

## MINUTES

### MONTANA HOUSE OF REPRESENTATIVES 51st LEGISLATURE - REGULAR SESSION

#### COMMITTEE ON JUDICIARY

Call to Order: By Chairman Dave Brown, on March 16, 1989, at  
9:25 a.m.

#### ROLL CALL

Members Present: All members were present.

Members Excused: None.

Members Absent: None.

Staff Present: Julie Emge, Secretary  
John MacMaster, Legislative Council

Announcements/Discussion: The House Judiciary Committee joined  
with the State Administration Committee to hear SB 196  
sponsored by Sen. Yellowtail.

#### HEARING ON SENATE BILL 196

Presentation and Opening Statement by Sponsor: Sen. Bill  
Yellowtail, Senate District 50, Big Horn County, sponsored  
the bill. He said this bill recommends that the salaries  
for members of the bench in Montana should be increased for  
two fundamental reasons. First, judges should be paid a  
salary commensurate with their duties and responsibilities.  
Lawyers in Montana, the group from which judges are  
selected, earn about 30 percent more than judges do.  
Second, we must attract the best and the brightest to seek  
and attain a seat on the bench. Sen. Yellowtail said that  
our Constitution and our democracy are only as good as our  
judicial system. This bill serves two simple purposes. It  
separates the nonpartisan and partisan elected offices, and  
it increases the judicial salaries. He pointed out that  
Montana ranks last in the nation in the salaries we pay our  
Supreme Court justices and district judges, which is a  
disgrace to these people that we hold in such high esteem.  
In 1977, Montana ranked 42nd in salary offered to an  
associate Supreme Court justice and ranked 29th for salary  
offered to district court judges. For comparison, this  
year, New York pays the Supreme Court associate justice  
\$115,000. SB 196 would bring Montana into the middle range  
of the surrounding states but substantially lower than the  
national average.

Testifying Proponents and Who They Represent:

Jim Murry, Executive Secretary, Montana State AFL-CIO  
Joel Roth, District Judge, Montana Judges' Association  
Margaret Davis, League of Women Voters of Montana  
Zander Blewett, Self  
Rick Bartos, Legal Counsel, Governor's Office  
John Stephenson, Jr., Montana Defense Trial Lawyers  
James Tutwiler, Montana Chamber of Commerce  
Max Hanson, State Bar of Montana  
Jim Oppedahl, Administrator, Supreme Court  
J. A. Turnage, Chief Justice, Montana Supreme Court

Proponent Testimony:

Jim Murry, Executive Secretary, of the Montana State AFL-CIO, presented written testimony (EXHIBIT 1).

Joel Roth, a district judge from Great Falls who has been on the bench for 12 years, said he is the president and spokesman for the Montana Judges' Association (MJA). The MJA consists of 36 district judges plus 7 Supreme Court justices, which represents the judicial branch, the third branch of Montana government. He said that Montana judges are employees of the state and have not had a salary increase for 3.5 years. He does not believe that judges are paid in proportion to the responsibilities that they bear. He said currently Montana judges are \$20,000 below the average salary paid to judges in the United States. Judicial salaries in Idaho, Wyoming and North and South Dakota come close to \$10,000 above the judges' salaries in Montana. Judge Roth said that if the judges received an increase of \$10,000 this year and \$2,500 next year, which is what the judges were advocating, but it did not get through the Senate, Montana judges would still rank 42 out of 50. If the judges receive the \$6,000 increase this year, Montana judges will rank 48 out of 50. Judge Roth presented a long list of responsibilities and decisions that are part of a judge's career. He stated that they should be paid commensurate with these responsibilities and decisions.

Margaret Davis, representing the League of Women Voters of Montana, presented written testimony (EXHIBIT 2).

Zander Blewett said he is an attorney from Great Falls who has been practicing for 17 to 18 years. He said he drove to Helena today to support SB 196. Mr. Blewett said that in the last 17 years, he has seen many lawyers who have paid their dues, learned how to practice law, spent 20 to 25 years in the practice of law, and would like to be judges, but simply couldn't because they could not financially afford the position. As a result, the system is starting to erode or may erode. We still have good judges, and we can maintain good judges and get better judges with this pay increase. Mr. Blewett said that his partner, John Hoyt, was

on the Salary Commission for about 15 years. Mr. Hoyt told Mr. Blewett that the Salary Commission unanimously voted every time they met to increase the judges' salaries. This bill is for judges secondarily. It is for our judicial system first. He urged the Committee to throw their support behind this bill.

