

MINUTES OF THE MEETING OF THE APPROPRIATIONS SUB-COMMITTEE ON ELECTED OFFICIALS AND HIGHWAYS

January 27, 1983

(Tape 37, Side B,  
Tape 38 and 39)

The Appropriations Sub-committee on Elected Officials and Highways met at 8:00 a.m. on January 27, 1983 in Room 437 with Chairman Quilici presiding. The following members were present:

Chairman Quilici	Senator Dover
Rep. Connelly	Senator Keating
Rep. Lory	Senator Van Valkenburg
	Senator Stimatz

Also present: Doug Booker, OBPP, and Leo O'Brien, LFA.

Also present: See Exhibit 6.

WORK SESSION

State Auditor

Management and Control Program

Senator Dover made a MOTION that the committee approve the 11 FTE's. Discussion. Motion carried.

Under "Contracted Services" and "Supplies and Materials" Mr. O'Brien said the difference between the budgets is that the audit fee of \$3,350 is broken out in each fiscal year in the LFA's budget and in the OBPP it is placed in one year. Under "Supplies and Materials" the LFA budget does not inflate these figures and the OBPP budget does.

Mr. Booker said he would like to put all audit monies in the first year.

Rep. Lory asked if this would have to be line itemed. Mr. Booker said that they should be.

Ms. Isaak explained to the committee that they did not have room to store all the paper for warrants and so they were purchased in smaller quantities. Therefore, they have to pay more for the warrants.

Senator Dover made a MOTION that the committee accept the Executive Budget for "Operating Expenses". Discussion. Motion carried.

Under "Equipment" the committee discussed in detail the breakdown of each item in this category. Ms. Isaak repeated her testimony which she gave during the hearing. She expressed concern that

the oldest machines are beyond their life expectancy and they are very concerned about possible breakdowns. This could result in liability for the state regarding payroll checks and agencies' vendor checks being delayed. The service on these machines can be delayed as much as a week. After considerable discussion Ms. Isaak said that they do not need these machines now, but they will need them in case of a breakdown during the biennium. She would like to be able to prevent any problems regarding breakdown of these machines.

Senator Dover made a MOTION that the committee approve \$26,000 for "Equipment" and that this be line itemed for replacement in case of breakdown. Discussion. Motion carried.

Senator Dover made a MOTION that the committee approve Management and Control Program's budget as amended with the addition that \$108,000 in FY85 be line itemed for termination pay. Discussion. Motion carried.

Senator Dover made a MOTION that the committee accept the Management and Control Program's budget as amended. Discussion. Motion carried.

#### Administrative Support Program

Senator Dover made a MOTION that we approve 8 FTE's. Discussion. Motion carried.

Rep. Lory made a MOTION that the committee accept the agency budget under "Contracted Services". Motion carried.

Senator Dover made a MOTION that the balance of "Operating Expenses" and "Equipment" be approved as recommended by the LFA's budget. Motion carried.

Senator Dover made a MOTION that the Administrative Support Program budget be approved as amended. Motion carried.

#### Insurance Division

Senator Dover made a MOTION that the 22 FTE's be approved by the committee. Discussion. Senator Van Valkenburg said this was the area where the audit of the Blue Cross, Blue Shield and one smaller organization should be addressed. Senator Van Valkenburg said it was the Legislature's intent to use this position of a Paralegal as an examiner of these audits. To promote discussion,

Senator Van Valkenburg made a SUBSTITUTE MOTION that the committee authorize 22 FTE's in this division and include within there an upgrade from Grade 11 to Grade 14 of the position that had previously been a paralegal and expect the agency would utilize that individual to do the examinations.

Discussion. Senator Van Valkenburg said that in talking with the Auditor's office it was his understanding that this audit would take a person with more qualifications than a paralegal and that

Minutes of the Meeting of the Appropriations Sub-committee on  
Elected Officials and Highways, Page 3, January 27, 1983

they could hire a person under "Contracted Services" rather than creating one job and losing another job.

Discussion.

Norma Seiffert told the committee that they need this paralegal very badly. The attorney absolutely needs this paralegal and any spare time she has she does research. She said it is imperative to this department that they have this person. They would feel a great void in their agency if they did not have this paralegal.

Discussion.

The Substitute Motion lost.

Senator Dover's original motion carried. Voting "no": Senator Van Valkenburg and Rep. Connelly.

Under "Operating Expenses" Mr. O'Brien told the committee that the figure \$13,947 is related to \$10,000 actuary fees which were line itemed in the previous biennium. The other \$3,947 were adjustments derived from averaging the amount of expenditures over a three-year period. The averages were not taken in the LFA budget but were in the OBPP. An average for "Supplies and Materials" was also taken in the OBPP budget and not in the LFA budget. "Repair and Maintenance" was arrived at in the LFA budget by including an additional \$2,500 and then inflating it for equipment that was purchased during the previous biennium. The agency purchased \$22,900 worth of equipment, one additional Lektriever and one additional Word Processing Unit.

The agency agreed that the LFA was correct. They will accept the drop in the LFA's budget if the \$10,000 is included as a line item on the actuarial part of it. Then they could approve the LFA budget right down the line.

Discussion. Put the \$10,000 actuarial fees in "Contracted Services" making that \$19,948. Senator Dover asked if this is where the \$64,000 would go for the Blues' audit. Discussion.

Senator Dover made a MOTION that the committee take the LFA's budget in "Contracted Services" amended as follows:

FY84 - \$9,948 plus \$42,000 (\$32,000 to carry out the intent of House Bill 385 from the previous session and an addition of \$10,000 for actuary fees). These figures are to be line itemed.

FY85 - \$10,540 plus \$52,000 (\$42,000 to carry out the intent of House Bill 385 from the previous session and an addition of \$10,000 for actuary fees). These figures are to be line itemed.

Minutes of the Meeting of the Appropriations Sub-committee on Elected Officials and Highways, Page 4, January 27, 1983

Discussion. Motion carried. Senator Van Valkenburg voted "no".

Senator Dover made a MOTION that the committee accept the balance of the LFA's recommended budget under "Operating Costs". Motion carried.

(Tape 38, Side A)

Regarding "Equipment" Leo O'Brien told the committee that the LFA budget includes amounts needed to purchase typewriters to replace one old typewriter in each fiscal year. Those costs were established by the Department of Administration and were used as a uniform amount for all agencies. Doug Booker said the OBPP budget included two typewriters in one year and one typewriter and one calculator in the second year. Mr. Tucker said they could accept the LFA budget on "Equipment" because \$2,000 was for some equipment for a person if they went without Option C and went to an in-house examiner.

Senator Dover made a MOTION that the committee accept the LFA's budget on "Equipment". Discussion. Motion carried.

Senator Dover made a MOTION that the committee accept the Insurance Division's budget as amended. Discussion. Motion carried.

The committee recessed until 9:00 a.m.

## HEARINGS

### Supreme Court

Mike Abley, Administrator for the Supreme Court, addressed the committee. He distributed a budget sheet showing FY83 actual expenditures and the requested budgets for FY84 and FY85. (Exhibit 1)

He noted that in their actual expenditures for FY83, these are not the figures which were appropriated. There are two additional law clerks in there. Last session two law clerks were deleted from their budget. The Supreme Court decided at that time to retain the law clerks and transfer the funds from another program. The FY83 thus shows the actual staff they have on the program.

In 1979 the Court went to the Legislature with a proposal to increase the Court by two Justices and to increase the staff by four law clerks and two secretaries. That was the alternate to either falling behind on the caseload or to have an intermediate appellate court as Idaho and some other states have done. The Court felt that alternative would be too expensive and probably not too effective. The plan the Court proposed was accepted. That included four additional law clerks bringing the number up to 14 and the two secretaries. The four law clerks were hired

when the new Justices were hired in January of 1981. They also hired one secretary. Within two months the Legislature deleted two law clerks. It created quite a problem for them as they had just hired in and no evaluation was done. Mr. Abley said this was, in his opinion, a misunderstanding that blossomed into a confrontation.

The result was that they were reduced by two law clerks. The Court determined that they needed those two law clerks; they transferred the funds from another program and continued the law clerks. They are requesting that those two law clerks be reinstated. They are strongly requesting these law clerks, Mr. Abley said, and at the very least, that a study or an evaluation be done to determine the use and need for the law clerks.

The Court is also asking for additional funds to hire another clerical person. They have 4 secretaries working for 7 Justices and when someone is sick or on leave it creates problems.

The rest of the budget request down through the Judiciary Brochure and the Public Information Material is the same. Mr. Abley said there have been substantial changes in the Court and they would like to reprint the Judicial Brochure. This is an additional request. They would also like to develop some public information material to generally go along with the Office of Public Instruction's desire to explain the Criminal Justice Program in the schools. This is also an additional request.

The next item over and above what they are spending now is the Archives Project. This project is the one from which the funds were taken for the two law clerks. This is for \$68,000 which is a substantial increase from what was indicated before. They got these figures from the Department of Administration. They went through the material and estimated what it would take to complete that project. Mr. Abley said this is somewhat of a sore subject since this is the money that was used for the two law clerks. They feel strongly about this project because the Historical Society says they have to remove all of their records from the Historical Society's building. The only place they have to store this material is a garage down at the Fairgrounds and it would never last down there. They would get this material microfilmed and destroy the original material except for what the Historical Society decides they want. They would be willing to have that money appropriated directly to the Department of Administration. Mr. Abley said that the details of this process can be explained by Mike Trevor, representing the Department of Administration.

The District Court Workload Project is a request for \$12,000 in FY85 to set up pilot programs for case management systems in the court. They are doing this in a number of other states to develop

Minutes of the Meeting of the Appropriations Sub-committee on  
Elected Officials and Highways, Page 6, January 27, 1983

some really good procedures for expediting cases through the District Courts for civil cases.

The District Court Management Project is basically the same thing but it would be the initial start-up costs to bring in the National Center for State Courts' management team and set up the program. It would be implemented in two districts the next year.

The next item that shows an increase is the Sentencing Data. The Legislature last session directed the gathering of a tremendous amount of sentencing data and they are doing that now. The problem is that they have to have computer time.

Under "Education and Training" this is primarily training for the staff in the utilization of the equipment that they have and also training for the Judges. The Court recently mandated continuing legal education for attorneys. They are going to do the same thing with the Judges and Justices.

There is a substantial increase in "Rent" because of the new building. They acquired more space and more expenses. This item is for the building. The "Equipment" costs are rental of the copy machines, the word processing machines, etc.

"Repairs and Maintenance" is obvious. "Other Expenses" has a substantial amount of money. This includes the state's contribution to the National Center for State Courts. They are assessed from the National Center the same way the Legislature is assessed for the National Conference of State Legislators. Mr. Abley wanted to emphasize that this is the state's contribution, not the Court's. He said the state has not been contributing its fair share.

In answer to a question from the committee, Mr. Abley said the "Legal Settlement" item was put in there at the request of the Budget Office because they didn't know where else to put it. This is a court case between Justice Shea and the Judicial Standards Committee. The District Court awarded Justice Shea his attorney's fees. This had to come out of state funds. Nobody knew exactly where this money should come from and he questions whether it should be in this budget. Mr. Booker said the decision to put this item in this budget was the decision of the Governor's legal counsel.

