MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
February 18, 1983

The thirty-first meeting of the Senate Judiciary Committee was called to order by Chairman Jean A. Turnage on February 18, 1983 at 10:05 a.m. in Room 325, State Capitol.

ROLL CALL: All members were present.

CONSIDERATION OF SENATE BILL 427: Senator Marbut, sponsor of the bill, stated that the Montana statutes are currently not particular about which nonprofit organizations may be given money by political subdivisions. SB427 will create more appropriation requirements which will require more accountability by the organizations. If an organization is required to have an IRS tax identification number then the local governments will know that the funs which they appropriate are going to bona fide nonprofit organizations.

PROPONENTS: Chip Erdmann, representing the Montana School Board Association, supported the concept of the bill, but was concerned that educational organizations may not be eligible for funds under the requirements of this bill since they do not have an IRS 501(C)(3) number. A written statement was submitted (attached as Exhibit "A").

There being no further proponents or opponents, the hearing was opened to questions from the Committee.

Chairman Turnage asked Senator Marbut if there would be a problem adding a 501(C)(6) number to the requirements of SB427. Senator Marbut felt that the educational organizations should be able to obtain a 501(C)(3) number. Chip Erdmann advised that since the Montana School Board Association does not deal exclusively with education, they would not qualify for a 501(C)(3) number.

CONSIDERATION OF SENATE BILL 440: Senator Marbut, sponsor, advised that the purpose of this bill is to make the court system in the state a better managed institution. As the court system is now set up, much of its financial support is dependent on local property taxes. Under the provisions of SB440 the court system would be funded totally by the state. Senator Marbut advised that we are one of 11 states which does not have a centralized court system. He also stated that this bill was patterned after legislation from Alabama. Each section of the bill was explained. The costs for the system would be financed through income taxes. A financial statement was distributed and reviewed (attached as Exhibit "B").

PROPONENTS: Judge H. William Coder, a District Judge from the 8th Judicial District, recommended a do pass consideration. He

advised that the district courts deal with state functions and should therefore be funded by the state. He had conducted a study in Cascade County and found that out of the $1,000,000 appropriated for the judicial budget, only $145,000 is used specifically for the district courts. Such programs as the youth court, conciliation, public defender and clerk of court required the remainder of the budget. Judge Coder stated that these are services to the litigant and would not fall under the centralized court system. Judges are now required to go before their county commissioners to request money to fund programs mandated by the legislature and it is his opinion that the state should fund programs which have been legislated. A copy of his study was submitted to the Committee (Exhibit "C") and also a statement regarding HB120 and SB19 which also address this issue (Exhibit "D").

There being no further proponents and no opponents, Senator Marbut closed by stating the district courts should be separated from the other judicial programs.

CONSIDERATION OF SENATE BILL 464: Senator Keating, sponsor, advised the purpose of this bill is to change and strengthen the obscenity laws by defining criminal offenses which are harmful to juveniles. SB464 was modeled after the Ohio obscenity laws and the U.S. Supreme Court has upheld an Ohio court's decision by refusing to hear an appeal regarding an obscenity law. The current Montana statutes deal with obscene material. SB464 will broaden the law by stating that anything which is harmful to juveniles is an offense. Most of the language in section 45-8-201 will be replaced with clearer definitions. Senator Marbut asked the Committee to give serious consideration to this bill.

There being no proponents or opponents, the hearing was opened to questions from the Committee.

Senator Mazurek noted there were alot of terms in the bill which are not readily defineable, such as "ordinary" and "bizarre."

Senator Marbut closed by stating this law has been successful in other courts and urged a do pass recommendation.

CONSIDERATION OF SENATE BILL 433: Senator Brown, sponsor, advised that Martin Lambert from Montana University School of Law would present the bill.

Martin Lambert advised that he and two other law school students, along with Professor McDonald, had drafted the bill as the current exemption laws were inadequate and outdated. He reviewed

each section of the bill and advised that their main concern when drafting it was to keep the debtor on his feet, but also allow the creditor to receive what monies were due him.

There being no further proponents and no opponents, the hearing was opened to questions from the Committee.

Senator Halligan was concerned with what appeared to be excessive protection of the debtor in lines 9 through 14 on page 7. Senator Halligan questioned why a failure to respond to the notice shouldn't simply result in a default, rather than another hearing. Martin Lambert advised that the Legislative Council had changed their original wording in this area. Senator Halligan was also concerned that the creditor was required to pay the costs incurred (referred to on page 8).

Senator Mazurek tried to determine the qualifications of the people who had drafted the bill. He also questioned who had reviewed it ,and if it was drafted from scratch or modeled from another law. Martin Lambert advised that Professor Donald McDonald had worked on it and it was also modeled from the Uniform Exemptions Act, the Bankruptcy Code and the California Exemption Laws. Senator Mazurek was concerned that other associations had not see it.

There being no further discussion, the hearing was closed.

CONSIDERATION OF SENATE BILL 393: Senator Daniels, sponsor, advised that this bill had been drafted by Ted Mizner, Powell County Attorney.

PROPONENTS: Ted Mizner informed the Committee that he is responsible for prosecuting the prisoners at Montana State Prison. It is difficult to punish hard-core violent prisoners as you can only add years to their sentence. There is nothing really to deter them from committing violent crimes against people. Ted Mizner feels that a point system should be implemented which would assess points for various violent crimes against people and would result in execution for the habitual offender. The logic for this bill came from the current statutes which deal with other habitual offenses. He felt that society needs some point where they can draw the line. Mr. Mizner expressed concern for the title of the bill as worded. He also advised that in the case of a deferred imposition of sentence, the point would be stricken from the record if the conditions were satisfactorily met during the deferred term.

OPPONENTS: Cathy Reardon, representing the Montana Religious Legislative Coalition, advised that while they don't condone

violent crimes, they do oppose the death penalty. A leaflet was distributed regarding capital punishment (Exhibit "E").

There being no further proponents or opponents, the hearing was opened to questions from the Committee.

Senator Halligan was concerned that there would be no way to remove the points from a record, even in the case where the defendant reforms.

Senator Daniels closed by stating the treat of execution would be a good deterrent to crime.

CONSIDERATION OF SENATE BILL 424: Senator Dover, sponsor, advised that this bill authorizes a fuel wholesale distributor to file a lien to secure payment. He reviewed the sections of the bill and advised that they would (1) provide who may have a lien, (2) provide how the lien may be obtained, (3) give instructions to the clerk and recorder in regards to filing the lien, and (4) state priorities. Senator Dover stated there is a need for this law since fuel costs have escalated. SB424 would give fuel dealers protection and leverage with farmers who receive fuel on credit.

PROPONENTS: John Braunbeck, representing Energy Services Company, testified in favor of the bill.

There being no further proponents, and no opponents, the hearing was opened to questions from the Committee.

Senator Mazurek felt that the fuel distributors were protected under the Uniform Commercial Code. John Braunbeck agreed but said SB424 addresses these types of liens more specifically. Senator Crippen was concerned with the priority date section of the bill. Senator Mazurek was also concerned with the lien being placed on machinery and equipment. John Braunbeck advised that they need some kind of security for payment.

There being no further discussion, the hearing was closed.

CONSIDERATION OF SENATE JOINT RESOLUTION 15: Senator Turnage, sponsor, advised that this resolution was drafted to commend Crimestoppers. The hearing then moved into executive session.

ACTION ON SENATE JOINT RESOLUTION 15: Senator Turnage moved SJR15 DO PASS. This motion carried unanimously.

ACTION ON SENATE BILL 427: Senator Galt moved SB427 DO PASS. Senator Berg was concerned that the school board association wouldn't be eligible for funds under this bill. Senator Turnage

suggested amending it to include the school boards. Senator Berg was also concerned with other associations who would not be eligible for funds under the provisions of SB427. Senator Hazelbaker made a substitute motion to TABLE SB427. This motion passed unanimously.

ACTION ON SENATE BILL 347: It was the consensus of the Committee that the only section of the bill which should be retained to cover the prescriptive easement issue is subsection (2) of section 1. Senator Mazurek was concerned with the definition of recreational purpose. Recreational purpose was discussed at length and a definition was ascertained in section 70-16-301. The Committee felt that by enacting this statute they wouldn't be affecting any current right of access by people to their cabins on weekends. Senator Galt moved to amend the bill to eliminate everything but subsection (2) of section 1. This motion passed unanimously. Senator Galt then moved SB347 DO PASS AS AMENDED. This motion also passed unanimously.