Rick Bartos, Legal Counsel to Governor Stan Stephens, said that in the Governor's State of the State Message, the legislature was urged to adopt judicial salary increases for our Supreme Court justices and district court judges. He said that the previous speakers have well illustrated the problems. Mr. Bartos said "Governor Stephens urges this Committee to give favorable consideration to SB 196 as a vehicle upon which we can begin to remedy this problem."

John Stephenson, Jr. said he is representing the Montana Defense Trial Lawyers, which consists of about 300 lawyers who deal primarily with defending law suits, and is a past president of that group and currently on its board of directors. He said he is also representing the Cascade County Bar Association as the immediate past president. He said that last fall, the Cascade County Bar passed a resolution supporting judicial raises. Those two organizations comprise well over 400 lawyers, which he believes are all firmly committed to supporting judicial pay raises. Mr. Stevenson said that the support system of our highways, bridges and water systems is in danger not only in Montana but across the nation. He then drew an analogy of the decay of the water systems, which routine maintenance would have prevented, to Montana's judiciary, which is the support of the state's legal system. He said that "over half of our Supreme Court justices are over 66; half of our district court judges are over 60. In five to ten years, it is very probable that two-thirds of these judges will be replaced. If salaries are not raised, who will replace those retiring judges? Not the best lawyers, the ones who should aspire to be judges. Instead those positions will go by default to the least qualified of our profession. We should not defer the maintenance of our judicial system." Mr. Stevenson requested the Committee to raise the judicial salaries in order to maintain good judges.

James Tutwiler, representing the Montana Chamber of Commerce, said that the Chamber stands firmly in support of SB 196. He said "we feel that this bill is warranted and merited. We know that the decisions that the judges make have a profound impact on the business of the state and on the private enterprise system. Over a period of time, they have impact on the actual performance of the economy itself. Montana is fortunate in that both the justices and judges in this state, in our opinion, have been of the very highest quality for the past years. We believe that now is the time to look squarely at this issue. Being last in the nation, in terms of salaries, for our justices and judges is

certainly not the position we want to be in as it will not ensure we have the quality of judges and justices we have had in the past." He urged the Committee's full support of SB 196.

Max Hanson, representing the State Bar of Montana, said that in behalf of the attorneys in the state, we owe it to the judges and justices to not have them be on the bottom of the national pay scale. He urged support of SB 196.

Jim Oppedahl, the administrator for the Supreme Court, presented to the Committee's comparison salary charts of the District and Supreme Court Justices' salaries (EXHIBITS 3 and 4). He stated that the comparison that is most often used in setting judicial salaries around the country is to look at what other judges make. The other comparison is to see what lawyers are making. The standard around the country is really simply keeping pace with inflation. In that regard, Montana has fallen significantly behind in setting judicial salaries and keeping pace. The charts give a hint of how that has happened. Mr. Oppedahl then reviewed the charts with the Committees.

J. A. Turnage, Chief Justice, Montana Supreme Court, presented written testimony (EXHIBIT 5) and a packet of photocopies of newspaper editorials concerning judges' pay raises (EXHIBIT 6).

#### Testifying Opponents and Who They Represent:

Sen. Larry Tveit, Senate District 11

#### Opponent Testimony:

Sen. Larry Tveit, Senate District 11, Richland and Roosevelt Counties, said that he rises reluctantly to oppose this bill. He said he wanted to make some feelings known about a certain district judge in his area that filed bankruptcy to beat his debts. He said "as a director of that bank, we worked with that judge very closely. He turned his back on the bank and had the federal courts take care of his debts to the bank and to others in Sidney. With his \$49,000 salary, his debt was not that large that he couldn't have worked it out. He took the easy way out. He is still a judge and has misused his office using professional stationery to make very strong accusations unbecoming of a judge." Sen. Tveit said he has talked to the Judicial Ethics Committee and several of the Supreme Court justices. The Judicial Ethics Committee threw out all but 2 of the 38 counts filed against this judge by the people of Sen. Tveit's area. Sen. Tveit said he has some concern when the judicial system looks so lightly on an area such as this, and it can't be corrected. Sen. Tveit also spoke about a Supreme Court action of the Squires' Shops in Missoula versus Gary Larson that occurred in 1983. He said that the

Supreme Court's decision concerning this case paints a "black eye" for the judicial system in the state. Sen. Tveit questioned increasing the judge's salaries when they cannot police their fellow judges.