Mr. Abley said the MONTCLIRC portion of the budget is a legal research program channeled through the Supreme Court although they are actually contracted with the University. He introduced Jim Ranney who reviewed the history of MONTCLIRC. Mr. Ranney presented the committee with a fact sheet on MONTCLIRC (Exhibit 2) and the November publication of MONTCLIRC which pictures the staff and outlines their backgrounds. Mr. Ranney said there were many people who wanted to testify on behalf of MONTCLIRC but he

reluctantly told them that in the interest of time he felt it would be best if one person represented this project. Mr. Ranney briefed the committee on the inception of MONTCLIRC and the services they provide. He distributed to the committee a sheet showing the Cost Savings (Exhibit 4).

Mr. Ranney said although there was a substantial increase, this is a bare-boned budget. He went through the budget (Page 2 of Exhibit 4) which is proposed for the next biennium. Under the Director's salary, Mr. Ranney noted that there is a 5% salary increase which is comparable to salaries in the Law School. The Research Assistants receive \$5.00 per hour. He said the only substantial increase is a new typewriter. This is listed on the budget as a word processor which would cost \$400 per month on a lease option.

#### Boards and Commissions

Mr. Abley distributed to the committee a budget sheet for these programs listing FY83 expenditures and the proposed budget for FY84 and FY85. (Exhibit 5) They are requesting an additional .5 FTE. This is necessary to handle the increases in the Sentence Review Board. They are getting so many requests for Sentence Review that they can't handle it all. The Board has also changed their rules and have increased the amount of time they are spending on the board. They now have three-day meetings four times a year as opposed to one-day meetings four times a year. It has become a more formalized process which has increased the workload.

The Chairman, upon request of Senator Van Valkenburg, asked Mr. Abley to review the Bar Examiners portion of the budget at this time.

The Bar Examiners' budget is primarily "Contracted Services". Due to the change in the Bar Exam this now includes all the graduates from the Montana School of Law. They now give two bar exams each year instead of one.

(Tape 38, Side B)

The "Secretarial" portion of this budget is contracted. Other costs are for the graders. The Bar Examiners pay the graders to grade the exams. They also have to purchase questions at \$200 each. The Bar Examiners contact professors, attorneys and other members of the judicial profession and pay them to write questions and answers for the bar exams. There are representatives of the Bar Examiners here for any specific questions the committee may have. Senator Van Valkenburg expressed concern over the charging of the fee for the bar exam which would now be over \$400. He felt this was an unfair fee and he wonders if the Board of Bar Examiners needs this much money to carry on their functions.

Minutes of the Meeting of the Appropriations Sub-committee on  
Elected Officials and Highways, Page 8, January 27, 1983

In answer to a question from Senator Van Valkenburg, Mr. Abley said the Bar Examiners had recommended two bar exams each year and the Court accepted that recommendation. In answer to a question by Senator Van Valkenburg, Mr. Abley said the reason for having two exams a year is because if an applicant applies two months after the exam has been given he has to wait almost a year before he can take the exam. They also are having an increased number of examinees as they will be examining all the students from the Law School in Missoula. They are now looking at 100 applicants per exam as compared to 50. There are too many to handle at one exam.

Senator Van Valkenburg expressed concern that the secretarial costs will be much greater because the work is drawn out over a long period of time. He also wanted to know why it is costing \$200 per question.

Michael Hughes, representing the Board of Bar Examiners, said they had tried to get questions for \$100 and they couldn't. There are 14 fields on which the applicants are examined. In answer to a question from Senator Van Valkenburg, Mr. Hughes said that before they started charging for questions, the board members wrote them gratis. He said that it took two months a year for one exam to do this.

Ms. Horgan, representing Robert Poore, who was unable to appear, said that Mr. Poore would have called the committee's attention to the fact that it has been many years since the board members have had close contact with the academic phase of their initial careers, feeling that it is more fair that the applicants take an examination that has been prepared by professors. She said a board member may narrow down the scope of the examination by choosing questions that involved a particular case he had worked on rather than on a broader base such as a professor would do.

In answer to a question from Senator Dover, Mr. Hughes said that there are two parts to the exam; there are 200 questions of multiple choice which takes one day. They are given 14 essay questions which are done in a day and a half. They are required to answer 11 of these 14 questions.

In answer to a question by Senator Dover, Mr. Abley said that the fees charged go directly into the general fund. \$25 goes to the MBE and \$400 goes to the general fund.

In answer to a question by Senator Van Valkenburg, Mr. Abley said he didn't know what the fees were in the surrounding states but he would get that information for Senator Van Valkenburg. Mr. Abley said the fees run anywhere from \$75 to \$675.



Minutes of the Meeting of the Appropriations Sub-committee on  
Elected Officials and Highways, Page 9, January 27, 1983

In answer to a question from Senator Stimatz, Mr. Ranney said he has wondered why he has never been asked to write a question for the bar exam. He said nobody on the faculty that he knows of have ever been asked to write questions for the bar exam in Montana.

Mr. Hughes responded that the reason they have tried to avoid using the faculty at the Law School in Missoula is because they are trying to get some permanent sources of questions. They have modeled the exam after that given in the State of California. They would like to get a source from out-of-state before they have 75 students from Missoula taking their exams in July.

The Commission on Practice investigates complaints in regard to attorneys and malpractice. When there is a complaint they have to hire an attorney to investigate the complaint. The secretarial expense includes providing transcripts to all parties involved in this process.

Civil Procedure Commission has not been active because the rules of civil procedure is not something that has to be constantly updated. Periodically they update these rules. It is now time to do this as the rules are old and out-dated and don't conform to some court decisions in the Federal Court and the Supreme Court. They also now have to provide the Jury Instruction Guidelines. They did complete the criminal instruction guidelines; now they have to up-date the civil instructions. They receive an up-date request about every five years, simply to conform with new statutes.

The Sentence Review Board. There is a bill in session to eliminate this board. Even if this happens they would have to have money for one fiscal year to conclude the cases that are now in court. In answer to a question from the Chairman, Mr. Abley explained that after a prisoner is sentenced, he has a certain period of time in which to request a review of that sentence. They submit a request to Mr. Abley's office. Mr. Abley said the hearing process involves a lot of people and a lot of paper. He said the board was originally set up by the Court because they were getting so many requests for sentence review and it was very expensive for the Court to handle this. The previous warden of the prison felt this was somewhat of a pressure valve and the Court feels this is the least expensive way to handle sentence reviews. In answer to a question from the committee, Mr. Abley said the expenses for this program are increased because the Court has assumed the responsibility for mailing all the transcripts, briefs, etc. and these must be sent certified mail. It is very costly. Mr. Abley said, in answer to a question, that although they thought the requests for sentence review were increasing, they are relatively the same for the last few years.

In answer to a question from the Chairman, Mr. Abley said he thought there were only about a dozen states that have the

Minutes of the Meeting of the Appropriations Sub-committee on Elected Officials and Highways, Page 10, January 27, 1983

Sentence Review Board procedure. He said he would furnish the Chairman with that information.

The Probate Commission was set up to keep probate cases current. The Courts of Limited Jurisdiction is primarily responsible for providing technical assistance in conjunction with the Court and the lower courts. They devised the uniform accounting system. They also assist in training the lower court judges. There are two FTE equivalents functioning in this program.

The Judicial Nominations Commission may not meet unless there is action required by the Governor. They expect to have to do this once each fiscal year.

The Judicial Standards Commission functions for judges much the same as the Commission on Practice does for attorneys. They investigate and conduct formal hearings for complaints against the judges. "Contracted Services" in this program is for secretarial services.

The Planning Commission is chaired by Justice Sheehy. This board meets on call when some problem arises in the district courts that the Court doesn't want to get involved in formally.

Senator Keating said that in the last session the Court seemed to feel that they were being denied appropriate funds and that there appeared to be a confrontation, so to speak, and so the Supreme Court did what it wanted to do. He felt the Chairman of the committee could write a letter to the Supreme Court and state that it is our duty to review the budget and to try to live within our means and that whatever action the committee takes is not to be taken personally as punitive and perhaps we could ask for some reconciliation between the Court and the sub-committee in the review process and ask for their indulgence in our review of the budget in view of the fact that we don't have very much money.

The Chairman noted that last session this sub-committee did grant the two law clerks to the Supreme Court and also the microfilm. In the full House Appropriations Committee the Chairman's motion prevailed and the two positions were withdrawn. Mr. Lory said this action was taken on the floor of the House. The Chairman said that this committee did grant the FTE's. If the Court would like the actual reason in writing, the Chairman said we would request that.

Mr. Abley told the Chairman that two years had passed and he hoped that everyone would realize that. The Chairman said it was the committee's responsibility to review all budgets, including the Supreme Court's and the Governor's. He said the programs are up to them, the committee is looking at the funding.

Minutes of the Meeting of the Appropriations Sub-committee on  
Elected Officials and Highways, Page 11, January 27, 1983

Mr. Abley said they would all have to work together. Priorities will have to be looked at.

Mike Trevor, Administrator of Computer Services for the Department of Administration, addressed the microfilming portion of the budget for the Court. The 75% figure is a bit misleading he said, because 46% of that job was completed before the request. They are talking about taking 46% up to 75% or 29% of the total job for \$30,000 each fiscal year. The Supreme Court has put in their budget an amount to complete the job to go from 46% complete to total completion. In answer to a question from Rep. Lory, Mr. Trevor said it could be spread out through a couple bienniums but that they would like to get this project going again. He said that in view of all the requests they have for microfilming from other agencies, it might be appropriate, because of the workload, to cut the Supreme Court's request in half.

The committee recessed briefly.

WORK SESSION

The committee reconvened at 10:45 a.m.

State Auditor

Insurance Regulations & Licensing Program

Mr. O'Brien told the committee that in the LFA budget the FTE's remain at 8. Mr. Tucker raised issue in the initial hearing that one FTE was not included in the LFA budget and was not addressed. Mr. Booker said he believed it was a modification. This was an additional FTE, Grade 10, Step 2. This person is being asked for based on the increased workload. They are also asking for one desk chair, one typewriter, and telephone services associated with the additional FTE. The total request for FY84 for the FTE and associated expenses is \$21,309. For FY85 the request is \$19,653. Discussion.

Rep. Lory made a MOTION that the committee approve the 8 present FTE's and the additional FTE requested for a total of 9 FTE's. Discussion. In answer to a question by the committee, Mr. Tucker explained that this person would begin as a computer trainee to work on the computer and take care of the registration of salesmen and broker dealers. They are going on line with the computer some time in May or June. Mr. Tucker explained that the only expense to that program will be the FTE. The rest of the equipment and the dedicated line, telephone lines, etc. is paid for by the National Association of Securities Dealers. Discussion. Mr. Tucker explained that approximately two years ago they were bringing in \$475,000 a year due to the fees; this figure will

Minutes of the Meeting of the Appropriations Sub-committee on  
Elected Officials and Highways, Page 12, January 27, 1983

exceed a million dollars this year. The number of registrations they have received has more than doubled. Even without the CRD they would need another person because of the increased workload. Mr. Tucker said they should be asking for another examiner because of this increase in their enforcement areas but they can get by without another examiner. He said he would be hard pressed to get by without this FTE.

The Chairman asked Mr. Tucker to explain the fees and how they offset the cost of these programs. The Securities Department, with this request for a budget, will use approximately 30 percent of the fees generated by the department. These fees go directly into the general fund and this program is funded by general funds.