ACTION ON SENATE BILL 424: Senator Mazurek moved to TABLE SB424. This motion carried with Senator Crippen voting in opposition.

ACTION ON SENATE BILL 440: Senator Crippen moved to TABLE SB440. This motion passed unanimously. The Committee felt the bill did have some merit. Senator Berg moved for a study resolution of SB440. This motion carried unanimously.

ACTION ON SENATE BILL 433: Since this bill was introduced so late, the Committee did not have adequate time to assess its merits. Senator Crippen moved to TABLE SB433 and to also ask for a study resolution. These motions both passed unanimously.

ACTION ON SENATE BILL 393: Senator Mazurek moved to TABLE SB393. This motion carried with Senators Crippen, Galt and Daniels voting in opposition.

ACTION ON SENATE BILL 170: Senator Mazurek moved SB170 DO NOT PASS. There was a constitutional question about reverting private property without just compensation. Senator Mazurek then proposed a substitute motion to TABLE SB170. This motion carried with Senators Galt, Halligan, Shaw and Crippen voting in opposition.

ACTION ON SENATE BILL 464: Senator Mazurek moved to TABLE SB464, This motion carried with Senators Galt, Hazelbaker and Crippen voting in opposition.

ADJOURN: There being no further business before the Committee, the hearing was adjourned at 12:01 p.m.

Jean A. Turnage

JEAN A. TURNAGE
Chairman, Judiciary Committee

ROLL CALL

JUDICIARY COMMITTEE

48th LEGISLATIVE SESSION - - 1983 Date 2-18-83

NAME	PRESENT	ABSENT	EXCUSED
Berg, Harry K. (D)	✓		
Brown, Bob (R)	✓		
Crippen, Bruce D. (R)	✓		
Daniels, M. K. (D)	✓		
Galt, Jack E. (R)	✓		
Halligan, Mike (D)	✓		
Hazelbaker, Frank W. (R)	✓		
Mazurek, Joseph P. (D)	✓		
Shaw, James N. (R)	✓		
Turnage, Jean A. (R)	✓		

DATE 2-18-83

COMMITTEE ON Judiciary

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Check One: Oppo
John Braunbeck	Mont. Iowa / Mont. LP Gas Assn	424	✓	
Mike Abley	Supreme Court	440		
Cathy Reardon	Supreme Court	440		
Marty Lambert	Mont. Law School	433	✓	
Kathryn S W Lambert	Montana Law School	433	✓	
Chip Erdmann	MT School Bd Assoc.	427	✓ with clarification	
Cathy Campbell	Mont Assn of Churches	393		✓

(Please leave prepared statement with Secretary)

EXHIBIT "A"
February 18, 1983

WITNESS STATEMENT

Name Chip Erdmann Committee On S. Jud

Address Helena Date 2/18/83

Representing MT School Bd Assoc Support X with Clarification

Bill No. SB 427 Oppose

Amend

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. MSBA supports the concept of this bill - to ensure that the nonprofit organizations public entities give money to are infact legitimate nonprofit organizations
2. The problem is that MSBA, and similar organizations, operate under the exemption found in 501(c)(6), yet someone looking at this bill could say that
3. since we are "educational" we should have a 501(c)(3) exemption number, which we can't
4. get since we are not exclusively "educational" We feel this should be clarified so there is no confusion on the other than 501(c)(3) nonprofit organizations that do have IRS exemption numbers, but under different subsections.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

FORM CS-34
1-83

(b) Tax on unrelated business income and certain other activities. An organization exempt from taxation under subsection (a) shall be subject to tax to the extent provided in parts II and III of this subchapter, but (notwithstanding parts II and III of this subchapter) shall be considered an organization exempt from income taxes for the purpose of any law which refers to organizations exempt from income taxes.

(c) List of exempt organizations. The following organizations are referred to in subsection (a):

(1) Corporations organized under Act of Congress, if such corporations are instrumentalities of the United States and if, under such Act, as amended and supplemented, such corporations are exempt from Federal income taxes.

(2) Corporations organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization which itself is exempt under this section.

(3) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.

(4) Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, or local associations of employees, the membership of which is limited to the employees of a designated person or persons in a particular municipality, and the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes.

(5) Labor, agricultural, or horticultural organizations.

(6) Business leagues, chambers of commerce, real-estate boards, boards of trade, or professional football leagues (whether or not administering a pension fund for football players), not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(7) Clubs organized and operated exclusively for pleasure, recreation, and other nonprofitable purposes, no part of the net earnings of which inures to the benefit of any private shareholder.

(8) Fraternal beneficiary societies, orders, or associations—

(A) operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system, and

EXHIBIT "B"
February 18, 1983

SENATE BILL 440 Senator A. Reed Marbut

FUNDING PROPOSAL

July 1, 1983 to July 1, 1985

1) Anticipated costs ± $750,000.00

2) Expected cases 48000 (based on increase from 32000 cases last year)

3) Therefore 48000 x $15.62 increased filing fee = $750,000.00 revenue.

July 1, 1985

	F.Y. 84	F.Y. 85
Systems costs:	$10,895,782	$11,567,526
Public Defender	1,400,000	1,498,000
Admins (projected)	(fees)	750,000
		$13,815,526.00

Revenue:

Income Tax 0.05% increase would raise $15.3 million.

"C"
2-18-83

EIGHTH JUDICIAL DISTRICT FINAL REPORT
FISCAL YEAR 1979 - 1980

****

SUBMITTED TO:

THE MONTANA SUPREME COURT
CAPITOL BLDG.
HELENA, MONTANA 59601

****

By

H. WILLIAM CODER
DISTRICT JUDGE
CASCADE COUNTY COURTHOUSE
GREAT FALLS, MONTANA 59401

****

June 10, 1980

TABLE OF CONTENTS

LIST OF EXHIBITS

T E X T

I. CASELOAD

Inasmuch as the case filings are reported statistically every month to the Court Administrator's Office, it is not necessary to further belabor the subject here. It is sufficient to observe that the Eighth, just as most of the Districts, is confronted with an increasing caseload and the attendant administrative and judicial problems inherent in that circumstance.

The nexus of the problem, as I see it, is that we still lack the requisite factual data necessary to appropriately evaluate such caseloads, whether civil, criminal or otherwise, which would enable us to assign some meaningful value to each case in terms of judicial effort which, in the end, would permit us to evaluate our efforts and forecast, with a reasonable degree of certainty, the court's future requirements for whatever purpose.

I attempted last year, after attending a management seminar at the Judicial College, to develop some of these caseload data in my own department on an experimental basis. The press of judicial business however, precluded the completion of the project.

The limited experience that I've gleaned from that exercise, however, leads me to conclude that such a program could be developed which would generate the requisite data to produce values and weights to be assigned to any given class of cases which would appropriately reflect the judicial time and effort required for disposition.

Moreover, I believe that such a program, and the data required could be undertaken and developed on a state-wide basis by simply utilizing four or five representative courts, without embroiling the entire trial bench and their clerks of court in the necessary paperwork and record keeping to acquire such information.

Needless to say. the success or failure of any organization in dealing with its systemic problems is, in large part, dependent upon the information that it has, or can acquire, with regard to its operations - its strengths and its weaknesses.

Attempts to solve a problem are fruitless and frustrating, in the absence of any demonstrated or empirical evidence which clearly defines and identifies the problems, its orgins, depth or breadth. The development of weighted caseloads and their application to the workloads of the courts' in the state, no matter of what level would, I submit, be of significant value and provide a valuable tool in analyzing the needs of the system and in affording an intelligent basis for quantifying the fiscal and staffing needs of the system.

In the absence of such weighted caseloads or other acceptable standards which give some identity to the number of cases reported, such figures are virtually meaningless and of no value to anyone.

II. PERSONNEL

What has been previously stated regarding the lack of definitive information anent the court's workload is equally true in regard to any attempted assessment of the capability of the

present personnel to carry out the duties of their respective departments.

At present, the court's operations fall into the following categories: a) Court, b) Clerk of the Court, c) Family Court Services, d) Youth Court Services, e) Public Defender, and f) Court Reporters.

These include: judges, lawyers, supervisors, counselors, administrative assistants, secretaries, investigators, court reporters, typists, stenographers and clerks.

Save and except for some minimal qualification set forth by statute for some of these positions, none of these job duties and responsibilities have ever been reduced to writing and published with a view toward state-wide uniformity.

Thus, before any conclusions can be drawn regarding the personnel requirements of any facet of the court's operation, we must make a definitive effort to establish and identify the types of personnel required, their duties, responsibilities, qualifications, both educational and experience, salary schedules and related factors which are part and parcel of an established personnel policy.