Questions From Committee Members:

- Rep. Addy asked if the controversy that Sen. Tveit testified about predated the filing of the bankruptcy. He asked if it wasn't the sentencing that the judge was handing down on drug cases that initially started the friction between Sen. Tveit and the judge. Sen. Tveit said that there were some petitions that came out with 1,900 signatures that had nothing to do with his bankruptcies or his other personal actions; the bankruptcy came before the sentencing controversy.
- Rep. Gervais said that he thought the opponent was the best proponent that testified. He said if we raise the judges' salaries we probably will not have things of this nature happen.
- Rep. Debruycker asked Jim Oppedahl to give an aggregate of what it costs the four surrounding states for judges' salaries. Mr. Oppedahl said in Montana it costs about \$2.1 million for the district court judges and \$350,000 for the Supreme Court. He said that he isn't sure what the aggregate in each of the other four states would be. REP. DEBRUYCKER said that on the Supreme Court bench there are seven judges. The other four states only have five judges. Montana is paying more for their Supreme Court than the four surrounding states. Mr. Oppedahl said that Montana has seven Supreme Court justices because of the case load that has been increasing fairly rapidly over the last ten years.
- Rep. Roth asked Judge Roth if he would be surprised to know that there are people in the private sector that are making less than they were 3.5 years ago. Judge Roth said he would accept that. REP. ROTH said that in Judge Roth's testimony, he stated that judges are nonpartisan. He said they run that way, but asked if he knew how many judges have held previously elected partisan positions. Judge Roth said that sometimes judges have been identified with a political party before they run for a judicial office. Judges do run nonpartisan. He said that he was never affiliated with any political party.
- Rep. Westlake asked if a judge may have any outside income. Chief Justice Turnage said they may only have unearned income, such as certificates of deposit and stocks.
- Rep. Boharski said that we have a strange state here where a lot of very qualified professionals are forced to take a huge cut in pay in order to live in Montana. They make probably half of what they can make in some other states. He said he

is curious how badly an attorney takes a beating if he decides to practice in Montana versus a big city or Montana's neighboring states, for a better comparison. Max Hanson said that associate attorneys, just out of law school working for the larger firms in New York City, start out at \$72,000 a year. He said he cannot say what attorneys starting out in Montana are paid. In Dillon and Butte, they are paid around \$22,000. Mr. Hanson said "some of his fellow law school graduates who are practicing in San Diego and Los Angeles are making approximately \$250 to \$300 an hour. If there is a going rate in some of the smaller towns, you would find it to be \$65 to \$75 an hour. In the larger cities such as Billings, it is somewhat higher. There is a substantial difference between what attorneys in this state make and what they are making in some of the other areas around the country."

Rep. Mercer said the question that the Legislature is looking at, in respect to judicial salaries is, what is fair and what is right; but on behalf of the citizens we are also "purchasing" an official branch of government. REP. MERCER asked if judicial salaries are increased, are we going to get more justice or are we going to get less justice. Chief Justice Turnage said "there is no guarantee that if you pay more, you are going to get the best qualified. There is a guarantee that if you don't, you certainly are not going to get the best. But justice is not for sale. Are you suggesting that you can purchase justice?" REP. MERCER said that he thinks that the judicial branch and executive branch exercise a tremendous amount of power, and they have exercised that power in lieu of legislative power. He said, "If we have the best and the brightest in the judiciary by increasing the salaries, are we going to continue this trend of the judiciary running the state of Montana? Do you think that judicial salaries have anything to do with the politics of the court?" Chief Justice Turnage responded, "I don't think what you pay judges has anything to do with the way the court rules."

Rep. Brooke stated that in Missoula they recently had an appointment to fill. There were many applicants. She asked why did we have so many applicants since we heard testimony stating salaries would keep attorneys from applying. Mr. Blewett said there probably would have been more than double the number apply, many of which that would be good lawyers, if the judges' salaries were more commensurate with what it should be. Chief Justice Turnage said he knows that a significant number of those people that applied for that position had barely five years of practice. He said that there is a Martindale-Hubbell Directory of Lawyers and Law Firms that has been in circulation for 100 years where lawyers and judges rate lawyers. He said that he didn't think any of the applicants, other than one or two, had a very high rating. There are about 2,700 licensed lawyers in the state. Chief Justice Turnage said that not all of them,

even after five years (the minimum requirement for a district judge) possess the experience that you would really want of a judicial officer of the court.

