p>Office of the Attorney General</p> <p>(A) Drug Enforcement Unit</p> <p>(B) Bureau of Criminal Investigation</p>	<p>(A) 1. Primarily enforces the Controlled Substance Act.</p> <p>2. Assist local law enforcement in other criminal investigations upon request.</p> <p>3. Agents shall have all the power conferred by law upon any peace officer of the state.</p> <p>4. State and local agencies shall cooperate with the Drug Enforcement Unit in the discharge of its responsibilities.</p> <p>(2) 1. To cooperate with and assist Federal, State and local law enforcement in establishing and carrying on a complete system of criminal identification.</p> <p>2. To file for record fingerprints of every incarcerated person suspected of having committed a felony.</p> <p>3. When requested by other law enforcement may assist, aid and cooperate in the investigation and conviction of all persons believed to be guilty of committing a felony within the state.</p> <p>4. To perform such other duties as may be assigned by the Attorney General.</p> <p>5. To provide assistance when requested in conducting police training schools.</p> <p>6. To maintain an identification file of persons convicted of issuing false or fraudulent checks.</p> <p>7. Perform inspection and enforcement duties for the attorney general's licensing department.</p> <p>8. To detect and apprehend persons illegally possessing or disposing of drugs.</p> <p>9. To act as a consumer fraud bureau.</p> <p>10. Investigators shall have all the powers conferred by law upon any peace officer of this state.</p> <p>11. Investigations not limited to felonies.</p>	<p>Separate Bureaus for Criminal Investigation and Drug Enforcement.</p> <p>Drug Enforcement has main office and field office.</p> <p>Has centralized criminal information system.</p>	<p>26</p> <p>(4) investigators per 100,000 population.</p>	<p>6</p> <p>(.23) clerical support per investigator.</p>

STATE	DUTIES AND POWERS	ORGANIZATIONAL DIFFERENCES	NUMBER OF INVESTIGATORS	NUMBER OF CLERICAL SUPPORT
<p>SOUTH DAKOTA:</p> <p>Population-688,217</p> <p>Area-77,047</p> <p>Division of Criminal Investigation</p>	<ol style="list-style-type: none"> 1. To prevent and detect violations of the laws of the state. 2. To apprehend criminals and fugitives. 3. To cooperate with the various sheriffs, constables, policemen and other peace officers in the performance of their duties relating to crime. 4. To cooperate with similar divisions, bureaus, or departments of other states or the federal government. 5. To establish, develop and carry on a system of criminal identification and investigation. 6. To offer assistance and instructions when practicable to local law enforcement in establishing efficient local bureaus of identification. 7. Coordinate and administer the training of all law enforcement officers and peace officers within this state. Intra-departmental training encouraged. 8. To perform such other duties as may be prescribed by law or the orders of the Governor or Attorney General in carrying out an effective plan for the investigation, detection and prevention of crime and apprehension of criminals, fugitives or persons charged with violation of law. 9. Agents shall have, in any part of the state, the same powers with respect to the enforcement of law as sheriffs, constables, police, and peace officers. 10. Investigations are not limited to felonies. 	<p>Organized as a division and includes the functions of law enforcement training, laboratory, statewide communications system, criminal intelligence, and criminal investigation.</p>	<p>21</p> <p>(3.05) investigators per 100,000 population.</p>	<p>4</p> <p>(.19) clerical support per investigator</p>

INDIAN JURISDICTION PROJECT

I. WHAT IS IT?

The Indian jurisdiction project was established to provide the State of Montana with expert legal advice and representation in matters involving Indian law. The Indian law area is so complex and unique that it is extremely difficult for non-specialists to adequately assist and defend the state.

This Indian law resource provided to state agencies has served two primary functions; the first and most significant function is to serve as a litigation unit in the event that the state is named as a defendant in a lawsuit. The litigating attorneys are intimately familiar with both Indian law and federal court practice. The second function is to provide legal advice to state agencies about their routine contacts with Indian reservations. This legal service provides advice to agencies that is useful in avoiding confrontation and litigation.

The project is composed of two contract attorneys, the Chief Counsel, and a staff attorney from the Governor's Office, and an attorney from the Attorney General's office.

The three major cases in which the project has been actively involved and an issue summary of those cases are set forth below:

(1) CROW TRIBE OF INDIANS V. MONTANA

The Crow Tribe is challenging Montana's right to impose the coal severance tax and gross proceeds tax on the Crow Reservation and ceded strip which includes the Westmoreland Resources mining operation. The state collects about \$10 million per year in coal severance tax from this mine and Big Horn County collects about \$1.5 million per year in gross proceeds tax. While this case began in 1978, the costs grew sharply as a result of a U.S. Supreme Court action in October, 1982. The court sent the case back to the federal district court for a full hearing.

On January 6, 1983, the Federal District Court granted the Crow Tribe an injunction enjoining defendants State of Montana and Department of Revenue from taking any action to enforce or collect the Montana coal severance tax from Westmoreland Resources, Inc., to the extent that the tax is imposed on coal produced on the ceded strip. The Court ordered all tax payments to be made to the Court in the interim. Presently, counsel of record are evaluating whether or not to appeal that issue to the Ninth Circuit or proceed to prepare for a trial on the merits.