At present, all of the court's employees are county paid. As a result of this, the county either explicity or implicity has "bought into" the supervisory aspects of the court's operation regarding its personnel and, hence, control in large part nearly every facet of the court's function.

This local control becomes even more apparent in the discussions hereinafter relative to the court's budget.

As an ancillary problem created by this local funding, the questions arise: Whose employee is the courts' secretary? If this secretary is paid by the county, then is not this employee a member of the M.P.E.A.'s local county bargaining unit? And, if this is so, then aren't the judges for whom these employees work precluded from making any determinations which affect their wages, hours or working conditions? And if this is so, to whom are these employees responsible? And what are the limits of the court's authority to award, supervise, discipline, terminate or hire its own employees? Is the court subject to the employer sanctions in the labor contract which was made and entered into by and between the M.P.E.A. representative of the county employees and the County Commissioners?

These and a host of other questions are created by the present situation which can, and does, fragment the court's operation and effectiveness in attempting to meet its constitutional and statutory obligations.

Unquestionably, there is a need to relieve the trial courts' of such conditions, and the only viable alternative is to provide a means by which to fund the state courts' operation from a level which is relatively free from such divisive influence.

Thus, in view of what has just been discussed, any assessments by the author of the present needs of the court, personnel-wise, would not even reach the level of an educated guess.

The one bright spot in the court's operation of the preceding year has been the new legislation which has permitted the recall of retired judges to active service.

The author has made extensive use of both Judges Bradford and Nelson to assist the court in handling and disposing of a great deal of the court's workload - notably in the domestic relations, probate and civil areas.

In Department "A" alone, the author has assigned Judge Nelson over sixty (60) cases from the civil calendar, thus alleviating a considerable back log which was generated by the departments' criminal and civil trial calendar of the past ten (10) months.

As a matter of practical judicial administration, it is the author's belief that every effort to utilize retired judges should be made before resorting to the solution of retaining additional judges, for two reasons: 1) As a matter of judicial economy, the workload of any given court may be such that a full-time judge is not required; and 2) the use of such retired judges on a part-time basis gives to the court additional manpower without the permanent necessity of additional plant, facilities and support personnel to accommodate them.

All in all, the advantages of having such judicial manpower available outweighs the administrative problems attendant thereto. (e.g., calendaring and scheduling available courtroom space, re-assignment by reason of disqualifications, assignment of clerks' and court reporters', additional calendaring and clerical duties upon support personnel, etc.)

III. PHYSICAL PLANT AND FACILITIES

A. CASCADE COUNTY COURTROOMS

The Eighth, having a three (3) judge bench, still suffers a lack of courtroom space inasmuch as the building has only two courtrooms as it was orginally designed in 1903.

That problem is further compounded by the fact that we have only one (1) jury room to serve both courts'; obviously, this leaves one jury panel standing about in the courtroom or in the halls exposed to litigants, counsel and witnesses alike; in addition to which, the individual jurors are bereft of any of the basic facilities required to provide the most fundamental of the creature comforts - restrooms.

The problem of space has been partially alleviated by the creation of an additional courtroom on the first floor of the building. Due to space restrictions, however, this courtroom is too small by any standard; it possesses only sufficient space to seat a six (6) man jury panel and again it is totally without a jury deliberation room and the attendant restrooms and facilities.

Without further elaboration it is sufficient to observe that the present physical plant is inadequate to meet the court's needs and to provide the district, and its peoples, the judicial services which they expect and which they're entitled to receive.

B. COURTROOMS AND FACILITIES CHOUTEAU COUNTY

The court's facilities available to it in Chouteau County (i.e. Fort Benton) do not suffer from the space problems aforementioned. Chouteau County's Courthouse, although old, is in a good state of repair and the courtroom, chambers, jury room and clerk's office which all occupy the second floor are, generally, well maintained and sufficient to handle the court's business in that county. Both the courtroom and clerk's office have undergone remodelling including panelling, painting, re-carpeting, with the addition of curtains and drapes, all of which provides a pleasant atmosphere in which to conduct the court's work.

C. CLERK OF COURT CASCADE COUNTY

Generally, the shortage of space incident to the court's requirements are reflected in the same measure in the office of the Clerk. In addition to the storage space required to house the files, documents, exhibits generated by the increased caseload, there are the bookkeeping, accounting and record maintance brought on by the domestic relations cases and restitution programs which are operated under the authority and direction of the clerk's office pursuant to orders of the court.

For example, receipts and disbursments of child support payments total, generally, between $90,000.00 and $100,000.00 per month. This function is at present being carried on in the vault portion of the clerk's office with the attendant result of overcrowding, loss of space and a great deal of

alien pedestrian traffic into the vault which generates further congestion and, additionally, creates a substantial security problem by having the vault accessible to the public. It is apparent from the author's most cursory examination of these facilities and the available space that it fails to meet even the minimal criteria set out by most of the authorities with regard to the working space necessary in a clerical situation. (see, e.g. Terry, George; Office Management Control (1962)).

Once again, by virtue of the present budgetary and fiscal arrangements which require that these plant and facilities be funded and provided for by the county, I see little hope of any improvement in the present situation.

IV. YOUTH COURT SERVICES

Again, without resort to the numerical statistics available, the caseload in the Youth Court division is escalating in about the same fashion as is the balance of the court's work.

One of the continuing problems in the youth court division, which I am sure is a problem with the rest of the district courts, is that we have a decided lack of appropriate security detention facilities for the youths whether they are pending hearings or otherwise required to be detained. We do not have in Cascade County any secure facility available for the detention of youths save and except the Cascade County and city jails. In conjunction with this demonstrated deficiency I believe it is salient to observe that, during the year 1979 Youth Court Services detained an average of fourteen (14) children per month in these facilities

(i.e. the Cascade County or city jails). I have in conjunction herewith supplied to the court, and attached hereto as exhibit A, a copy of Youth Court Services report which was prepared for 1979.

Incident to this lack of facilities, it should be noted that the City of Great Falls and Cascade County will, in the next few months, complete a grant from M.B.C.C. (L.E.A.A. funded) which was directed principally toward developing and implementing systemic improvements in the Cascade County criminal justice system. The administration and supervision of this grant was undertaken by a "Crime Attack Team" comprised of members of City and County Commission, members of all law enforcement agencies, both juvenile and adult probation, prosecution and defense lawyers and the courts. The author, as District Judge, has served as chairman of that "C.A.T." Team for the last 2-1/2 years.

The C.A.T. project was a comprehensive undertaking and its stated objectives embraced every aspect of law enforcement, from the police functions on the streets to sentencing of defendants after trial and conviction.

One of the principal objectives of the grant and the C.A.T. Team and its staff was to create in the county, with the necessary personnel, plant and facilities, a juvenile intake and detention facility which would comply not only with the legislative intent expressed in the Montana Youth Court Act, but also to bring the local juvenile system into compliance with the more recent U.S. Supreme Court decisions dealing with the issues of right to counsel, interrogation, arrest, detention and dispositions of youths. (see, e.g. In re: Gault, 387 U.S. 1, 87 S.Ct. 1428 (1967);

In re: Winship, 397 U.S. 358, 90 S.Ct. 1068 (1970); Gerstein v. Pugh. 420 U.S. 103, 95 S.Ct. 854, 43 L. Ed.2d 54 (1975)).

In furtherance of these stated objectives, the C.A.T. Team and staff requested and received from the county its assurances of funding and its authority to renovate one first floor wing of the Casco Building [the old Columbus Hospital which had been purchased by the County] for purposes of creating such a facility.

However, the project has not as yet been completed, and in view of the budgetary limitations and restrictions which have been imposed on the court by the county, there is little likelihood that it ever will be completed.

In this connection, it should be noted that the author, as chairman of the C.A.T. Team, has received notice from the M.B.C.C. that the facility must be completed or the L.E.A.A. is going to demand a return of the portion of the C.A.T. Grant which went into the renovation, which is $42,500.00.

Needless to say, the absence of such a facility virtually cripples the court and the community in carrying out the requirements of the Youth Court Act, and more importantly, deprives the court and the community of a vital tool with which to deal with the problem of juvenile crime and to provide effective assistance to those children who, having been caught up in the juvenile justice system, require counselling or some type of treatment or care from some agency or service provider unconnected with the justice system.