Rep. Cocchiarella asked if she could amend the bill to coordinate passage of the judicial request for raises to passage of a state employee raise. She said that the state employees have been offered a 1.5 percent raise for two years. This bill supports raises of 11 percent for the first year of the biennium and 24 percent for the second. Sen. Yellowtail said he would prefer to keep the issue of judicial salaries a distinct issue as it is a distinct branch of government and deserves that consideration. He said that the percentage increase proposed in the bill does appear to be substantial; but in fact, it actually represents an increase in judicial salaries comparable to increases received by state employees over time. Mr. Oppedahl said he has made comparisons on two levels. If you put judges on the state pay plan, and you start them in 1977 or 1984 and you move them up based on where they were in 1977 or 1984 on the matrix like other public employees, judges in the Supreme Court would be currently making about \$6,000 to \$7,000 more than they make today. District court judges would make about \$5,000 more than they make today. This is because increases on the matrix have been steady.

Rep. Addy asked to comment on the question raised by Rep. Brooke concerning appointments to fill vacancies in district courts. He said that a number of judges have resigned in Billings. This is the same situation that REP. BROOKE talked about. REP. ADDY said that in his discussions with other lawyers in Billings when there is a vacancy on the bench, "the conversation in every case seems to follow the same pattern. We have to find someone who has experience in trial practice, preferably someone who has been successful there as they are the ones that probably understand the arena as well as anyone else. You're probably talking about somebody making \$100,000 a year or something substantially above what we're talking about here. Then you have to find someone who can afford to apply for the judge's position, someone who doesn't have a big mortgage and three kids in college." He said that "for most of the judges in Billings, it has been a substantial reduction in salary."

Closing by Sponsor: Sen. Yellowtail thanked the committee's for a very good and thorough hearing. He said that the testimony the committee's heard today regarding the complex responsibilities of judges, Governor Stephens' endorsement for the bill, evidence of the imbalance within state government as to salaries between the executive branch and judicial branch, evidence of the majority turnover in the next ten years in our judgeships in Montana was very convincing. He said that Sen. Tveit offered the very best argument for SB 196. If we find fault with some judge, then we should be able to attract someone better and brighter.

This is the bottom line in SB 196. We can ill afford to offer less to attract less than the best. We hold our judges to the highest of standards, and we deserve a first-rate judiciary in this state.

#### HEARING ON SENATE BILL 54

Presentation and Opening Statement by Sponsor: Sen. Bruce Crippen, Senate District 45, stated he has proposed SB 54 at the request of the Department of Revenue. SB 54 will provide that levies for execution of a warrant restraint has continuing force and effect until the amount of the liability is satisfied or if the liability is withdrawn by the Department. Presently the Department of Revenue serves approximately 3,000 levies annually against delinquent property taxpayers' property. The Department has to reserve these levies each time a payment is received. The reservation process requires a great deal of extra paperwork and expense. The proposal contained in this bill would eliminate the additional efforts by making levies and writs of execution continuing in nature until the amount required by the action is satisfied or withdrawn.

#### Testifying Proponents and Who They Represent:

Jeff Miller, Administrator of the Income Tax Division of the Dept. of Revenue  
Chip Erdmann, Montana League of Financial Institutions and Montana Savings and Loans  
George Bennett, Montana Bankers Association  
Tom Harrison, Montana Sheriffs and Peace Officers Association

#### Proponent Testimony:

Jeff Miller, Administrator of the Income Tax Division of the Department of Revenue, spoke in support of SB 54. This bill will put them in the position of having a continuing levy rather than going through the considerable amount of paperwork in reserving the levy. Mr. Miller indicated it was the Department's intent to only serve one levy at a time as they don't intend to marshal everyone out there in the field to make them collectors for the Department. Mr. Miller proposed an amendment which explains and clarifies that the financial institution, retailer, or whomever the levy is served against need only notify the Department timely that they have no relationship for the Department to withdraw the levy and serve it elsewhere (EXHIBIT 7). Mr. Miller also indicated that the sheriff's office had concerns about their reporting requirements, and they have also agreed to some language that they think would be responsive to their concerns, although that language is not in typed form yet. Mr. Miller indicated they saw this not as a measure of increasing the numbers of levies they would be able to serve but would make them more effective in the way they do serve the levies and put them on a comparable



footing with the federal government which presently has the capacity to issue a continuing levy. If the federal government is ahead of the state, the state has to wait until the federal government's is completely satisfied before the state's is in place. Having to reserve the state's every time puts the state in greater risk of someone else getting ahead of them.