Question being called for, the motion carried.

The Chairman asked that Doug Booker and Leo O'Brien get together to get the exact figures for inclusion of this FTE into the budget.

Mr. O'Brien told the committee that the major differences between the OBPP budget and the LFA budget is in "Contracted Services" and "Travel". The request from the agency included an additional \$8,000 for "Contracted Services" for various duties. This was never clearly identified and was not included in the budget. Under "Travel" Mr. Tucker has asked for an additional \$6,000 because some money was not being included from the North American Securities Exchange Association. The request was not placed in the LFA budget because this travel could not be identified. There is a difference in the "Rent". He said he would concur in the OBPP's budget for "Rent".

Under "Equipment" the agency has requested one Lektriever. The LFA didn't feel this was needed as they had dead files which could be removed from the present Lektriever.

Rep. Lory asked Mr. Tucker to address "Contracted Services". Mr. Tucker said the majority of the \$8,000 was for legal help from the AG's office, from outside hearings officers, for legal documents, transcripts of hearings in courts which they have to pay for and the services of the Law Library. They are set for eight hearings at the present time and there is no money for eight hearings.

Discussion.

Mr. Tucker said they would request that the "Travel" be at the same level they had requested in FY84 and not be inflated.

In answer to a question from the committee, Mr. O'Brien said they were budgeted for \$10,043 for FY83 and they spent \$4,326

Minutes of the Meeting of the Appropriations Sub-committee on Elected Officials and Highways, Page 13, January 27, 1983

in FY82. Discussion of files and Lektrievers. Mr. Tucker said they have a problem with the files. They increase 165 files per month. Mr. Tucker said the computer would be the way to go but they don't have the money to do that.

Mr. Booker told the committee that the figures for the additional FTE would result in the following: (458)

	FY84	FY85
Personal Services	\$ 17,959	\$ 17,890
Communications	1,618	1,651
Equipment	1,836	--

Senator Dover made a MOTION that the committee accept the Executive Budget for "Supplies" and the Executive Budget for "Communications" of \$9,350 plus \$1,618 for a total of \$10,968; that the committee accept the Executive Budget in "Travel" and "Rent" and the LFA's budget in "Repair and Maintenance" and "Other Expenses" in FY84 and that the same figures be approved for FY85 with the exception that in "Communications" an additional \$12,614 be included; "Travel" at Executive Budget level; the Executive Budget for "Rent" and the LFA's budget for "Repairs and Maintenance" and "Other Expenses". Discussion. Motion carried.

Senator Dover made a MOTION that the committee accept the Lektriever plus \$1,836 (for the new FTE) under "Equipment" in FY84. Discussion.

Senator Keating asked if they could keep cleaning out the files and wondered if they would have space for another Lektriever. Mr. Tucker said if they didn't get the Lektriever they would find space for the files; they don't have any other choice. He said he needs the Lektriever but he doesn't have space for it. If it is a trade-off, they'll find a place for them. He said he cannot get along without the other equipment; he lost two more pieces of it this morning. The equipment needed is replacement for typewriters and dictating equipment.

Senator Keating made a SUBSTITUTE MOTION that the committee approve the "Equipment" except for the Lektriever. Discussion. Senator Keating AMENDED his SUBSTITUTE MOTION to read "\$6,550 for FY84 for "Equipment". Discussion.

The Chairman suggested to Mr. Tucker that he look into going to a computer or microfilming some time in the future because they are running out of space for files and for Lektrievers. Discussion. Mr. Tucker suggested that a study be done to see what alternatives they would have. The Chairman said they would look into this in the full committee.

The Amended Substitute Motion carried.

Minutes of the Meeting of the Appropriations Sub-committee on Elected Officials and Highways, Page 14, January 27, 1983

Senator Dover made a MOTION that the committee approve the Insurance Regulations and Licensing budget as amended. Discussion. Motion carried.

Central Payroll (636)

The Chairman asked Mr. O'Brien to explain the issues on this budget. Mr. O'Brien said the primary issue was "Contracted Services". The LFA came up with projected costs by using FY83 for the month of September and then extrapolated out for future expenditures. The Auditor's office has, since that time, done some revisions and is going to ask for a modified request of \$15,000 which would alter the "Contracted Services".

Ms. Behm said the figures the LFA used did not include the additional processing, key punching and leave accounting. Discussion. Ms. Behm said the \$15,000 in the modified budget is called minor enhancement. They have one report that does not put out a decent audit trail. Also Computer Services has changed its method of billing agencies and they want to use some of the \$15,000 for support services (programmer analyst) to see if they can reduce printing costs.

(Tape 39, Side B)

In answer to a question from Rep. Lory, Ms. Behm said they are asking for two .5 positions in addition to the nine they have already.

Discussion by the committee. Senator Van Valkenburg asked if the \$136,000 is in each year of the biennium in the budget request. Mr. Taylor said that this system cannot be broken up as it is not possible to extricate one cost from another. This is their joint recommendation. Mr. Taylor explained that this is a current level budget expense but since it is being moved into the Auditor's budget, it has been labeled as a "Modified". It is an on-going current expense.

Senator Van Valkenburg expressed concern that the Executive has set aside a \$2 million reserve for "Modifieds" for elected officials but put its own "Modifieds" into the budget within the levels of the Executive budget. In order to keep current level we have to reach into that \$2 million reserve to pay that particular cost. Discussion.

Rep. Lory made a MOTION that the committee approve 10 FTE's. Discussion. Senator Keating asked Senator Van Valkenburg to explain again, his view of the modifications and the funding for these modifications. Senator Van Valkenburg said the Executive

Minutes of the Meeting of the Appropriations Sub-committee on  
Elected Officials and Highways, Page 15, January 27, 1983

has included their modifications in the Executive branch budget. However, this doesn't work out for the other elected officials. What is happening is that the Executive takes current level spending expenditures that it is incurring in the Executive branch agencies, shifts them to an Elected Official, here, the State Auditor. This is \$136,000 of that \$4 million that has to be appropriated. Discussion.

Motion carried.

Under "Contracted Services" Ms. Behm said they would prefer the Executive Budget figures be used to add on the \$15,000. There was considerable confusion concerning these figures for PPP and where they should be included. After some discussion the committee decided they needed a corrected budget sheet with agency requests plugged in. Senator Keating requested a three-column, LFA, OBPP and agency request with everything plugged in so we can have a bottom line figure. The Chairman said he would also like included in this the FY82 and FY83 budget. The Chairman requested that the LFA, OBPP and agency get together to have this for the committee for the next work session.

Senator Van Valkenburg requested that Leo O'Brien and Cliff Roessner prepare an updated sheet regarding the modifications so we know what has been approved and what will be requested so the committee can see where we are now. The Chairman said he thought that was a good idea and would like this done as soon as possible.

After some further discussion, the meeting adjourned at 12 Noon.  
(339)

  
\_\_\_\_\_  
Joe Quilici, Chairman

dm

SUPREME COURT AND CLERK OPERATIONS

	FTE	FY83 ACTUAL	FY84 REQUESTED	FY85 REQUESTED
	32.00		33.00	33.00
Personal Services				
Justices	7.00	330,342	7.00	330,342
Staff	21.00	368,520	22.00	394,013
Clerk	1.00	30,185	1.00	30,185
Staff	3.00	63,103	3.00	63,103
Benefits		<u>134,250</u>		<u>137,166</u>
Total		926,400	957,028	954,809
Operating Expenses				
Contracted Services				
Printing/Court		12,643	13,402	14,506
Printing/Clerk		2,253	3,186	3,404
Montana Reports		40,000	43,316	43,316
Judiciary Brochure		-0-	5,300 ✓	-0-
Public Information Material		-0-	8,000 ✓	10,000
Laundry		45	48	51
Insurance		1,056	1,486	1,509
Data Processing		7,680	8,141	8,629
Archives Project <i>Mike Nero</i>		-0-	68,046	68,046
District Court Workload		-0-	-0-	12,000
District Court Management		-0-	5,000	-0-
Sentencing Data		-0-	5,898	-0-
Education and Training		<u>2,928</u>	<u>8,000</u>	<u>8,000</u>
Total		66,605	169,823	169,461
Supplies & Materials				
Court		27,635	28,533	30,268
Clerk		<u>3,105</u>	<u>3,292</u>	<u>3,489</u>
Total		30,740	31,825	33,757
Communications				
Court		19,965	18,365	21,327
Clerk		<u>14,375</u>	<u>13,734</u>	<u>15,669</u>
Total		34,340	32,099	36,996
Travel				
Court		9,400	15,273	15,723
Clerk		<u>1,450</u>	<u>1,496</u>	<u>1,523</u>
Total		10,850	16,769	17,246
Rent				
Building/Court		68,350	83,341	92,235
Building/Clerk		6,482	7,905	8,748
Equipment/Court		21,083	33,298	28,250
Equipment/Clerk		<u>6,240</u>	<u>6,240</u>	<u>4,460</u>
Total		102,155	130,784	133,693
Repair and Maintenance				
Court		8,976	13,456	14,262
Clerk		<u>1,550</u>	<u>1,685</u>	<u>1,787</u>
Total		10,526	15,141	16,049
Other Expenses				
Court		36,362	32,487 ✓	34,435
Clerk		916	971	1,031
Legal Settlement		-0-	8,504 ✓	-0-
Total		<u>37,178</u>	<u>41,962</u>	<u>35,466</u>
Total Operating Expenses		292,394	438,403	442,668
Grants				
MONTCLIRC		84,996	106,000	113,265
TOTAL PROGRAM		1,303,790	1,501,431	1,510,742



# Fact Sheet on MONTCLIRC

Exhibit 2  
Jan. 27, 1983

## WHAT IS MONTCLIRC?

MONTCLIRC (Montana Criminal Law Information Research Center) was established in October of 1976 by the Law Enforcement Assistance Administration (LEAA) to provide assistance in the area of legal research to all Montana judges, county Attorneys, public defenders, court-appointed counsel, sheriffs and other command law enforcement officers, juvenile and adult probation officers, parole officers, and correctional personnel. MONTCLIRC was initially funded for one year by a Justice Department grant of \$83,000 matched by \$9,200 from the University of Montana School of Law. MONTCLIRC was re-funded in April, 1978 for a 15-month period (until June 1979) via an "emergency" \$50,000 grant from the Montana Board of Crime Control and a \$25,000 award from the Northwest Area Foundation, this award being conditioned on MONTCLIRC's seeking permanent funding from the state legislature.

The center is housed at the University of Montana School of Law and utilizes selected senior and junior law students to do research, eight to twelve part-time during the school year and two full-time in the summer. They are supervised by the director of MONTCLIRC, James T. Ranney, a 1969 graduate of Harvard Law School and former Deputy Chief of the Appeals Division in the Philadelphia District Attorney's Office. Students also have access to other faculty.

## HOW DOES MONTCLIRC WORK?

The procedure is simple. Qualified users of the service simply call us collect at 243-6492 or write to us at the School of Law. While requests for copies of past releasable memoranda are handled by a secretary requests for research are taken by the director, who assigns it to one of the part-time research assistants for an initial draft. Upon editing and approval of the memo, it is retyped by the secretary (on an automatic word-processor typewriter which makes very rapid revisions) and sent to the user. Enclosed in the material sent is an evaluation form and a consent to release form. Most users do not object to releasing the research memo to other users, so that, after deleting the name of the user, the memo can be sent out to other users interested in the same issue. Synopses of past memos are contained in MONTCLIRC's quarterly newsletter and in a Bibliography of Past Memoranda, which has an extensively cross-referenced index by

subject matter to all past releasable memos.