(2) NORTHERN CHEYENNE TRIBE OF INDIANS V. ADSIT

This case involves seven different suits brought in Federal District Court by the United States and various Indian tribes against the State of Montana and thousands of individual water users within the State. Three suits were filed in 1975, and four more were added in April of 1979. The Jurisdiction Project entered the cases as attorney of record in the 1979 cases, and assumed responsibility for the 1975 cases at the same time. The

Federal District Court dismissed all seven cases on November 29, 1979, in deference to the Montana Water Use Act (Senate Bill 76), and five different appellants appealed to the Ninth Circuit. The Project filed Montana's Appellee Brief on July 24, 1980.

The case was argued on July 15, 1981, and the decision was issued on February 22, 1982. The Court held that Montana could not adjudicate Indian water rights in state courts. The Project has prepared a petition for certiorari in the Supreme Court which was filed on May 24, 1981. This petition for review was granted by the U.S. Supreme Court in October of 1982. The Project filed its brief in November, 1982 and will file another brief in January. The case will probably be argued in March or April of 1983.

(3) THE ASSINIBOINE & SIOUX TRIBES V. MONTANA

This case involves a tribal challenge to Montana's new car sales tax and the motor vehicle property tax. The Jurisdiction Project on behalf of the state made a motion to dismiss or, in the alternative, motion for summary judgment. Plaintiff's made a motion for partial summary judgment. Oral arguments were made on April 30, 1982, in Federal District Court in Great Falls. A decision is pending.

II. Funding for the 1983 Biennium

The Indian Legal Jurisdiction Project's budget for FY 83 was \$65,698. As of today the entire budget has been committed. In addition, the Governor has agreed to pay from his budget, \$12,900 for immediate and necessary expenses including attorneys' fees and printing costs incurred prior to January 1, 1983.

Immediate Costs

Maclay	\$4,000
Printing	8,000
Roth (Namen Case)	900
	<u>\$12,900</u>

Remaining costs of \$136,100 will be incurred in the remaining six months of FY 83.

Jan - June 30.

Maclay	\$26,000
Boggs	11,600
Retained Counsel	
for Crow Coal Case	60,000
Operating Expenses	18,000
Randolph (Adsit)	17,500
Agency Legal Services	<u>3,000</u>

TOTAL	<u>\$ 136,100</u>
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III. Supplemental Request

In order for the state to continue to defend its right to impose the coal severance and gross proceeds tax on the Crow Reservation and ceded strip, a supplemental of \$149,000 is requested.

This supplemental fund will allow the Governor's Office to continue to contract with the retained counsel to prepare and present the state's side in this case and pay other associated costs. The supplemental will also allow the Project to continue its efforts in the cases involving (1) adjudication of Indian water rights (Adsit) and (2) payment of state taxes on reservations such as the new car sales tax (Assiniboine).

Without this additional funding, the state will be unable to continue its defense of these positions.

Exhibit 7.
Jan. 13, 1983

~~BILL~~ DEPT OF JUSTICE:

DATE 7/13/83

~~SPONSOR~~

FD Program
Criminal Investigator

[illegible]

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITOR'S REGISTER

HOUSE

COMMITTEE

BILL Indian Juns-Supplemental Gov's office DATE 1/13/83
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IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

SUMMARY OF ACTIVE IJP CASES

Crow Tribe v. Montana

Issue: May the state impose its severance tax to Crow-owned coal mined by non-Indians on the Crow Reservation and Crow Ceded Strip?

Proceedings to Date: The U.S. District Court in Billings dismissed the case on motion of the state. The Ninth Circuit reversed, sending the case back to district court for trial. The U.S. Supreme Court refused to review the Ninth Circuit's refusal.

Future Proceedings: Trial has been scheduled for January, 1984. The Project's retained counsel, Jerry Anderson and John Ross will be conducting extensive discovery plus trial preparation in the next six months.

Northern Cheyenne v. Adsit

Issue: Whether the state or federal court will adjudicate Indian reserved water rights.

Proceedings to Date: U.S. District Court in Billings plus Great Falls dismissed federal suits filed by U.S. and tribes, thereby deferring to state courts. The Ninth Circuit reversed, holding that the disclaimer clause in Montana's Enabling Act and Constitution bars state jurisdiction and that, even absent disclaimer language, federal courts should not have dismissed. In October, U.S. Supreme Court agreed to review Ninth Circuit decision. Project filed brief in November.

Future Proceedings: Project will file brief in February and argument will be held in March.

Blackfeet Tribe v. Montana

Issue: May the state and counties collect various taxes on oil and gas production occurring on tribal lands within the reservation?

Proceedings to Date: The U.S. District Court in Great Falls held that a 1938 federal statute gave the state jurisdiction to tax. In December, 1982, the Ninth Circuit upheld the decision. The tribe may ask U.S. Supreme Court review.

Future Proceedings: If the Blackfeet ask Supreme Court review, the Project will file brief in opposition. If the Court grants review, the Project will brief other case plus at least attend the argument.

Assiniboine and Sioux Tribes v. Montana

Issue: May the state levy the new car sales tax on Indians who purchase new cars off the reservation?

Proceedings to Date: Project has made plus brief preliminary motions asking U.S. District Court in Great Falls to hold for state without trial. Motions are pending.

Future Proceedings: Possible are almost any combination of trial, appeals to Ninth Circuit and appeal to U.S. Supreme Court.

Confederated Salish and Kootenai Tribes v. Montana

Issue: May state require tribes to file applications for reserved water rights in state adjudication system?

Proceedings to Date: Case has been stayed in district court pending outcome of Adsit in U.S. Supreme Court.

Future Proceedings: Adsit case may resolve the issues disputed in this case.