Chip Erdmann, representing the Montana League of Financial Institutions and Montana Savings and Loans, spoke in support of the bill. They had some problems with the concept of the continuing levy and there was some concern that once the levy was served upon one of their institutions, even if there was no relationship or the relationship with the judgment debtor was terminated, they would still have to continue to report on the chance that individual may have to come in and deposit some funds. When they discussed this with the Department, they were ensured that wasn't the intent, and the amendment offered on page 2, line 11, clarifies that. With that amendment, they support the bill.

George Bennett, representing the Montana Bankers Association, stated the Bankers have had their objections met. Mr. Bennett indicated some good people would be affected by this bill: employers, contractors, grain elevators, warehouses, feedlots, consignment brokers, anyone who holds property or owes money to anybody. The amendment makes it clear that if there is no relationship, the levy can be returned unsatisfied, and the Department will have to withdraw. If there is a relationship, then the garnishee will have to comply with the act until the relationship terminates. If the amendment is not accepted, businesses would have to set up a file with the name of the taxpayer and watch every transaction to see if that taxpayer ever appeared. With that amendment in the bill, the bankers support it.

Tom Harrison, representing the Sheriffs and Peace Officers Association, offered a second amendment which was not in typewritten form. The sheriffs were concerned with the use of a particular form for a particular service. This bill provides the sheriff would then be required to use the Department's form. The Department indicates that is not intended. They want their form to be used by the person who gets the levy, in other words, the bank. They have attempted to correct that. Once it's out of the sheriff's hands, the sheriff would not have to do any periodic reporting but the person to whom the levy is directed would have to make the periodic report. Their amendment says this. Mr. Harrison stated the amendment, "A sheriff or agent shall return the levy along with any funds collected within 90 days of the levy. The person to whom the levy is directed shall file a status report along with any funds collected within 90 days of the levy and thereafter . . ." The bill then picks up with the periodic report language. With that amendment, they also support the bill.

Testifying Opponents and Who They Represent:

None.

Opponent Testimony:

None.

Questions from the Committee: Rep. Hannah asked Mr. Miller to walk him through the procedure as to how they get into a position to file the warrant. Mr. Miller then did so. He further explained that to the extent they can find a continuing source of funds, whether from an employer or bank, they would be in a position to let that levy stand until it is satisfied or withdrawn by the Department.

Rep. Hannah asked what occurred with their assessment the money is due. Mr. Miller explained that with all of their notices of assessment, they are apprised of their right to protest the adjustment. If they do so, they are entitled to an informal or formal conference. If they are not satisfied with the result, they can appeal it to the State Tax Appeals Board and then on through the process--district court all the way to the supreme court. If a taxpayer protests the assessment, they stop the process.

Rep. Hannah asked if the warrant can be filed with the taxpayer is in the process of disputing the assessment. Mr. Miller responded they can but they don't.

Rep. Boharski asked if filing a lien to collect taxes is the same situation as we have here. The response was yes, it is the same situation, although there is a difference between filing a lien and executing or levying on a lien.

Closing by Sponsor: Sen. Crippen closed.

HEARING ON SENATE BILL 363

Presentation and Opening Statement by Sponsor: Sen. Bruce Crippen, Senate District 45, stated SB 363 deals with the arbitration statutes. In 1985, Montana adopted the American Arbitration Act but made one change--certain actions involving money matters of \$35,000 or less were not subject to the act. Sen. Crippen stated the act deals with a written agreement to submit to arbitration any controversy arising between the parties after the contract is valid and enforceable. This has some exceptions. Sen. Crippen stated the bill eliminates the language dealing with \$35,000 or less. One of the reasons behind this is to deal with the clogging of our courts and backlog of civil cases.

Testifying Proponents and Who They Represent:

Charles Sandy, Former District Judge  
Lewis Penwell, Arbitration and Mediation Service Company  
Michael Sherwood, Montana Trial Lawyers Assoc.