One of the most important stated objectives of the C.A.T. Team in creating this facility and the procedures to operate it, was to create a diversion program and house it in a plant which was completely removed from any jail or adult criminal institution. The clear import of this procedure was to reduce the exposure of the children to the adult system as mandated by the Youth Court Act, and additionally, to alleviate the pressure on the local law enforcement agencies incident to the arrest, booking and detention of juveniles.

At present, in the absence of such a facility, the intake procedures regarding children are being carried out by one 3-man juvenile intake team in one room of the Great Falls City Jail.

Juveniles are still being held in both the city and Cascade County Jails.

In this connection, it should be noted that in 1979 there were a total of 1,976 children who went through juvenile intake at the city jail (Exhibit A, p. 3). This total yields an average of 165 children per month going through the city jail and, as noted before, of this number an average of 14 children per month are locked up in either the city or County Jail awaiting whatever proceedings or dispositions are necessary or required.

With regard to the inadequacy of these jails for holding children the author has attached hereto, for the court's edification, copies of Jail Inspection Reports which were made and prepared by Mr. Vernon E. Sloulin, Chief, Food and Consumer Safety Bureau, Environmental Sciences Division. (Exhibits B & C, city and county jails, respectively).

Without dwelling upon these reports and what their contents reveal, it is sufficient to quote the following:

> Juvenile Cell #1
>
> The complete cell area was filthy to sight and touch. Cleaning procedures are obviously poor.
>
> The walls and ceiling need minor repair and repainting.
>
> The toilet facitity was deteriorated and filthy.
>
> The shower stall needed to be cleaned, repaired, and painted.
>
> Excessive paper and flammable items were left in the cell area.
>
> Ventilation was inadequate in the cell area.
>
> (Exhibit C, pp.2-3)

If, as Mr. Justice Frankfurter has remarked "...that not the least significant test of the quality of a civilization is its treatment of those charged with crime..." (Irvin v. Dowd, 6 L.Ed.2d 751, 760 (1960)) then this society and the Youth Court Act which purports to serve it is nothing less than barbaric.

For any segment of the government, at whatever level - whether legislative, executive or judicial - to require or even expect any District Judge to confine any child in such a facility, for whatever reason, is nothing short of ludicrous and flies in the face of every known legislative or judicial principle which has ever been expressed and recorded in this state.

The inability of local government to shoulder the financial burden imposed upon it by the State Legislature incident to carrying out such legislative and state responsibilities is no where more apparent than the court's budget for Youth Court Services. (Exhibit D, attached)

A brief review of that exhibit reveals that Youth Court Service's budget was slashed by over $129,000.00.

It is also apparent that what was cut from that budget were personnel and M.& O. expenses relative to the intake and detention functions and related services.

It is equally apparent that these were incorporated into the court's budget in an attempt by the court to comply with the aforementioned legislative mandates and to try, as best could be managed, to provide the minimal services which children, their families and the community could reasonably expect to be delivered by a functioning juvenile justice system.

It is even more apparent that the reason for slashing this budget (and all others of the court's operations) was an attempt by the county to stay within its fiscal and tax capabilities and still provide, at least in some measure, the demand for governmental services which, as always, exceeds the supply of money available to provide it.

The author is not saying, nor should I be understood as saying, that the responsibility for these circumstances lies entirely with the counties or their commissioners. It does not.

The responsibility falls for the most part upon the legislature which uniformly and routinely enacts legislation requiring an expenditure of considerable sums of money, goods or services to effectuate its purposes and then, again routinely, saddles local government with the financial burdens incident to carrying that legislative intent to fruition. The Montana Youth Court Act is but one example.

It is equally true that the judiciary and its judges, individually and collectively, must share some of the responsibility with the counties for permitting the situation to reach such an intolerable state. As Montanans, we all know that even a pack mule has brains enough to refuse to carry a load which is unevenly distributed or beyond its capacity to carry.

If the legislature is to deal intelligently and effectively to remedy the situation, then it must have available for its examination and evaluation all the facts and figures which clearly and explicitly demonstrate the magnitude of the problem, together with rational, cogent and persuasive alternative solutions which necessarily include a demonstrated willingness and capability on the part of the judiciary to assume its responsibility and accept the accountability incident to managing its fiscal and budgetary affairs.

In conclusion, it need only be observed that in view of the budget reductions and the resultant loss of personnel, the Youth Court Services Division of the Eighth Judicial District Court has little, if any, capability of meeting the demands placed upon it by not only the Youth Court Act, but also by this community, its parents, and most importantly, by its children.

V. FAMILY COURT SERVICES

Copies of the Family Court Services Final Report and its budget, as submitted, and as approved, have been attached hereto as Exhibits E and F; and, without elaboration it is evident that it, too, has fallen victim to the burgeoning caseload in the domestic relations arena.

It is equally evident that the Family Court Services was created by the Court in an effort to give vitality, meaning, and to carry out the mandates of the legislature (Sections 40-3-101 et. Seq. Montana Conciliation Law; and Sections 40-4-101 Et. Seq. M.C.A.)

Needless to say, the legislation has assigned the financial burden of this function to the counties (40-3-114, M.C.A.) and, as is apparent from the budget, (Ex. F) the county has declined to fund the Family Court in an amount which would assure even the minimal personnel to meet the burdens imposed upon it in the field of domestic and family law.

The report reveals that in an attempt to meet these increasing demands for service and to operate within the reduced personnel and budget limits has resulted in considerable amounts of overtime being worked by the present staff. Page (2) of the Report (Exhibit E) reveals that for the six month period of September 1979 through February, 1980, approximately 326 man hours of overtime were worked by the staff. Thus, in one six month period, the staff has accumulated two man-months of overtime, or the equivalent of over 30% of the agency effort.

Counselling and guidance work in the domestic relations field involving dissolutions and child custody problems together with the attendant trauma of domestic violence, spouse and or child abuse is, without doubt, one of the more 'High-intensity' areas of professional effort. To expect this staff to remain effective and to maintain its professional ability and to provide the court with the necessary assistance in resolving domestic conflicts under

these conditions is simply unrealistic.

As, I'm sure the court is aware, a final decree of dissolution is anything but final. More often than not, the final decree is simply the opening shot of a running gun battle between the parties which is periodically punctuated by orders to show cause, petitions for modification or other forms of relief which can be utilized to get the parties before the Court or back into the system for continuing litigation involving custody, child support, visitation, property disputes, unpaid debts, or any other claim, either real or imagined, which may serve as a vehicle to further enhance the love-hate relationship which is an integral part of most post-marital relationships.

Moreover, it should be pointed out that these post-judgment applications for relief, of whatever mature, do not appear in the Courts caseload since the file contains a final decree!

In conclusion, it is sufficient to observe that the Family Court Services Agency of the Court is simply another legislative creation imposed upon the Court to ameliorate or resolve a demonstrated social problem and the Court's efforts to comply therewith have been, in large part, thwarted and or rendered nugatory by a divisive fiscal policy which by its very application segregates, as a matter of law, the concepts of responsibility, authority and accountability thereby defeating the very objective sought to be achieved.

VI. OFFICE OF PUBLIC DEFENDER

Initially, without regard to the personnel or budget problems of the defender office, it is the opinion of the author that the inclusion of the Public Defender in the Court's budget is constitutionally impermissible in that it directly and clearly violates Art. III, Sec. I, Montana Constitution, declaring the separation of powers; the opinion of the Attorney General to the contrary, notwithstanding. Indeed, the opinion of the Attorney General declaring that defender costs are the responsibility of the Judiciary, by construing a statute which is barren of any language to support it, is an even clearer violation of that same article.

The author has canvassed the cases and I find none, nor have any been refered to me, which support the proposition that the judiciary is subject to the authority and direction of the executive department of government, including the Attorney General.

The author concedes that the problem of acquiring, and reimbursing counsel for indigent criminal defendant's is a vexing one which has plagued the system from its inception. However, to assume that because such functions are carried out in the judicial arena and then to make the quantum leap to the proposition that such function and cost must necessarily fall on the Courts is a feat of logic which is beyond the capacity of the author to make.

Indeed, considering the adversary nature of all criminal proceedings, the role of the judge and all counsel, including the prosecution, the ethical conflicts of requiring judicially paid and supervised counsel would, upon brief reflection, give anyone cause for concern.