## WHAT SERVICES DOES MONTCLIRC PROVIDE?

MONTCLIRC provides the following services to all publicly-paid members of Montana's criminal justice system, free of charge: (1) research in criminal cases; (2) copies of past releasable memos; (3) bibliography of past releasable memos; (4) periodic reports in summary form of the most recent criminal cases (available even before advance sheets and organized by subject matter); and (5) copies of other materials not readily available across the state, such as law review articles.

MONTCLIRC has also been engaged in a few long-term projects, mainly a recently completed book for judges and attorneys on the 1973 Montana Criminal Code, with complete commission comments, the latest statutory changes and the most recent cases discussing the Code. Our next project is a book on Criminal Jury Instructions.

## HOW WILL MONTCLIRC ACTUALLY SAVE THE STATE MONEY?

Montana faces a problem that many rural states face--lack of adequate law libraries in all but a few cities (in Montana, only Helena and Missoula). This problem was especially great in Montana due to the simply huge distances required in order to reach adequate legal research facilities. The need for access to better law libraries has continually increased in the criminal law area in large part because of increased "constitutionalization" of much of the criminal procedure area and due to increased use and adoption of model codes, such as Montana's 1973 Criminal Code and the new (1976) Montana Rules of Evidence.

In mid-1975, a task force formed by the Montana Board of Crime Control consisting of representatives of the Montana Supreme Court, the State Bar of Montana, the District Judges and County Attorneys Associations, the Governor's office, the Attorney General's office, the State Legislature, and Montana Citizens for Court Improvement studied the need for increased access to legal research facilities throughout the state of Montana. The task force considered two alternatives before recommending that the University of Montana School of Law seek federal funding for a central research center modeled upon a similar center at Creighton Law School. First, the possibility of upgrading county law libraries was considered. But the

cost of law books today is so prohibitive that it was found that even the one-time capital outlay would be in the millions of dollars. Second, the possibility of more judicial law clerks was considered, and this was rejected not because of the cost (approximately \$240,000 a year for 20 new clerks) but because clerks without access to an adequate research facility would be relatively useless.

MONTCLIRC was the ideal solution because it utilized three pre-existing resources which had already been created and maintained (at tremendous capital expense). Those resources are: (1) the excellent library at the University of Montana Law School, which has an annual update and acquisitions expense of \$70,000 (compared to an average annual cost per county law library of about \$724); (2) the ready availability of a pool of talented legal researchers who work at a fraction of the cost of regular attorneys (\$4 per hour); and (3) the access of these student researchers to top faculty who cumulatively have several decades of experience in the relevant research area and who personally drafted the Montana Criminal Code, the Montana Code of Criminal Procedure, and the Montana Rules of Evidence. As a result of this unique concentration of resources, MONTCLIRC is able to do what criminal justice personnel in Montana would otherwise have to do twice as fast, twice as well, and at a fraction of the cost.

MONTCLIRC thus saves money that would otherwise have to be paid to cover less cost-effective research by court-appointed counsel and prosecutors who lack access to a major law library or the time to travel to such a library. In some of the more populous counties, MONTCLIRC has done sufficient work to have effectively removed the need to hire additional personnel. And access to better legal research facilities on both difficult issues and on easy ones, where a quick answer is increasingly possible, cannot help but reduce the number of appeals, retrials, and pointless litigation generally. Many times, we've noticed, a MONTCLIRC memo will result in a guilty plea or, on the other hand, the dropping of charges. This saves the state of Montana, through its individual counties, many thousands of dollars.

We have no doubt that MONTCLIRC is cost-effective in the short run. And in the long run it is even more cost-effective. For one thing, we are able to use the same research over and over again, as users request copies of prior memos. Relatedly, as we continue to gain expertise, we are collecting a valuable bank of past memos upon which to draw in respond-

ing quickly to questions or in beginning research on new but related problems. Finally, we are training attorneys who are gaining an invaluable experience which will benefit the state of Montana for years and years.

### ***WHO'S BEEN USING MONTCLIRC?***

MONTCLIRC has been receiving about 50 to 60 requests of one kind or another per month. About half of these are for actual research. At last count, requests were coming in in almost exactly equal numbers from prosecutors and defense counsel (MONTCLIRC has a "first-come, first-serve" policy to avoid any possible problems and, in practice, this policy has worked very well). Judges were the next most frequent requesters of research. Requests have come from almost every county in Montana, both populous and less-populated counties.

### ***WHY DOES MONTCLIRC NEED A SPECIAL FUNDING AUTHORIZATION?***

MONTCLIRC has actively pursued and obtained what limited funding was available from other sources. The LEAA money was strictly a one-year pilot project concept. The Board of Crime Control money was emergency funding obtained solely because the legislature was not in session and because certain residual monies were found. The Board is willing to continue to act as a conduit for state monies for MONTCLIRC, but feels that it is time that permanent funding be obtained. The University budgeters felt that MONTCLIRC was more "service" oriented and not purely an educational matter, so that funding should be sought separately. A MONTCLIRC Advisory Board felt that a seeming conflict of interest could arise if funding were provided from the Attorney General's budget. Thus, a separate funding bill was recommended.

### ***WHO SUPPORTS MONTCLIRC?***

Amongst others: Chief Justice Frank I. Haswell of the Montana Supreme Court, Attorney General Mike Greely, the heads of the County Attorneys, Public Defenders and Justices of the Peace Associations.

Last, but hardly least, the users of the research service have been extremely supportive. One hundred percent of those surveyed felt MONTCLIRC was a

good idea. Evaluations received on memoranda have been 78% in the excellent category, 22% in the good category, and 0% in the fair, poor and very poor categories. Our users have said the following about MONTCLIRC:

"I am writing to compliment your organization on a prompt and efficient service you have been able to provide to our office. We have used your services on several occasions, and have been extremely pleased with the results and the promptness of your replies, either by telephone or letter." (Unsolicited letter from Keith Haker, Custer County Attorney).

"MONTCLIRC has filled a definite need in rural communities in Montana and . . . its services to date have been excellent." (James Nelson, Court-appointed Counsel, Cut Bank).

"Speaking as a law enforcement officer, it is of particular benefit for members of this department to have at their fingertips concise, easily understood memoranda of Montana criminal statutes, procedural statutes, case law, and pertinent administrative regulations . . . (T)he entire staff of this department would like to extend a 'thank you' to the MONTCLIRC staff for helping to make our job easier. The case law contained in every one of your newsletters has been reviewed and discussed at length in staff meetings." (Sheriff Michael McMeekin, Libby).

"We have found the services rendered by MONTCLIRC to be most beneficial to this office. Due to the heavy work load in this office and lack of time for personal research, we often rely on MONTCLIRC for legal research, and find them to do a very good job. Likewise, many of the attorneys, both prosecution and defense, use their services to great avail." (Mary Riedel, Justice of the Peace, Kalispell).

"I cannot urge strongly enough that the MONTCLIRC program be continued and that funding be established for continuation of this program for the benefit of the criminal justice system." (James Seykora, Big Horn County Attorney).

"Your thorough and thoughtful research will have lasting impact on the executive clemency process in Montana." (D. Robert Lohn, Counsel to the Governor).

"Am very happy with the quality of assistance provided: very prompt, giving me ample time to use MONTCLIRC material for my own brief/argument; the memorandum was well-written, with good case authority. Well-reasoned and well-organized." (Evaluation from K. Kent Koolen, Deputy County Attorney, Billings).

"I have employed the services of the Research Center on two or three occasions and have been entirely satisfied with their results. I believe they have saved the county money in the past because their research seems to be impartial and the court is willing to lend credence to their findings." (Joseph Swindlehurst, Public Defender, Livingston).

"The project is especially welcome and necessary in Montana for the reason that 49 of the 56 counties are staffed by only one or two part-time county attorneys who have a great many civil duties to perform for their counties as well as trying to maintain a private practice and in most cases the necessary time to properly research the various criminal cases that must be handled is simply not available. The research center has done an excellent job in filling this need." (James McCann, Wolf Point, President, County Attorney's Association).

"For those of us small practitioners in the outlying districts of Montana the chance of getting to a law library to do the type of intensive research often necessary in a criminal case is many times lacking because of our relative isolation from law libraries. There are only two adequate public law libraries in the State of Montana, one of which is located in Missoula, Montana, and the other is in the State Capitol of Helena, Montana. While the staffs of these libraries are very courteous and helpful to attorneys from outlying districts, the traveling time of 12 hours from a round trip from Havre, Montana to Missoula or 8 hours roundtrip from Havre to Helena makes consulting these facilities very difficult. The Montana Criminal Law Information Research Center provides the court appointed attorney in Montana with the information that they need to adequately prepare for trial with the speed necessary for this information to be usable and with the depth of research necessary for the attorney to adequately inform himself or herself of the rule of law in that particular area . . . All of the people that I have come in contact with who have used this service feel it is a fine addition to the legal resources available in the State of Montana . . . I would heartily urge that the Montana Criminal Law Informaion Research Center be fully funded." (James Spangelo, Court-Appointed Attorney, Havre).

"(M)y time expended on such cases [court-appointed cases] is dramatically reduced--thus resulting in considerable savings to the public." (Frank Altman, Court-appointed Attorney, Havre).

“Please be advised that I personally consider this project to be one of the more useful applications of LEAA money in the State of Montana, or for that matter in any state.” (Robert Deschamps III, Missoula County Attorney).

“Everyone I have talked to in Montana agrees that MONTCLIRC is one of the most useful projects that LEAA has funded in Montana.” (U.S. Senator John Melcher).





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UNIVERSITY OF MONTANA  
SCHOOL OF LAW

SCHOOL OF LAW  
MISSOULA, MONTANA 59812  
(406) 243-6492

## MONTANA CRIMINAL LAW INFORMATION RESEARCH CENTER

Vol. 4, No. 3

November 1982

### THE STAFF, 1982

**JO ANTONIOLI**



Jojamette, a recently married senior, will be working for Montana Power Company upon graduation. She came to work here after schooling at the University of Colorado, Leningrad University (graduate work in Russian), the University of Washington Law School, and the London School of Economics.

**BARB CLAASSEN**



Barbara is a native of the Helena area. She went to MSU undergrad, and spent her first year of law school at the University of Puget Sound. Barb was one of our full time research assistants last summer, and now is a senior.

**BART DZIVI**



Bart took High Honors in Business Administration at UM, after two years at MSU in chemical engineering. He is a top second-year student here, and worked last summer for a law firm in New York City.

**BILL BRONSON**

Bill was born in Havre, but now calls Great Falls his home. He holds a B.A. in Economics and a Masters of Public Administration. He has worked as a high school teacher, a University teaching assistant, legislative lobbyist, and administrative researcher for the Fiscal Analyst. He is now editor of the Public Land Law Review and a member of the Law School moot court team.



**CURT DRAKE**



Curt is a UM grad (honors, including Rensselaer Polytechnic Institute Medal for Mathematics and Science) who took time to work on the railroad, a California ranch, a surveying crew and an archaeological expedition in Amman, Jordan. Nice work if you can get it.