The author is not alone holding this view and the concerns which are here expressed find much support in the modern cases and with the text writers [Pulaski County ex rel Mears v. Adkisson, 560 S.W. 2d 222, 223, (Ark. 1978); Guidelines for Legal Defense Systems in The United States, Final Report [1976] by the National Legal Aid and Defense Association, P. 221; National Conference of Commissioners on Uniform State Laws, Model Defender Act, Section 10, Handbook of the National Conference of Commissioners on Uniform State Laws, pp. 271, 278 [1970]; American Bar Association Standards Relating to providing Defense Services, Section 1.4 at p.19]

At the beginning of the meetings with the County Commissioners which determined, ultimately, the budget for the Court and its subsidiary agencies, I indicated to the Commissioners in unequivocal terms that the actions of the commissioners in even reviewing the Courts budget (let alone cutting it) was constitutionally impermissible on two grounds: 1) That the action of the Commissioner's in doing anything with the budget of a District Court was violative of the separation of Powers clearly delineated in the Montana Constitution (Art. III, Section 1); and 2) Assuming that the Commissioner's were acting under some legislative authority, that such legislation was an impermissible delegation of legislative authority prohibited by the same Article. (see, e.g. Sections 7-6-2315, 7-6-2351 and 7-6-2352,

M.C.A.)

I also indicated to the commission that the inclusion of the public defenders office in the Court's budget was defective, not only for the reasons just mentioned, but also because it raised some ethical questions regarding the role of the Court - the opinion of the Attorney General to the contrary, notwithstanding.

Needless to say, my observations went unheeded and, as a result, 11% of the Courts budget went to the defense function.

As a matter of fact, if all of the Court's expenditures from its' M. and O. Account for court-appointed counsel in civil matters, sanities, child custody cases, etc. are totaled with the Public Defender's budget, then the portion of the Court's budget assigned to the defense function could well exceed 20%.

In conclusion, it's the opinion of the author that in no event should the defense function, or any part of it, be assigned to the judiciary; it is a function of the executive department of government and the assumption thereof by the judiciary is impermissible for the reasons herein stated.

VII. COURT BUDGET

Unquestionably, the single event of the past year which had the greatest impact on the courts operation was the passage by the legislature of the "6 mill levy" incident to the counties funding of district court operations (Section 7-6-2511, M.C.A.) and the

attendant opinion by the office of the Attorney General which further expanded the act to include costs for the defense function (38 Op. Atty. Gen. No. 31 (1979)). That opinion in that connection had as its basis the courts opinion in State v. Allies, 36 St. Rep. 820 and the cases cited therein.

It is equally clear that at least a majority of the counties viewed the act as express authority to limit the district courts budget; and further, by necessary implication, gave support to the proposition expressed in Sec. 7-6-2315 M.C.A. that counties could reduce any district courts budget upon its own motion and by its own authority.

Unfortunately, this proposition and its constitutionality was given express approval by the court in Bd. of Commr's. v. Dist. Court, 36 St. Rep. 1231, 1237 (1979).

As I indicated previously, I remain convinced that these legislative acts delegating budgetary control of a constitutionally created court to a board of county commissioners is constitutionally impermissible, the opinion of the court to the contrary notwithstanding (Bd. of Commrs, supra).

In any event the result of all this legislative activity and attendant strife and litigation is reflected by the budgets of the court and its agencies as attached hereto (Ex's. D,F,G,H and I) as reduced and subsequently approved by the commissioners.

A review of those exhibits yields the following:

	DEPARTMENT	SALARIES	M. & O.	TOTAL
1.	YOUTH CT. SVCS.	$173,003.20	$31,281.95	$204,285.15
		($111,500.00)*	($18,200.00)*	($129,700.00)*
2.	FAMILY CT. SVCS.	$38,883.34	$3,109.68	$41,993.42
		($10,306.66)*	($6,800.00)*	($17,106.66)*
3.	PUBLIC DEF.	$24,222.54	$82,800.00+	$107,022.54
			($40,500.00)*+	($40,500.00)*
4.	CLK./COURT	$116,323.00	$60,572.00	$176.895.00
		($11,989.00)*	($7,650.00)*	($19,639.00)*
5.	DIST. CTS.	$99,953.84	$47,000.00	$146,953.84
		-0-	($20,000.00)*	($20,000.00)*
TOTALS:		$452,386.32	$224,763.63	$677,149.95**
*		($133,795.66)	($93,150.00)*	($226,945.66)*

* Reductions made by County Commissioners
\+ Deputy Public Defenders are paid from M. & O. account.
** Total does not include the fringe benefits for personnel - 18.7% or $84,600.00

From the standpoint of personnel, the court suffered losses and reductions in the office of the Clerk of Court, Family Court services, Public Defenders Office and Youth Court Services; the latter, of course, was the entire juvenile intake and detention function contemplated by the C.A.T. Team Committee under its M.B.C.C. Grant, hereinbefore discussed.

In addition to the personnel shortages, the reduction by $93,150.00 of the Courts M. & O. accounts created a host of problems. The result of which was a multiplicity of transfers between various M. & O. accounts [robbing Peter to pay Paul] in an attempt to satisfy the competing demands of the Courts departments for the funds remaining after a 30% reduction. (Exhibit J)

Subsequently, as a result of the condition of the judges M. & O. budget as revealed by Ex. J, it was decided to consolidate the remaining M. & O. budget balances of all of the courts departments and pay all claims from that consolidated account on a 'first come, first served' basis. The results of this effort are reflected in Exhibit K, attached. As is evident from that Exhibit, the balance of that consolidated account as of May 8th, 1980, was $1,946.54. this is expected to be exhausted within the week and it is anticipated that the county will begin the registration of county warrants pursuant to Sections 7-6-2603 Et.seq. M.C.A.

Contrary to the budgetary fiasco extant in the district courts operation in Cascade County, the same district courts operation in Chouteau County is operating with a surplus. Had the Chouteau County Commissioners levied the total permissive levy of

five (5) mills under Section 7-6-2511, M.C.a. there would have been created in that county a fund of about $142,000.00 or about $60,000.00 in excess of what was required and budgeted for the courts operations in Chouteau County (Exhibit M, Chouteau County district Court Budget). To generate the necessary funds for the courts operation in that county, the Chouteau County commission was required to levy only 2.52 mills. (Exhibit N, Excerpt, Montana Property Tax Mill Levies, 1979 - 1980, Page 11, Published by Montana Taxpayers Assn.)

It should be noted in this connection that the District Court in Chouteau County will complete the 79-80 fiscal year with an estimated surplus of about $20,000.00 in its budget while, at the same time, Cascade County will be registering warrants to cover the same Courts deficits in the other end of the district.

Thus, the funds which would have been available to the Court were withheld simply because Chouteau County had the millage, but Cascade County had the problem, leaving, of course, the Court in the middle.

Indeed, the monumental misconception that the district courts belong to the county in which they sit is so commonly accepted that the fact of ownership was alluded to by the press in its report on the current financial crisis. (Exhibit L)

From the contents of that article it is equally clear that the County commission has adopted the same stance; that as a result, it has assumed ownership of the court's problems; and, thus has 'bought into' the function and operation of the judiciary by controlling its budget.

Thus, the quality of judicial administration, judicial services and justice itself is made to depend upon the wealth, or lack of it, of the county in which the court sits.

Ludicrous.

This situation and related budgetary anomalies are, I submit, created by a variety of circumstances:

1. Counties, generally, have assumed ownership of those district court operations physically located in their respective boundaries as noted previously;

2. Failure, generally, of both legislature and county government (courts, too, sometimes) to recognize the existence of judicial districts, which are multi-county in nature, and thus separate, and constitutionally distinct, governmental functions unrelated in any way to county government operations;

3. Predicated upon 1 and 2, above, the enactment of Section 7-6-2511 which served only to fortify the erroneous assumptions posited therein by failing to provide for any means by which the district court couldtransfer surpluses in one county in its district to support its deficit in another part of its identical district.

Query: Assuming the necessary legislative appropriation for "emergency" assistance, how could cascade County apply for emergency assistance to operate the district court when Chouteau County, in the same district, will show a $20,000.00 surplus in the district courts budget and had only levied 2.52 mills rather than the 5 mills set out in Section 7-6-2511, M.C.A.?

As a matter of practical politics there may be more, or less, subtle ways to strangle the peoples' courts, but if there is a more powerful way, it has escaped the attention of all concerned.

In conclusion, there is only one alternative:

The legislature and the courts themselves must assume their respective responsibilities devolving upon them by the constitution of this State and provide for a unified court system and as a necessary adjunct thereto, a unitary Budget for all judicial operations in the State. The Supreme Court, by and through its constitutionally mandated power of Supervision of judicial operations should, in that capacity submit to the legislature, its budget for each biennium. Thus, the fiscal and budgetary accountability and responsibility will rest squarely upon the functions to which they belong.

Explicit in the application of the unitary budgeting concept, is the concept that we, as courts, do not assume ownership of problems or functions which are not properly ours.

First, providing defense services is not properly a judicial function and should be severed completely, budgetarily and otherwise, from the judiciary.

Secondly, every other "service" function which has been legislatively assigned to the courts should be critically examined -e.g. Court of Conciliation Services, and Youth Court Services- to ensure that such functions are truly judicial, rather than executive.

In this connection, i.e. unitary budgeting, I submit, that at present we have sufficient information regarding the cost of court operations to submit a proposed biennial budget to the legislature for its consideration and passage.

The situation as it exists now is intolerable; it is fundamentally unsound, does violence to every known principle of accountability and responsibility inherent in the concept of good government, and most importantly, it deprives the people of the State of Montana of an effective judicial system.

VIII. OPERATIONS

A. GENERALLY

Subject to the budget and personnel limitations herein before discussed, the operation of the Eighth has been comparatively unremarkable, save and except for systemic developments and acquisition of word processing equipment brought about by the C.A.T. Grant which was previously mentioned. The Court's local rules were amended for the first time since 1963, a copy of which, I believe, was forwarded to the court at the time of their passage and adoption.

We attempted at that same time to develop and promulgate rules specifically designed for governing operations and procedures governing the Youth Court Division. However, lack of clerical help and the subsequent failure of the entire juvenile detention project rendered the entire project a nullity and accordingly, work on the rules was abandoned. As

contemplated initially, these rules would have incorporated the necessary procedures mandated by the Youth Court Act and the decisions of the appellate courts regarding handling and disposition of juveniles. Notwithstanding the failure of this effort in the Eighth, I believe that the magnitude of the problem is sufficient to warrant additional effort to create state-wide rules governing these proceedings.

B. JUDICIAL WORKLOAD, WEIGHTED CASELOADS, WORD AND DATA PROCESSING.

As indicated previously, one of the continuing problems with the courts in Montana is the demonstrated lack of any programs in the state to develop and acquire hard, accurate and reliable management data upon which to predicate any intelligent evaluations or forecasts regarding the quantity and quality of the courts present efforts and its requirements in the future.

This and related problems inherent in court administration are not new to the judicary. The only distinction, however, is that Montana, for whatever reason, has neglected to keep pace with developments. In this regard, it is submitted that this is one area of court financing and budgeting which absolutely requires a unitary budget for the judiciary supported by legislative appropriation. This is not a local problem - it is state wide.

For an excellent overview of efforts being expended nation-wide in this field, see: State Court Caseload Statistics: The State of The Art (National Center for State Courts) L.E.A.A., National Criminal Justice Information and Statistics Service, (1978). For some possible program models for resolving this and related administrative problems extant in the system, the reader is refered to: Trial Court Management Series: Personnel Management (July, 1979); Financial Management (July, 1979); Records Management (July, 1979); Executive Summary (March, 1979). (L.E.A.A., National Institute of Law Enforcement and Criminal Justice) These publications, of course, are not exhaustive; they do, however, provide an entry point into the problem area to be examined and moreover, selection of some of the suggested program models might possibly support a grant application to assist the state in its endeavors.

It is the opinion of the author that the Eighth Judicial District, at present, has the necessary trained operator and equipment capability to develop a weighted caseload system applicable to the courts in Montana.

As indicated previously, the Criminal Justice System in Cascade County under its C.A.T. Grant, acquired the following equipment from Digital Equipment Corporation, Englewood, Colorado:

one (1) WD-236; two (2) WD-78's; one (1) VT-100 Master Terminal; five (5) VT-100 User Terminals; three (3) LQ Printers. This equipment is now on-line and is located as follows:

a) County Attorney's Office: WD-236, Master Terminal and one User-Terminal, one LQ Printer;

b) Clerk of Court: two User Terminals, one LQ Printer;

c) Courts:

i) Dept."A" (Coder) one User Terminal, one LQ Printer;

ii) Dept."B" (McCarvel) one User Terminal

d) Public Defender: One WD-78 (stand alone) with Printer

e) Sheriff's Office: One WD-78 (stand alone) with Printer.

At present this equipment is being utilized for storage, retrieval, indexing, editing and printing functions incident to its word-processing capability. It can, however, with minimal operator training, some clerical programming and technical consulting assistance be programmed to provide the data necessary to create weighted caseloads. It is in this latter connection that the budget problems encountered by the court laid such systemic improvements to rest.

Again, in view of the magnitude of the problem and the state-wide application of its solutions, the project must be undertaken, supervised, monitored and financed by someone other than the Eighth Judicial District or Cascade County.

CONCLUSION:

As is self-evident from this report, the operation and administration of the Eighth Judicial District is suffering from a variety of fiscal and administrative policies and philosophies which have been imposed upon it without appropriate regard to accepted principles of authority, responsibility and accountability.

The problem is not unique to the Eighth, however - it is endemic to the entire system of the judiciary in the State of Montana. So long as these conditions exist, the best that can be said of the judiciary is that it only functions - it is not functional.

_____

DISTRICT JUDGE

H. WILLIAM CODER

EXHIBIT "D"
February 18, 1983

Re: HB 120 and SB 19

Although re-districting may ameliorate, in some respects, the disparity extant in the workload shared among the district judges, the real vice of the present system is that the authority and responsibility for the operation and function of the judiciary (including its financing) has been dissipated by spreading these duties and obligations among various agencies of state, county and local government which have little or no interest in the operation of the courts and, as a result, have no accountability for the success or failure of the courts in discharging their constitutional duties.

In my view, the "overhaul" must be more than simple re-districting -- it requires substantial administrative reform. This is especially true in the area of state court financing, which, as we all know, is currently borne largely by the counties. We further know that such financial burden is simply beyond the financial capabilities of the county taxpayers to bear. (e.g. the Eighth Judicial District Courts' operating deficit for fiscal year '80-'81 was $156,013.00; the courts' deficit for FY '81-'82 is $234,000.00; '82-'83 estimated at $434,758.00).

A brief review of Montana's constitution and statutes make it abundantly clear that the duties and responsibilities for the administration, supervision and funding of the states' courts lie with the State of Montana and its' Supreme Court and not with the counties or their respective commissioners:

a) It is the State of Montana which guarantees that "...No person shall be denied the equal protection of the laws." (Mont. Const. Art II, Section 4) and not the county Commissioners;

b) It is the State of Montana, and not the county commissioners which guarantees that "Courts of Justice shall be open to every person, and speedy remedy afforded for every injury of person, property or character.... [and that].... Right and justice shall be administered without sale, denial or delay" (Mont. Const., Art II, Section 16);

c) It is the State of Montana, and not the county commissioners which guarantees that "No person shall be deprived of life, liberty or property without due process of law" (Mont. Const., Art II, Section 17);

d) It is the State of Montana, and not the county commissioners, which guarantees that any citizen accused of a crime has the "...right to appear and defend in person and by counsel ... to meet the witnesses against him face to face, ... to compel the attendance of witnesses on his behalf, and a speedy public trial by an impartial jury ...." (Mont. Const., Art. II, Section 24);

e) It is the State of Montana, and not the county commissioners, which guarantees that "The right of trial by jury is secured to all and shall remain inviolate." (Mont. Const., Art II, Section 26);

f) It is the people of the State of Montana, and not the county commissioners, who have mandated that "the power of the government of this state is divided into three distinct branches -- legislative, executive and judicial. No person or persons charged with the exercise of power properly belonging to one branch shall exercise any power properly belonging to either of the others, except as in this constitution expressly directed or permitted." (Mont. Const., Art. III, Section 1);

g) It is the Supreme Court of the State of Montana which ".... has general supervisory control over all other courts ....[and] may make rules governing appellate procedure, practise and procedure for all other courts...." (Mont. Const., Art. VII, Sections 2,3).

h) It is the State of Montana, and not the county commissioners, which has the responsibility, authority and duty incident to taxation, revenues and appropriation. (Mont. Const., Art. VIII, Sections I, et.seq.)

Furthermore, it is the legislature of this State, and not the county commissioners, which has enacted the laws necessary to bring to fruition all those ideals and principles enunciated and mandated by the constitution, and not just those cited herein.

For example, the State of Montana has defined conduct which constitutes a crime against the peace and dignity of this State, and has prescribed the punishment therefor. (Sections 45-1-101 et. seq., Montana Code Annotated) Additionally, it is the State of Montana which establishes the requisite procedures to be followed by the State when charging one of its citizens with the commission of an offense. (Sections 46-1-101 et. seq. M.C.A.)