**HARLEY HARRIS**



Harley was born in Dickinson, ND and graduated from MSU before coming here. Somewhere in the interim he has worked on a railroad steel gang, a pizza delivery truck and an oil rig. He is now on the staff of the Public Land Law Review.

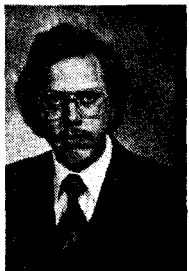
**TIM CAVAN**

Tim is a graduate of Eastern Montana College, after having gone to Boise State and MSU. Prior work experience includes positions as a legal intern with the BLM in Billings and with Burlington North-



ern in Billings.

**GREG GOULD**



Greg is still one of our Student Directors, despite having written the second-longest memo (45 pp.) in MONTCLIRC history. Greg shared the Book Award in Criminal Procedure, and also pulled one in Property. He would like to clerk for a year and then do general practice in western or central Montana.

**WENDY HOLTON**

Wendy, in addition to being a "brain" (highest honors, MSU; teacher of accounting, Eastern; Auditor, Legislative Auditor's Office) is something of a professional "beauty" (to-wit: Miss Helena, 1978; Miss Bozeman, 1979; Miss Missoula County, 1981; and 1981 USO tour of Veteran's Hospitals), and a nice one at that!



### JEFF HUNNES



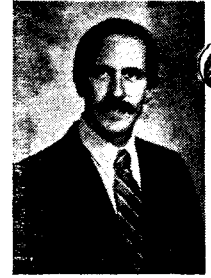
Jeff is our "other" Student Director, but primarily he is the manager of our softball team (better luck next year, right?). He is from Miles City, a UM grad, and hoping to find a judicial clerkship in Montana.

### BROOKE PEW



Brooke is from Garden City, Kansas, graduated from Arizona State (with distinction), and is now Vice-President of the Women's Law Caucus. She is married to a Missoulian and would like to stay here, having an interest in corporate and labor law.

### JIM SCHEIER



Jim was born in Flemington, NJ. He graduated from UM in history/political science (7 times Dean's list). Following several years' work with the Montana Highway Department, Jim worked last summer for the Attorney General.

### BILL KETTERING

A native of Denton, Montana, Bill hit some of the high spots of Montana before coming here, including Moore, Melstone, Ekalaka and Worden. A graduate of MSU, he was highly ranked in the first-year class at Lewis & Clark Law School before transferring here.



### MARJIE RODRIGUEZ

Marjie is a senior and reputedly the author of a best-selling book, "I Made \$100 in Real Estate." A graduate of the University of Colorado, she is in fact experienced in the commercial area, from real estate sales to marketing management for an agricultural firm.



### BOB SNIVELY

Bob's hometown is Hardin, where he has worked for two summers doing research for the Big Horn County Attorney's Office. A graduate of MSU in business accounting, he has been accounting for himself very well.

### STACEY WADE



Stacey is a UM grad (high honors in political science/history) and currently on Law Review. She has been working part-time for the Missoula County Attorney.

### DAN McKAY

Dan hails from Great Falls, and graduated from UM in political science. This hard-hitting third baseman, given his performance on the field last year, is likely to become our new hard-hitting right-fielder.



### DAVID RUSOFF

Dave (not too distantly related to our own Lester Rusoff) graduated from UM in history. Despite his seemingly easygoing style, he is a real mover and shaker, having previously worked as a forklift driver, furniture deliverer, and bottling production line laborer.

### JEFF TANZER

Jeff is another top-notch student, currently on Law Review, with a master's degree from the University of California at San Diego (English Lit) and a BA from the University of California at Santa Cruz (literature and earth sciences). He grew up in the Washington, D.C. area, but came to Glacier Park for four summers to work on the trail crew.



### Moot Court Team Makes Nationals

For the third year in a row, a UM Law School moot court team has been selected, following regional competition, to participate in the National Moot Court Competition in New York City. The team, which placed second at regionals, but had the best brief, consisted of: Judy Bartram, Bill Bronson and Don Harris. Good luck in the competition!

### NOTICE TO ATTORNEYS

We are sending this edition of our MONTCLIRC newsletter to all Montana attorneys, on the theory that many of you who are not county attorneys or public defenders will nevertheless be court-appointed occasionally. If you wish to remain on our mailing list (and are not already on it), please drop us a line at the Law School to let us know.

# New Releasable Memoranda

Since the last newsletter the following memos have been written and released for public distribution. If you would like a copy of a memo, just ask for it by number (limit two dozen per customer.)

## No. 1763

*Q: May the owner of lands bordering both sides of a river that is navigable for federal title purposes, erect a fence across that river and thereby obstruct the public use of it?*

**A: MCA § 27-30-101 states that anything which unlawfully obstructs the free passage or use in the customary manner, of any navigable river is a nuisance. Although the statute does not define the term navigability, several states with similar statutes have held that the nuisance statute is applicable if the river could be navigated by oar or motor propelled small craft.**

## No. 1852-A

*Q: Is MCA § 41-5-103(12), which defines a "youth in need of supervision," so vague as to violate the due process clause of the United States Constitution and the Constitution of the state of Montana?*

**A: Probably not. States have broader authority over the activities of children than over the like actions of adult, and courts have sustained statutes more vague than Montana's in the face of the same challenge.**

## No. 1852-B

*Q: Are MCA § 41-5-103(12), which allows a youth in need of supervision who has violated his probation to be adjudged a delinquent, and MCA § 41-5-523, which allows incarceration of delinquent youths in state correctional facilities, unconstitutional as a violation of the Equal Protection Clause of the U.S. Constitution and the constitution of the state of Montana?*

**A: Arguably yes. Although federal courts have allowed comparable legislation to pass under equal protection analysis utilizing the "rational basis" test, the trend in state courts is to apply a "strict scrutiny" test, which standard has been used to invalidate legislation having the same effects as Montana's.**

## No. 1852-C

*Q: Are MCA § 41-5-103(12), which allows a youth in need of supervision who has violated his probation to be adjudged a delinquent, and MCA § 41-5-523 which allows incarceration of delinquent youths in state correctional facilities, unconstitutional as a violation of the due process clause of the United States Constitution and the constitution of the state of Montana?*

**A: Arguably yes. Although all the mandates of procedural due process may be met, incarceration of status offenders in state correctional institutions alongside juveniles with criminal records, arguably bears no substantial relationship to the rehabilitative**

## goals set by the Montana Legislature in MCA § 41-5-102.

### No. 1852-D

*Q: Are MCA § 41-5-103(12), which allows a youth in need of supervision who has violated his probation to be adjudged a delinquent, and MCA § 41-5-523, which allows incarceration of delinquent youths in state correctional facilities, unconstitutional in that their effect is to inflict cruel and unusual punishment?*

**A: Arguably yes. Status offenders, who are incarcerated with youths guilty of criminal offenses, instead of being rehabilitated are being subjected to suffering, trauma and degradation while there exists (at least in other jurisdictions) much more humane and rehabilitative treatment for similar offenders.**

### No. 1976

*Q: Is a confession voluntary when made by an accused while under the influence of alcohol, who is suffering from an organic brain defect as a result of alcoholism, and who cannot remember making the confession?*

**A: As a general rule, a confession made by an accused under the influence of alcohol is a voluntary confession unless it can be shown that the confession was not the product of a free and rational intellect.**

### No. 2054

*Q: Is it reversible error for a court to sustain a prosecution challenge for cause solely on the basis that a prospective juror is a government employee?*

**A: While error, it is probably not reversible error.**

### No. 2064-A

**FACTS:** The defendant was arrested without a warrant on a probation violation, on Friday, at approximately 3:00 PM. There were magistrates available at the county courthouse across the street, but the defendant was not brought before one for an initial appearance. Instead, he was given his *Miranda* rights and then questioned for approximately one-half hour by a sheriff's lieutenant as to whether he committed a homicide in another place. Defendant denied involvement. The defendant was then taken to a different room to be questioned by the sheriff's office lie detector expert. The lie detector expert had the defendant sign a written waiver of his *Miranda* rights. This was done with no pressure or coercion by the expert. The expert then questioned the defendant for 2½ hours. He subjected defendant to subtle psychological persuasion by saying such things as "get the monkey off your back, we know you did it, if you give a statement voluntarily, it will help you in the long run, we've got a sketch of you right down to the niche of your eyebrow and have the gun involved in the crime, you will rest better if you confess, I've seen guys do this, plead guilty, and be back on the street in two years," etc. In

addition, the expert spoke in a soft voice and kept repeating that he wanted to be his friend and they'd be easier on him. Also, the defendant could be classified as emotionally unstable. After 2½ hours of this type of questioning, the defendant broke down and cried and confessed. The expert then had him write a written confession. The defendant was questioned again on Monday, but with an attorney present at this session. He was taken before a magistrate that afternoon and advised of the charges against him. He was then flown on Tuesday to the county of the homicide and was then taken for an initial appearance before a magistrate.

*Q: Was there an unnecessary delay between the time of defendant's arrest and his arraignment that was reasonably related to his confession and would thus invalidate the confession?*

**A: Under the Montana *Benbo* rule and the Pennsylvania *Futch* rule, it is possible that the confession was invalid, although neither case (or their progeny) is very clear on the question of what constitutes "unnecessary delay."**

### No. 2064-B

*Q: Was the confession involuntary because the defendant was subjected to psychological pressure and because he was emotionally unstable?*

**A: If the psychological pressure and the emotional instability can be proven to affect the defendant's free choice, then his confession can be adjudged involuntary.**

### No. 2092-A

*Q: Is a search by a store security officer of a suspected shoplifter's purse made without probable cause or a warrant, properly subjected to scrutiny and any resultant evidence excluded?*

**A: The evidence is excluded under the Montana Constitution but not under the U.S. Constitution, since Montana continues to apply an exclusionary rule to private searchers.**

### No. 2092-B

*Q: If a security officer obtains damaging testimony from a possible shoplifter, is that testimony excluded from evidence because no *Miranda* warning was given.*

**A: No. *Miranda* explicitly applies only to questioning by "law enforcement officers," and was concerned about the inherent coercion of such interrogation.**

### No. 2101-A

*Q: Is a defendant "in custody" or deprived of his freedom of action in any significant way under *Miranda* where the suspect, not under arrest, is questioned in a hospital room by a highway patrolman following an accident?*

**A: If a reasonable man, under the objective test, would be led to believe that he was being deprived of his freedom of action in any**

significant way, then there was "custodial interrogation" requiring *Miranda* warnings.