More specifically, it is the Montana State Legislature which provides that:

> "Every defendant brought before the court must be informed by the court that it is his right to have counsel before proceeding and must be asked if he desires the proceeding and must be asked if he desires the aid of counsel.
>
> "(2) The defendant, if charged with a felony, must be advised that counsel will be furnished at state expense if he is unable to employ counsel as determined under the provisions of 46-8-111. If the offense charged is a felony and if the defendant desires counsel and is unable to employ counsel, a court must assign counsel to defend him (Section 46-8-101 M.C.A.);

The real "zinger" -- that is, who is going to pay for this attorney representing a defendant charged with violation of state law and being represented by an attorney appointed by authority of the state constitution and being tried in a state court -- is set forth thereafter, when the statutes describe the method of repayment by the defendant of this "state" expense:

"....Such payments [if, and when they are ever made] shall be made to the Clerk of the District Court. The Clerk of the District Court shall disburse the payments to the County or State agency responsible for the expenses of Court appointed counsel as provided for in 46-8-201." (Section 46-8-114 M.C.A.).

Section 46-8-201, just referenced, after stating that such attorneys compensation shall be reasonable, goes on to require that:

> "(2) The expense of implementing subsection (1) is chargeable to the county in which the proceeding arose, except that:
>
> a) in proceedings solely involving the violation of a city ordinance or a state

statute prosecuted in a municipal or city court, the expense is chargeable to the city or town in which the proceedings arose; and

b) when there has been an arrest by agents of the Department of Fish, Wild Life and Parks or agents of the Department of Justice, the expense must be borne by the state agency causing the arrest".

Thus, the Montana legislature, while recognizing that the right to counsel in a criminal proceeding is a federal and state constitutional right, and further recognizing that it is a "state expense" (Section 46-8-101(2), above quoted) nevertheless has relieved itself of several hundreds of thousands of dollars per year of expense by assigning these costs to local government.

To put this legislative feat into perspective it should be pointed out that during the fiscal year 1980-1981 Cascade County expended the sum of $143,000.00, for providing legal representation to the indigent; during the current fiscal year, these expenditures will, in all liklihood, exceed $145,000.00. Nor is this the only example of the state shifting the financial burdens of constitutional and legislative mandated policies or programs to the local governments.

ITEM:

"The Montana Youth Court Act shall be interpreted and construed to effectuate the following express legislative purposes.

(1) to preserve the unity and welfare of the family whenever possible and to provide for the care, protection, and wholesome mental and physical development of a youth coming within the provisions of the Montana Youth Court Act;

(2) to remove from youth committing violations of the law the element of retribution and to substitute therefor a program of supervision, care, rehabilitation, and, in appropriate cases, restitution as ordered by the youth court;

(3) to achieve the purposes of (1) and (2) of this section in a family environment whenever possible, separating the youth from his parents only when necessary for

the welfare of the youth or for the safety and protection of the community;

(4) to provide judicial procedures in which the parties are assured a fair hearing and recognition and enforcement of their constitutional and statutory rights." (Section 41-5-102, M.C.A. "Montana Youth Court Act.")

How are these State policies regarding our Youth paid for? Section 41-5-207 M.C.A. provides that:

"The following expenses shall be a charge upon the Court or other appropriate agency when applicable..."

(1) Costs of medical examination and treatment of the Youth;
(2) Attorneys fees
(3) Service of summons, subpoenas, traveling expenses of witnesses, "and other like expenses incurred";
(4) Compensation for guardian ad litem; and
(5) Costs of transcripts and printing briefs on appeal.

In order that these duties delegated to the court may be properly carried out, the state legislature has provided that each judicial district shall [not may, or maybe, or at its' option] appoint probation officers and ...."shall insure that the Youth division are staffed with necessary office personnel and that the offices are properly equipped to effectively carry out the purpose and intent of this chapter."

After establishing the mandatory qualifications for such probation officers (Section 41-5-702, M.C.A.) and what their powers and duties "shall" be (Section 41-5-703, M.C.A.) the legislature then provides the salary levels that such officer shall be paid, and ...."The salary of such officer shall be apportioned among and paid by each of the counties in which such officer is appointed to act ...." (Section 41-5-704, M.C.A.)

In fiscal year 1980-1981 the costs incurred by Cascade County to provide these state-mandated services was $209,025.00. The court's proposed budget for fiscal year 1982-1983 has pegged these costs to the county in the amount of $277,645.00;

These costs do not include the expenses of court appointed counsel for these Youths and other ancillary services embodied in other portions of the courts budget.

Further examples of legislatively delegated costs to local government would render this communication far too prolix and serve only to boggle the mind of the reader.

It is sufficient to observe that the state, by and through its legislature, has transferred the bulk of the costs for the operation of the states courts, and the costs incurred by the litigants (including the state itself) to the local governments.

Without further protracted discussion, it is my view that the present statutory scheme of financing the court's operations through local government which requires the county commissioners to approve a district court budget is constitutionally impermissible. (Mont. Const., Art. III, Sec. 1)

The provision that local government has the power to reduce a state court's budget which provides those constitutionally mandated requirements is, I believe, an impermissible delegation of legislative authority and is plainly violative of the separation of powers required by the Montana Constitution, Art. III, Section I.

Furthermore, the granting and withholding of these constitutionally guaranteed rights by the county for any reason, especially lack of money, is plainly violative of every Montana citizen's right, either as a taxpayer or litigant, to the equal protection of the law. (Mont. Const., Art. II, Section 4; U.S. Const., Amend. XIV)

Without regard to those constitutional issues just discussed, the present scheme for financing the courts, and court-related services by local government is ill-conceived and offends the fundamental principles of good business management, good government and sound financial and accounting principles.

By reason of this existing financial scheme, the budgetary deficits of the Eighth Judicial District will, in all liklihood, reach 1/2 of one million dollars by the end of fiscal year, 1983.

Cascade County is not the only local government currently faced with the fiscal and budgetary disasters inherent in the present system. The author is informed that approximately twenty other counties are suffering the same financial difficulties to a

other counties are suffering the same financial difficulties to a greater or lesser degree. There may be other counties having a sufficient tax base and mill levy who are not reporting these difficulties. There are also, I strongly suspect, many counties which are not reporting these problems simply because they have failed and refused to provide these mandated services to their citizens and thus, have avoided the necessary costs incident thereto.

Thus, we have a disparity of judicial services state-wide which arises directly from either the willingness and ability or unwillingness or inability of the individual counties, and their respective commissioners, to provide them.

In view of the foregoing it is apparent that points out, the entire system of our courts badly need an overhaul.

If we are to effectuate any lasting improvement in our courts, and improve the quality of judicial services, both civil and criminal, to which we, as citizens, are entitled to demand and receive, then we must, as citizens, judges, legislators and public executives re-examine, reassess and reevaluate our views of the fundamental political and social philosophies upon which our state is founded and which are specifically articulated in our own constitution.

First, we must rid ourselves of the notion that the courts of this state "belong" to the political sub-division in which they are situated. Every Court in this State has as its origin either the constitution of this state or in legislation enacted by that mandate (Art. VII, Section 1). Every citizen in this state is entitled to the equal protection of the law in this state's courts without regard to their place of residence (Art. VII, Section 4), and they are entitled to have their case heard and justice done "without sale, denial or delay" (Mont. Const. Art. II, Section 16).

Thus, we cannot, as citizens, require or even permit the function of our courts to be left to the whim or caprice of local government, nor can we permit the state to shift that responsibility to local government. The Courts of this state

...ng to the people of this state and to permit the government, either state or local, to thwart the will of the people and to deprive them of the effective and efficient administration of justice is, in a word, wrongheaded.

Secondly, we must disabuse ourselves of the notion that simply because an event occurs in the courtroom that it should be the court which is chargeable with the costs incident thereto. (see, for example, the language quoted previously from section 41-5-207, ..."The following expenses shall be a charge upon the court....")

In this connection, we would do well to recall, and heed, the words of Alexander Hamilton in The Federalist No. 78:

> "The executive not only dispenses the honors but holds the sword of the community. The legislature not only commands the purse but prescribes the rules by which the duties and rights of every citizen are to be regulated. The judiciary, on the contrary, has no influence over either the sword or the purse; no direction either of the strength or of the wealth of the society, and can take no active resolution whatever. It may truly be said to have neither force nor will but merely judgment; and must ultimately depend upon the aid of the executive arm even for the efficacy of its judgments."

As some observers have succinctly pointed out: 'the judiciary is the stepchild of government'. As Alexander Hamilton tells us, the judiciary has neither "sword" nor "purse". In short, the courts are totally dependent upon the willingness of the legislature to provide its' sustenance and the willingness of the executive department to enforce the courts orders which the court issues in aid of those litigants who seek the relief to which they are entitled under the law.

In view of what we have just discussed, is redistricting the answer to the states problems administering and financing its courts?

The answer, I submit, is no.

There are several reasons:

1. Redistricting, in whatever form it takes, will do

absolutely nothing to alleviate the present fiscal dilemma facing local governments throughout the state, which as we have seen, is inherent in the present statutory scheme of financing the courts operations. In point of fact, it will, in all liklihood, exacerbate the condition since redistricting contemplates additional judges (which will necessarily include all ancillary services) without regard to the ability or willingness of local government to pay for them.

2. Under the present Montana constitution the "...Chief Justice [of the Supreme Court] may, upon request of the district judge assign district judges and other judges for temporary services from one district to another and from one county to another." (Mont. Const., Art VII, Section 6)

When read together with the judicial article giving the Supreme Court the power [and, hence the duty] to supervise and administer all the states courts, it is apparent at least to the author that the plain intent of the people of this state was to delegate to that court the responsibility, authority and duty to administer to the courts and to manage the available judicial manpower and that includes assigning judges to where they are needed in the state at any particular time.

Moreover, in my view, reading these articles together leads to the conclusion that the Supreme Court could make these assignments or transfers without any request from anyone.

It may well be that some judges would find these temporary assignments and transfers an inconvience or even onerous. However, in view of the constitutional articles and the fact that it is the Chief Justice who makes the order, what judge is to say him nay?

Regarding the Power of Supreme Courts on these constitutional questions it is only necessary to paraphrase the language of the late U.S. Supreme Court Justice, Felix Frankfurter who said, in effect: "We are not final because we are right; we are right because we are final."

Thus, the rationale for redistricting can in large part, be accomplished under the existing constitutional authority without

unnecessarily invoking the legislative power to change judicial district boundaries which, I am sure, will meet with considerable opposition, be costly and expensive and finally, will not in any way, alleviate the root problems previously discussed.

3. There is simply not enough evidence or data (empirical or otherwise) regarding available judicial man-hours, work-loads, case-loads, travel time and related cost factors upon which there can be any rational or intelligent decision to redistrict and how it should be done, if at all.

All that we can reasonably be certain of at this time is that we have 786,690 citizens in this great state, which is the nation's fourth largest, spread over 145,587 square miles; and that we have 32 trial judges attempting to handle 32,000 cases per year. This, of course, does not include the nearly 200 justices of the peace, city and municipal court judges of this state who every year handle hundreds of thousands of cases with inadequate courtrooms, inadequate quarters, miserable pay, little or no clerical assistance, and with little or no public recognition for their service. They are judicial officers of this state and they deserve better.

If not redistricting, what?

"Laws and Institutions must change to keep pace with the progress of the human mind" -- Thomas Jefferson.

The dilemma confronting our courts is one of financing and budget and, I submit, can best be resolved by adopting the concept of unitary budgeting.

Briefly stated, the practise of unitary budgeting requires the Chief Justice, pursuant to his constitutionally vested administrative and supervisory authority, to submit to the legislature of the State of Montana a budget encompassing all the costs and expenses necessary to operate <u>all</u> the courts of the state for the budgeted period. The legislature in turn, pursuant to its constitutionally delegated authority, appropriates, or not, as it wishes the moneys necessary to fulfill that budgetary requirement.

Thus, two objectives are reached:

1. The judiciary (and every judicial officer in the system) becomes accountable for the expenditure of public funds which are utilized to operate the courts and to provide for the necessary services mandated by law;

2. The legislature, which establishes the public policy of this state and has the responsibility for appropriating public moneys to carry out these policies would have before it the necessary documentation to intelligently determine the efficacy of the courts efforts in carrying out those policies and to re-assess and re-evaluate on a continuing basis, the cost-benefit ratios incident to the execution of these mandated policies and programs.

Unitary budgeting is not new and has been implemented in at least seven states: Alaska, Colorado, Connecticut, Hawaii, North Carolina, Rhode Island and Vermont.

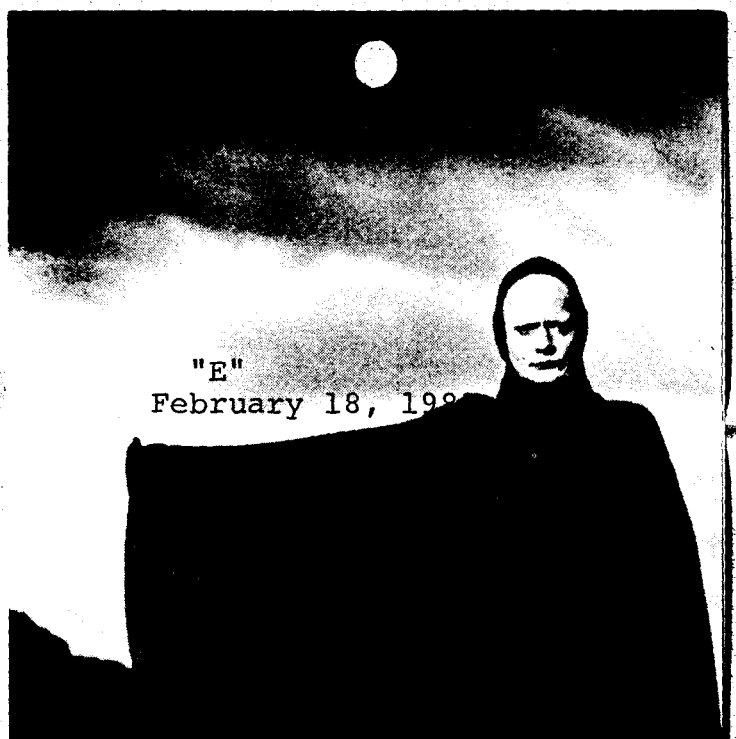
A detailed recital of the financial, budgetary, administrative and management benefits obtainable by such a budgetary system would render this document far too lengthly.

In conclusion, the unitary budgeting system would bring to this state, its' beleaguered courts and overburdened tax payers a measure of good management, sound judicial administration and fiscal responsibility that everyone has gone too long without.

It should be noted that the views herein expressed are the author's alone and are not to be considered as reflecting any endorsement by anyone else.

Sincerely,

H. William Coder,
Chief District Judge,
Eighth Judicial District



"E"
February 18, 198

CAPITAL PUNISHMENT

Montana Religious Legislative Coalition
(M.R.L.C.)

1981

(This sheet to be used by those testifying on a bill.)

NAME: John Braunbeck DATE: 2-18-83

ADDRESS: 1212 Wilder

PHONE: 442-6647

REPRESENTING WHOM? Mont. Intermountain O.I. Mfrs Assn. Mont. LP Gas Assn.

APPEARING ON WHICH PROPOSAL: SB 424

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

STANDING COMMITTEE REPORT

February 19 19 83

MR. PRESIDENT

We, your committee on Judiciary

having had under consideration Senate Joint Resolution ~~BILL~~ No. 15

Turnage

Respectfully report as follows: That Senate Joint Resolution ~~BILL~~ No. 15

introduced resolution,

DO PASS

JEAN A. TURNAGE, Chairman.

STATE PUB. CO.
Helena, Mont.

J.C.

STANDING COMMITTEE REPORT

February 18 19 83

MR. PRESIDENT

We, your committee on Judiciary

having had under consideration Senate Bill No. 347

Galt

Respectfully report as follows: That Senate Bill No. 347

introduced bill, be amended as follows:

1. Title, line 6.
   Following: "USE"
   Strike: "; AMENDING SECTION 70-19-405, MCA"

2. Page 1, line 9.
   Strike: "NEW SECTION."

3. Page 1, line 9.
   Following: "easement"
   Insert: "not acquired by recreational use"

Continued on Page 2

And, as so amended,

DO PASS

JEAN A. TURNAGE, Chairman.

STATE PUB. CO.
Helena, Mont.

4. Page 1, lines 9 through 13.
Strike: "(1)" through "(2)"

5. Page 1, lines 16.
Strike: section 2 in its entirety.

Chairman.

STATE PUB. CO.
Helena, Mont.