**No. 2101-B**

*Q: Did a defendant who was not under arrest, but was suspected of driving a vehicle involved in a felony, validly consent to giving a blood sample upon the request of a highway patrolman, where he was not advised of his right to refuse the test?*

**A: The validity of a consent to a search depends on the voluntariness of the consent as determined from all the surrounding circumstances. The individual's knowledge of his right to refuse the test is only one factor to be considered with all the other circumstances.**

**No. 2103**

*Q: May a minor be requested to provide a blood sample for the purpose of determining the alcoholic content of his blood where parental consent was not first obtained?*

**A: Yes. Despite Montana's statutory protections of a minor's right to counsel during interrogation, the request to give a blood sample is not classified as interrogation procedure and therefore triggers neither general *Miranda* protections nor specific statutory provisions.**

**No. 2107**

*Q: Where the Deer Lodge community is manifestly upset about all of the escapes at the prison, leading to creation of a "concerned citizen's committee" which has been referred to as "vigilante" by the press, and where recent efforts to select an unbiased jury have disclosed candid admissions by as many as six of 24 prospective jurors of prejudice since the defendant was a prisoner or escaped prisoner, would the above facts be sufficient to support a motion for change of venue under the new Link standard?*

**A: It is not entirely clear that there is sufficient evidence that "there is a reasonable apprehension that the accused cannot receive a fair and impartial trial," despite this being a very strong case for a discretionary change of venue.**

**No. 2131-A**

*Q: Is there a requirement of a minimum amount or a "usable quantity" of a dangerous drug before there is a violation for the sale of dangerous drugs under MCA § 50-32-224 (1981)?*

**A: It appears that there is no minimum amount or "usable quantity" restriction on the quantity of a dangerous drug necessary to obtain a conviction.**

**No. 2131-B**

*Q: Must the identity and background of a police informant be disclosed via cross-examination to an individual who is charged with the offense of illegal sale of a dangerous drug?*

**A: The identity of a police informant cannot be withheld by the state if disclosure of the informant's identity is relevant and helpful to**

**the defense of the accused and is essential to a fair determination of a cause. At trial, the accused may cross-examine witnesses on any appropriate subject. Determination of an appropriate subject is within the discretion of the trial court and includes the name and address of a police informant except when such information would endanger the safety of the witness or his family.**

**No. 2131-C**

*Q: Does the fact that an information charges an offense to have occurred on or about a specific date give rise to a defect in the information when the date listed is off by one day?*

**A: An information must state the time of the offense as definitely as can be done. The Montana Supreme Court has upheld information using the language on or about a specific date where the state intended to prove the crime was committed within a reasonable period of time prior to or subsequent to the date on the information and where the accused had adequate notice of the offense charged.**

**No. 2148**

*Q: Should a county rightfully pay claims for mileage and per diem of three out-of-state character witnesses who testified at trial on behalf of an indigent defendant but were not compelled to attend?*

**A: Case law from other jurisdictions could be used to argue that at least two out-of-state witnesses should be paid mileage and per diem by the county where they voluntarily appear and testify at trial because of the limited discretion of the trial court and the underlying due process and compulsory process rights of an indigent defendant.**

**No. 2152**

*Q: Is the "temporary insanity defense" a viable defense in defending a victim of spouse-abuse who has been charged with the offense of attempted deliberate homicide?*

**A: Although the "temporary insanity defense" is no longer an affirmative defense in Montana and evidence of such is therefore confined to negating the requisite mental state for the crime, recent cases involving the battered woman syndrome as a defense to charges of homicide indicate that a defense of justifiable use of force may be successful where the defendant reasonably believes herself to be in imminent danger of serious bodily harm.**

**No. 2168**

*Q: Can a person be convicted of both theft and criminal trespass where the trespass occurred during the commission of the theft?*

**A: Yes, even though both charges arose from the same transaction, they are separate and distinct offenses.**

**No. 2188-A**

*Q: Will the fact that the prosecution did not indicate that it was going to prosecute the charge against the defendant until the defen-*

*dant went to the sheriff's office to inquire about his bond money approximately 11 months after the complaint was filed constitute an automatic denial of a speedy trial?*

**A: No. The issue of whether a person has been denied a speedy trial involves a balancing of the actions of the prosecution and the defendant of which delay caused by the prosecution is only one factor.**

**No. 2188-A**

*Q: Is it necessary to show actual prejudice to the defendant in order to successfully claim a speedy trial violation?*

**A: No. In some circumstances prejudice will be presumed.**

**No. 2194**

*Q: Where a person was a passenger in a truck used to commit a crime (pushing a police car down the street) and later taunted police about the incident over the telephone, is that sufficient evidence to make him an accomplice?*

**A: Probably not. It is doubtful a passenger could be held accountable for the driver's acts.**

**No. 2196**

*Q: Can an airplane pilot be convicted of negligent homicide where the pilot was not qualified for "instrument flight" under conditions of darkness and attempted flight at night in adverse weather conditions without making a required weather check?*

**A: Probably not. While airplane pilots are subject to a very high standard of care in the operation of their aircraft, violations of FAA regulations constitute negligence *per se* only in civil suits. In order to sustain a criminal conviction the prosecution must prove both: (1) That defendant's conduct reflected a disregard for human life or an indifference to consequences, and (2) that defendant's conduct was the legal cause of the accident. A conviction may not be sustained on the mere probability of defendant's guilt.**

**No. 2208-A**

*Q: Was a plea of guilty entered in chambers during a hearing on a motion in limine before voir dire and before trial began entered in "open court?"*

**A: Probably not. Proceedings conducted in chambers are nevertheless done in open court when: (1) those persons necessary to constitute a court are present and (2) the proceedings are conducted openly so far as the public is concerned. IN the present case, it appears that the clerk of court was not present during the proceedings and that such proceedings were intended to be purely private.**

**No. 2208-B**

*Q: Does violation of the open court requirement mandate reversal of a conviction?*

**A: Probably not. The open court requirement has been held to merely regulate procedure and not to be jurisdictional in nature. It is a waivable privilege and in the absence of**



prejudice resulting from an open court violation, will not result in reversal.

**p. 2212-A**

*Q: Is a search warrant valid if it describes the place to be searched as "room 121 of the Custer Inn" and if the application for the search warrant in one section describes the place as "room 121 of the Custer Inn" and as "his (the suspect's room," the room that police officers observed the suspect "looking out of the door of," but elsewhere describes the place as "room 21," when in fact the Custer Inn does not have a room 21 but does have, on the first floor, a room 121?*

**A: ???**

**No. 2212-B**

*Q: Can a Buck knife with a black handle and a black sheath be validly seized under a search warrant issued for "one white handled knife" and "other fruits of said crimes" which were sexual intercourse without consent and aggravated assault?*

**A: Arguably yes, the Buck knife was probably properly seized because it was either sufficiently described in the search warrant or was properly viewed as reasonably related to the crime of sexual intercourse without consent and aggravated assault.**

**No. 2213-A**

*Q: Does the Sixth Amendment guarantee of a right to counsel extend to a photo lineup where the defendant had been arrested and was in custody but not present at the photo lineup and where defendant's attorney was denied the opportunity to be present during the photo session?*

**A: No, the Sixth Amendment right to counsel has never been extended to include a photographic identification where the defendant is not present. The purpose behind the counsel guarantee is to insure the defendant is not misled by his ignorance of the law or the powers of persuasion of his adversary. The right to counsel provides the defendant with legal assistance and advice. Where the defendant is not present, the function of the lawyer becomes that of a mere observer—a role for which the Sixth Amendment does not provide.**

**No. 2213-B**

*Q: Does a six-picture array of front and profile shots where defendant and at least one other individual are shown with beards and all the pictures are taken at chest level though some of the men pictured are heavy set while others are slim, violate the defendant's due process rights?*

**A: Probably not, unless additional facts could be presented to show that the identification process was unnecessarily suggestive and conducive to irreparable mistaken identification.**

**No. 2221-A**

*Q: May a justice of the peace take away the driving privileges of a juvenile driver and juvenile passenger of a motor vehicle who are*

*found to be in illegal possession of alcohol?*

**A: Yes. Under MCA § 46-18-201(1)(a)(ix) (1981) a justice of the peace has the power to impose reasonable conditions of probation considered necessary for rehabilitation or for the protection of society in deferring imposition or suspending execution of a jail sentence. Case law suggests that withholding the driving privilege would be a reasonable condition because it is reasonably related to the crime committed.**

**No. 2221-B**

*Q: May the court impose a \$50 fine in addition to withholding the driving privilege?*

**A: Yes. Subject to certain limitations the court may impose the fine as a condition of probation or in the alternative impose the fine in addition to the condition of probation.**

**No. 2232**

*Q: Should a motion in limine be granted to exclude evidence (or the use for impeachment purposes of evidence) that a prosecution witness in a rape case has had "problems with bad checks?"*

**A: If such prior misconduct could be said to involve dishonesty, the changes for admissibility would be increased under Rule 608(B)(1). However, the trial court must also decide whether or not the circumstances surrounding the misconduct are either too prejudicial or of too little probative value to warrant admission. On balance, it would seem that the motion should be granted, especially in view of the flat prohibition in Montana's Rule 609 against use of prior crimes to impeach.**

**No. 2234-A**

*Q: Where defendant was threatened with jail if he did not talk and impliedly promised immunity if he cooperated, was the resultant confession voluntary?*

**A: No. When a defendant alleges an admission or confession was not made voluntarily, the prosecutor has the burden of proving by a preponderance of the evidence the statement was voluntary. Where defendant was threatened with jail if he did not talk and induced to talk by promises of immunity, the "totality of the circumstances" show the statement at issue was not voluntary, and the statement should be suppressed.**

**No. 2234-B**

*Q: Can a defendant enforce an alleged immunity agreement made with law enforcement officials after he has performed his part of the agreement, and the state begins to prosecute him?*

**A: While several state courts have held agreements between defendant and law enforcement officials are unenforceable, the federal courts recognize such agreements if there has been a formal grant of immunity, or a waiver of constitutional or statutory safeguards. Attacks based upon the prosecutor's abuse or discretion and the ill-defined concept of "equitable immunity" are also available where a defendant has per-**

**formed his end of an immunity agreement, and yet is still prosecuted.**

**No. 2237**

*Q: Is the fact that seven to eight hours after the commission of the crime, a dog led the police from the scene of the crime to the defendant's home sufficient to establish probable cause for the defendant's arrest?*

**A: Probably not, although other factors such as time and place may affect the reasonableness of relying on the information received from the tracking of a dog.**

**No. 2238-A**

*Q: Is a search warrant necessary before police officers may lawfully obtain scrapings from underneath an arrested suspect's fingernails?*

**A: No, when a lawful arrest is effected, a police officer need not procure a search warrant before obtaining fingernail scrapings.**

**No. 2238-B**

*Q: Is a search warrant necessary to obtain fingernail scrapings from a suspect who has not been arrested?*

**A: This question must be answered on a case-by-case basis depending upon whether probable cause exists that evidence will be found in the search and the exigency of the circumstances.**

**No. 2238-C**

*Q: Must fingernail scrapings be taken by a medical professional?*

**A: No, a fingernail search by nonmedical police personnel in nonmedical surroundings should be permissible because of the very minimal danger of physical harm to the individual and because of the minimal intrusion of privacy.**

**No. 2239**

*Q: When a parolee's parole is revoked, is he entitled to good time for the period of time he was on parole prior to revocation?*

**A: Yes. Under MCA § 53-30-105(3) (1979), a parolee is entitled to good time credit during the period of his parole until revocation if such revocation occurred before October 1981.**

**No. 2240**

*Q: Did defendant violate MCA § 45-5-201(1)(b) (1981), which states that, "A person commits the offense of assault if he negligently causes bodily injury to another with a weapon," where, after sharpening a folding pocket knife, he walked into a darkened room and collided with his wife, thereby cutting her?*

**A: Liability could be found only upon a showing that defendant's conduct was a "gross" deviation from the standard of care which a reasonable person would observe in defendant's position.**

**No. 2248**

*Q: Can an ex-wife be compelled to testify against her ex-husband in a prosecution for*

aggravated assault, kidnapping, and sexual intercourse without consent, all against his wife, as well as aggravated burglary of her residence?

**A:** Yes. The ex-wife is not incompetent to testify under MCA § 46-16-212 (1981), nor is she privileged under MCA §26-1-802 (1981). Moreover, the privilege against adverse spousal testimony terminates once the parties are divorced, except with regard to communications made by one spouse to the other during the marriage.

**No. 2259-A**

**Q:** May a United States border patrolman stop or detain an individual to ask him whether he is an alien or a citizen, solely because the individual displays physical characteristics of Mexican ancestry?

**A:** Probably not. The decision in *United States v. Brignoni-Ponce*, 442 U.S. 873 (1975) limits the authority of a border patrolman to make investigative stops of individuals when the only reason for the stop is the observed Mexican ancestry of the individual. Unless there are other specific, articulable facts, together with rational inferences from these facts, pointing to a reasonable suspicion that the individual may be an illegal alien, the investigatory stop is unconstitutional. Portions of *United States v. Mendenhall*, 100 S.Ct. 1870 (1980), arguing that the act of peace officers approaching, requesting identification from, and posing a few questions to an individual exhibiting suspicious conduct might be constitutionally reasonable and would not amount to a seizure, do not constitute a majority opinion of the members of the United States Supreme Court. Therefore, *Brignoni-Ponce* remains the more relevant law on the subject.

**No. 2263**

**Q:** Does a prior, unrevoked deferred imposition of sentence for a felony constitute a previous "conviction" for purposes of Montana's persistent felony offender statutes?

**A:** Probably not. The policy behind Montana's statutes authorizing a deferred imposition of sentence is to assume that a first-time offender will not have a criminal record.

**No. 2274**

**Q:** If a defendant is allowed to pay a traffic fine in installments and fails to do so, what penalties may a justice court impose?

**A:** A justice court may punish a defendant for failure to pay installments on a traffic fine or under civil or criminal contempt statutes which provide different penalties. The primary difference between the two kinds of contempt is that the primary purpose of punishment for civil contempt is remedial while the primary purpose of criminal contempt punishment is punitive and to preserve the authority of the court.

**No. 2284**

**Q:** Can a person who was a visitor at a residence where narcotics were found, and who was unaware of their presence or

whereabouts be found to be in possession of such drugs?

**A:** No. Mere physical proximity to the drugs, i.e., being in the house where they were found, is not sufficient to prove possession. There must be additional evidence that would show both defendant's knowledge of and intent to control the drugs.

**No. 2285**

**Q:** Does an agent of the division of motor vehicles have power to issue a probationary license under § 61-5-206 to a person who has been adjudged an habitual traffic offender under §§ 61-11-201 et seq.?

**A:** Probably not. The mandatory nature of §§ 61-11-211, 212 suggest that the license of an habitual traffic offender must be revoked for three years. Section 61-5-206 appears to allow discretionary suspension of drivers' licenses prior to revocation hearings when such suspension would be in the public interest.

**No. 2290**

**Q:** Is the three day additional time period, under rule 6 (e) of the Mont. R. Civ. P., applicable to mailing a motion for substitution of a judge in a criminal case?

**A:** Maybe. The Montana Supreme Court might be willing to apply the computation of time provisions in Rule 6 of the Mont. R. Civ. P. to MCA § 3-1-802 (1982) in order to avoid the confusion of dual time periods for criminal and civil cases.

**No. 2292**

**Q:** Can a justice of the peace incarcerate a juvenile for a violation of fish and game laws?

**A:** Yes, it would appear that a justice of the peace has the authority to incarcerate juveniles for fish and game violations if the juvenile is separated from adult offenders in the detention facility. However, the rehabilitative purpose which underlies the juvenile justice system may be better served by alternative sentencing.

**No. 2293**

**Q:** What type of court costs can a justice of the peace assess against the defendant under MCA § 61-8-711(4) (1981)?

**A:** Only those court costs which are expressly or impliedly provided for by statute such as juror, witness, and justice fees.

**No. 2308**

**Q:** Is the "presumption" contained in MCA § 45-6-316(2), which makes failure to make good on a check within 5 days of notice of nonpayment "prima facie evidence" of the mental element for issuing a bad check, a denial of due process when applied in a situation where the issuer of a bad check is not given notice of nonpayment for three months after the check was written?

**A:** Probably not. It appears that § 45-6-316(2) would be constitutional as applied because (1) it would probably be construed as merely creating an inference; (2) the defendant is in the best position to prove lack of knowledge;

(3) the section is not essential to establishment of the offense; and (4) if construed as a presumption, it may still be rebutted.

**No. 2311**

**Q:** Can a person who has never obtained a Montana driver's license and who was previously convicted of driving under the influence of alcohol, resulting in an order of revocation of license, be convicted of driving while his license was revoked?

**A:** Arguably not. Because the defendant never had a driver's license, the revocation order was inapplicable. Therefore, the charge of driving while his non-existent license was revoked is not applicable.

**No. 2319**

**Q:** May an employee of the city, who is also an attorney, be appointed as a substitute city judge under MCA § 3-11-203, when the employee lives 3 miles outside of the city limits?

**A:** Yes. Under the intergovernmental cooperation provision of the Mont. Const., Art. XI, § 7, the city employee would be able to act as a substitute for a city judge.

**No. 2333-A**

**Q:** Does the Sixth Amendment of the United States Constitution require appointment of counsel to defend indigents accused of misdemeanors, where the state has agreed, with concurrence of the court, that no jail sentence will be imposed?

**A:** No. Appointment of counsel to assist indigents accused of misdemeanors is required only where actual imprisonment occurs. Counsel need not be appointed if the judge, having weighed the seriousness and gravity of the offense, precludes the possibility of imprisonment in the event of conviction.

**No. 2333-B**

**Q:** Does the Sixth Amendment to the U.S. Constitution require appointment of counsel to defend an indigent accused of a misdemeanor, where upon conviction defendant is by statute presumed to be entitled to deferred imposition of sentence, as in a first misdemeanor possession of dangerous drugs?

**A:** It is not necessary to appoint counsel to assist indigent defendants accused of misdemeanors where imposition of sentence will be deferred. But if the defendant is convicted without counsel and the court later revokes the judgment of deferment, the defendant may not be imprisoned, although imposition of other sentences would then be permissible.

**No. 2333-C**

**Q:** May a justice court appoint counsel under MCA § 46-8-101 (1981) to represent indigents accused of misdemeanors, or must such appointment be made by the district court?

**A:** A justice court may appoint counsel to represent indigents accused of misdemeanors. A justice court is a "court" within the meaning of MCA § 46-8-101 and thus may appoint counsel in the interest of justice if the

defendant desires counsel and is unable to employ counsel.

**2333-D**

*Q: Does a justice of the peace have power to appoint counsel to represent a criminal defendant where the attorney sought to be appointed resides outside the county of the justice's jurisdiction?*

**A:** Arguably, yes. While justice court powers are generally limited to the county where they are located, it is arguable that Montana's right to counsel statute, MCA § 46-8-101 (1981), in granting justice courts power to appoint counsel, also confers upon justice courts the power to do so by any means necessary. Also, the traditional relationship between courts and attorneys arguably includes power of the court to compel such service. It has been held that the privilege to practice carries a duty to serve the court.

**No. 2336-A**

*Q: If a person is found in contempt of district court for failure to obey a court order to pay child support would the contempt be considered a civil or criminal contempt?*

**A:** The ordinary contempt case involving failure to pay child support should be considered an indirect civil contempt because it is instituted to protect the rights of private parties and only indirectly to vindicate the court's authority. It is unclear whether criminal contempt proceedings may be applied in an aggravated case.

**2336-B**

*Q: What are the consequences of an alleged contemnor's inability to pay in relation to a charge of contempt of court?*

**A:** In Montana inability to pay is a defense which may excuse a charge of contempt if the person proves an inability to pay and a diligent and good faith effort to make payments. If the person is unable to pay as a result of his own contumacious acts it appears that he cannot be jailed in excess of five days.

**No. 2336-C**

*Q: What is the maximum sentence available to a court which finds a person in contempt of court for failure to obey a court order to pay child support?*

**A:** The maximum sentence available to a court depends upon the contemnor's ability to pay. If the contemnor is able to pay he may be jailed until he pays child support and/or fined for failure to pay child support. If the contemnor is unable to pay it appears that he can be jailed a maximum of five days.

**No. 2336-D**

*Q: Are there any particular findings which must be made by the court prior to the order of contempt?*

**A:** No. A prima facie case is established by violating the court order and a failure to comply therewith. The defense of inability to pay must be raised by the alleged contemnor.

**No. 2337-A**

*Q: Does an indigent defendant have a constitutional or statutory right to assistance of court-appointed counsel on a motion to reduce sentence under federal rule 35, after the defendant, assisted by court-appointed counsel, pled guilty in federal district court to a felony and was sentenced to imprisonment?*

**A:** There is no constitutional right to court-appointed counsel, in a Rule 35 motion to reduce sentence, under the due process, fundamental fairness test applied in *Gagnon v. Scarpelli*, 411 U.S. 778 (1973). There may be such a right where the government seeks a sentence increase or the court increases the sentence *sua sponte* under Rule 35. There is a statutory right to counsel on a Rule 35 motion, under the Criminal Justice Act, 18 U.S.C. § 3006A(c), for defendants who have been convicted by guilty plea, according to *United States v. Morales*, 496 F.Supp. 139 (E.D.N.Y. 1980), although some authorities conclude differently on different facts.

**No. 2337-B**

*Q: May court-appointed counsel withdraw from a case after representing the defendant through guilty plea and sentencing, if counsel determines that a motion to reduce sentence under Rule 35 would be frivolous, and if so, what procedures must be followed?*

**A:** Arguably, counsel may withdraw from representation of a defendant on a Rule 35 motion to reduce the sentence, if such a motion would be frivolous, by compliance with the procedures outlined in *Anders v. California*, 386 U.S. 738 (1967). Counsel should at least, in the interest of fairness, advise the defendant of the opportunity to file and the likelihood of success. It may be possible to obtain a court ruling which allows a simpler procedure.

**No. 2338-A**

*Q: What procedures are available to a youth court when it seeks to commit to Warm Springs State Hospital a youth who has previously been adjudicated delinquent?*

**A:** The proper procedure is not clear because the statutes do not provide commitment procedures for delinquent youths; however, there appear to be three different procedures that could be used.

**No. 2338-B**

*Q: Is a juvenile who has been adjudicated delinquent entitled to a hearing when he is involuntarily committed to Warm Springs?*

**A:** Yes. Case law suggests that the involuntary commitment of a delinquent youth without a hearing to determine if he should be committed would be a denial of equal protection and due process of law.

**No. 2338-C**

*Q: If a youth who has been adjudicated delinquent is committed to Warm Springs should the adjudication of delinquency be allowed to stand?*

**A:** It is arguable that a court which is put on

notice after an adjudication of delinquency that the youth was incompetent to stand trial should not permit the adjudication to stand.

**No. 2338-D**

*Q: If a juvenile is committed to Warm Springs and turns 18 while committed, can he be transferred to the adult ward?*

**A:** It is arguable that he should not be transferred. Furthermore, it appears that the youth court could retain jurisdiction over the person committed and prevent such a transfer.

**No. 2360**

*Q: When a search warrant authorizes the seizure of specifically described items, including certain particularly described articles of clothing, may other items of clothing (in this case a pair of socks) be seized which are not specifically described, which do not fit the general description of "any other clothing which may have blood stains," and which have no apparent incriminating characteristics?*

**A:** No. It is generally required that things seized under authority of a warrant be particularly described in the warrant. There are, however, exceptions to this requirement. Items not described in the warrant may be seized under the plain view doctrine. To be justifiable under the plain view doctrine, a seizure must be: (1) based upon a prior valid intrusion; (2) based upon an inadvertent discovery of the evidence; and (3) predicated upon a demonstrable nexus between the items seized and criminal behavior (e.g., where the item is plainly incriminating). Further, Montana case law requires a showing of exigent circumstances in addition to the three requirements listed above. Since the socks were not particularly described in the warrant, and since there were no apparent incriminating characteristics visible to the officers upon execution of the warrant, the seizure of the socks is not justifiable under the plain view doctrine. Further, if the police were aware of information amounting to probable cause to seize the socks prior to execution of the warrant, discovery of the socks was not inadvertent. Finally, since the warrant was issued and executed seven days after commission of the crime being investigated and there were no other circumstances justifying a warrantless seizure, there were no exigent circumstances which made obtaining a further warrant for the socks impractical. Also, the state may not justify the seizure as based upon a search incident to arrest and search were not substantially contemporaneous, as required by Montana law.

**No. 2369-A**

*Q: Is marijuana admissible at trial when four or five police officers rush to approach a person, ostensibly for the purpose of questioning her, and there seize marijuana plants growing in plain view in the garden next to her?*



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**A:** Arguably, the answer depends on the intent of the police officers and the amount of suspicion they acted under. Police cannot enter a person's property in the absence of exigent circumstances with the intent to find contraband. Assuming that the police had reasonable suspicion that criminal activity

was afoot, a stop of the person would be justified. However, it could be argued that a search warrant was required if their suspicion would have constituted probable cause for issuance of a search warrant.

No. 2369-B  
Q: Does the "open fields" doctrine apply to a

*garden not visible from outside a person's property?*

**A:** The answer depends on the location of the garden with respect to the dwelling and other factual considerations as they tend to evidence the person's subjective expectation of privacy and whether these expectations are "justifiable."

COST SAVINGS

Although it is difficult to put a precise value on having higher quality legal research readily available on a phone-up basis across the state, the following categories of estimated minimum cost savings should give some idea of how MONTCLIRC has been of great help.

(1) Less personnel in certain populous counties, (at least 2 people each in Cascade, Missoula, and Yellowstone Counties, at \$18,000/person). . . . .	\$108,000
(2) Differential cost between court-appointed attorneys (at least 100 requests/year, average 10 hrs/request) and our researchers (at least \$30/hr; in some counties the difference would be \$45/hr) . . . . .	30,000
(3) Fewer trials, because defense counsel decide (after being convinced by our research that every possible avenue has been fully explored) to take a plea or (less often) the prosecutor decides not to bring some charges (very conservative estimate, based upon evaluations telling us that our research resulted in a plea, 10 cases/year, at least \$3,000/trial) . . . . .	30,000
(4) Fewer retrials, due to higher quality information (given cost of both appellate litigation and the retrial, even 10 cases/year would save minimum of \$40,000) . . . . .	<u>40,000</u>
TOTAL	<u>\$208,000</u>

Finally, the above savings are in a way only half of the value of what MONTCLIRC does. A large portion of our work is the dissemination of prior memoranda, periodic synopses of Montana and U.S. Supreme Court decisions, and long-term book projects such as the MONTANA CRIMINAL CODE ANNOTATED (this book has been playing to "rave reviews," for it has annotations and other research tools unavailable anywhere else).

In sum, the research has to be done anyway, so it should be done the cheapest and best way, which is precisely what MONTCLIRC has been doing.

JR

ESTIMATED MONTCLIRC BUDGET, 1983-85

<u>Personnel</u>	<u>1983-84</u>	<u>1984-85</u>
Director <sup>1/</sup>	\$ 37,800.00	\$ 39,700.00
Legal Secretary <sup>2/</sup>	14,400.00	15,600.00
Research Assistants <sup>3/</sup>	24,000.00	26,400.00
Employee Benefits <sup>4/</sup>	10,100.00	10,700.00
<u>Travel<sup>5/</sup></u>	500.00	500.00
<u>Equipment Rental &amp; Maintenance<sup>6/</sup></u>	4,800.00	4,800.00
<u>Supplies &amp; Operating</u>		
Supplies	675.00	700.00
Printing and Xerox <sup>7/</sup>	4,500.00	5,000.00
Telephone	675.00	725.00
Postage	700.00	750.00
Indirect Cost <sup>8/</sup>	<u>7,850.00</u>	<u>8,390.00</u>
TOTAL	\$106,000.00	\$113,265.00

1/ At a 5% annual increase.

2/ Currently Grade 8, Step 4 (Legal Secretary I).

3/ Upwards of 24 part-time in school year; 3 to 4 full-time in summer-- estimated at \$2,000/month (first year), \$2,200/month (second year).

4/ Teacher retirement, PERS, social security, workmen's and unemployment compensation, group insurance; estimated 18% for Director and Secretary, 1% for students in school year, and 8% for students in summer.

5/ Mainly to lower court conferences.

6/ Lease-option on word-processor (estimated \$400/month). *includes printer*

7/ Prior memos, periodic case synopses, quarterly newsletter and annual bibliography.

8/ Calculated at rate applicable to state contracts of 8% of direct cost.

STATISTICS ON MONTCLIRC SERVICES

November 1, 1976 through December 31, 1982

TOTAL NUMBER OF REQUESTS: 2481

Type of User

593 - County Attorneys (including deputies)  
408 - Public Defenders  
478 - Court Appointed Counsel  
191 - Justice of the Peace  
104 - City Judges  
169 - City Attorneys  
51 - District Judges  
39 - Sheriffs  
31 - Parole Officers  
61 - Police Chiefs  
23 - Special Prosecutors  
25 - Juvenile Probation Officers  
10 - Tribal Judges  
294 - Other

Counties Represented

22 - Beaverhead	23 - Mineral
55 - Big Horn	311 - Missoula
46 - Blaine	11 - Musselshell
16 - Broadwater	29 - Park
33 - Carbon	1 - Petroleum
221 - Cascade	26 - Phillips
12 - Choteau	30 - Pondera
102 - Custer	11 - Powder River
2 - Daniels	25 - Powell
52 - Dawson	1 - Prairie
47 - Deer Lodge	95 - Ravalli
6 - Fallon	35 - Richland
26 - Fergus	31 - Roosevelt
100 - Flathead	36 - Rosebud
66 - Gallatin	31 - Sanders
9 - Garfield	18 - Sheridan
46 - Glacier	112 - Silver Bow
1 - Granite	5 - Stillwater
84 - Hill	12 - Sweetgrass
13 - Jefferson	33 - Teton
9 - Judith Basin	26 - Toole
65 - Lake	1 - Treasure
172 - Lewis & Clark	37 - Valley
8 - Liberty	4 - Wheatland
110 - Lincoln	6 - Wibaux
17 - Madison	158 - Yellowstone
20 - McCone	12 - OUT OF STATE
8 - Meagher	

BOARDS AND COMMISSIONS

Exhibit 5  
Jan. 26, 1983

	FY83 <u>ACTUAL</u>		FY84 <u>REQUESTED</u>		FY85 <u>REQUESTED</u>
FTE	3.00		3.50		3.50
Practice					
Contracted Services					
Executive Secretary			15,168		16,077
Investigation			7,051		7,474
Transcripts			3,266		3,462
Supplies and Materials			1,865		1,977
Communications			1,502		1,610
Travel			<u>9,111</u>		<u>9,483</u>
Total	35,050		37,963		40,083
Bar Examiners					
Contracted Services					
Secretarial			15,500		15,500
Graders			6,600		6,600
Questions			5,600		5,600
Member Compensation			3,000		3,000
Supplies and Materials			3,468		3,508
Travel			<u>5,117</u>		<u>5,345</u>
Total	38,351		39,285		39,553
Civil Procedure					
Contracted Services					
Research			14,000		12,000
Printing			3,315		3,551
Travel			<u>5,305</u>		<u>5,471</u>
Total	1,000		22,620		21,022
Sentence Review					
Personal Services	.50	1.00	16,162	1.00	16,114
Supplies and Materials			689		730
Communications			1,027		1,141
Travel			<u>2,078</u>		<u>2,129</u>
Total	11,500		19,956		20,114
Probate					
Personal Services	.50	.50	8,002	.50	7,985
Supplies and Materials			36		38
Total	8,000		8,038		8,023
Limited Jurisdiction					
Personal Services	2.00	2.00	50,035	2.00	49,920
Operating Expenses					
Contracted Services					
Research			6,000		3,000
Printing			1,584		1,679
Training			4,795		5,083
Supplies and Materials					
Commission			1,994		2,292
Training			1,011		1,072
Communications					
Commission			1,201		1,665
Training			196		254
Travel					
Commission			13,308		13,591
Training			<u>4,884</u>		<u>5,031</u>
Total	76,000		85,008		83,587
Nominations					
Supplies and Materials			71		76
Travel			<u>464</u>		<u>487</u>
Total	500		535		563
Standards					
Contracted Services					
Investigation			2,513		2,664
Supplies and Materials			1,849		1,889
Travel			<u>1,209</u>		<u>1,337</u>
Total	5,500		5,571		5,890
Planning					
Supplies and Materials			1,888		1,937
Travel			<u>3,241</u>		<u>3,372</u>
			5,129		5,309



## VISITOR'S REGISTER

## HOUSE ELECTED OFFICIALS/HIGHWAYS COMMITTEE

~~Bill~~ Work Session 8-9 a.m.

DATE Jan. 27, 1983

~~SPONSOR~~ Hearings: Supreme Court Operations

8:00 a.m.

## Boards &amp; Commissions

NAME	RESIDENCE	REPRESENTING	SUP- PORT	OP- POSE
<del>Lady Belton</del>	Helena	State Auditor		
<del>Josephine Isaak</del>	Helena	State Auditor		
<del>Norma Ruffert</del>	Helena	State Auditor		
<del>Rick Koe</del>	✓	✓		
Gordon Bruce	✓	State Auditor		
Stacy Holloway	✓	✓		
Roy L. Phelps	Helena	St. Auditor	✓	
RG "Rick" Tucker	"	"	✓	
Mike Oberst	Helena	Supreme Court	✓	
Mike Trevof	Helena	Computer Services	✓	
Joe Jellis	Hlv	Supreme Court	✓	
James Schuveln	Bozeman	Water Courts	✓	<del>✓</del>
James T. Kinney	Missoula	MONTCLIRC	x	
Claire Wright	Helena	Sup Ct	✓	
Ethel Harrum	Helena	Sup. Ct	✓	
Richard Hall	Canyon Creek	State Auditor	-	
Roy L. Phelps	Helena	" "	✓	
Devin M. Taylor	Helena	Personnel Div/DofA	✓	
Donna Warren	Helena	State Auditor	✓	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.