Proponents Testimony:

Charles Sandy, former District Judge, spoke in support of SB 363. Judge Sandy stated that the suggestion which Mike Sherwood will be making is completely acceptable to the proponents of this bill.

Lewis F. Penwell, Arbitration and Mediation Service Company, presented written testimony in support of SB 363 (EXHIBIT 8). Mr. Penwell stated he also supported the amendment to be submitted by Mike Sherwood.

Michael Sherwood, representing the Montana Trial Lawyers Association (MTLA), stated MTLA proposes the stricken language of the bill be retained except on line 7 the figure \$35,000 be changed to \$3,500. He indicated there is a clogging in the district court, but that clogging is not radical in the justice courts, and the justice court jurisdiction is \$3,500. Mr. Sherwood also stated that with the smaller amount of money you get, the more chance there is for oppressive contracts. He did not feel there was a need for arbitration at that level when you have the alternative of small claims court or justice court.

Testifying Opponents and Who They Represent:

None.

Opponent Testimony:

None.

Questions from the Committee: Rep. Hannah asked why Montana should adopt anything different than the uniform act which the testimony indicates is working well in other states. He asked how we justified having anything different in this act. Sen. Crippen stated that in light of the lack of time, he was willing to compromise.

Closing by Sponsor: Sen. Crippen stated he would go along with the amendment as he felt the small claims court maximum was probably a very good one that could be reviewed at a later time.

DISPOSITION OF SENATE BILL 363

Motion: Representative Nelson moved SB 363 BE CONCURRED IN, motion seconded by Rep. Gould.

Discussion: Rep. Mercer stated you can always agree to arbitration after a dispute arises. Also, he was concerned that those entering into small contracts may not understand what it means to agree to arbitration.

Amendments, Discussion, and Votes: Rep. Mercer moved SB 363 be amended as follows:

Reinsert subsection (c)

Delete: "\$35,000"

Insert: "\$10,000"

This amendment essentially reinserts the language on lines 4 through 7 and change the figure to \$10,000.

Rep. Rice stated that he had some concern with changing it to \$10,000 as all the parties who testified were in agreement on the \$3,500. Rep. Mercer felt this would better protect the people who were entering into contracts with people who did such things as home improvements and the \$3,500 was too small.

The motion to amend SB 363 CARRIED with Rep. Rice opposing the motion.

Recommendation and Vote: Rep. Wyatt moved SB 363 BE CONCURRED IN AS AMENDED, motion seconded by Rep. Boharski. Motion CARRIED unanimously.

HEARING ON SENATE BILL 353

Presentation and Opening Statement by Sponsor: Sen. Bruce Crippen, Senate District 45, stated SB 353 is an act which would allow local law enforcement agencies to request assistance from the National Guard and from tactical teams from other jurisdictions during tactical incidents. It would also allow and empower the governor to authorize National Guard assistance. Sen. Crippen related two incidents in multiple jurisdictions giving rise to the need for this bill--the Nichols manhunt and the Holter Lake incident. The bill sets forth various definitions as to a tactical incident, who can assist, and who is responsible. It does not make the National Guard peace officers.

Testifying Proponents and Who They Represent:

Sheriff Chuck O'Reilly, Montana Sheriffs and Peace Officers Association

Captain Bill Fleiner, Lewis and Clark County Sheriff's Office

Lieutenant Greg Hence, Missoula County Sheriff's Department  
Peter Funk, Assistant Attorney General, Dept. of Justice

Proponents Testimony:

Chuck O'Reilly, Lewis and Clark County Sheriff, representing the Montana Sheriffs and Peace Officers Association, spoke in support of SB 363. He gave further details about the Holter Lake incident. At one point, Sheriff O'Reilly asked his office to call the Governor to see if he could get an armored vehicle to deliver a sniper rifle. He was not asking for personnel, nor does this bill request personnel help. It came to light there was no authority in the law for the Governor to do this. This bill was drafted to handle a situation such as this should it occur again. Sheriff O'Reilly stated they are not asking for a statewide tactical team or for National Guard members to be a part of it. The bill only asks for assistance to be provided in transportation and the loading of a weapon or other item of equipment if the need arises. Sheriff O'Reilly stated that in these incidences, delivery of such equipment is a matter of life and death. This bill would give the Governor the authority to tell the National Guard that yes, they could pick a tactical team up in Billings and transport it to Lewis and Clark County, or yes, you can authorize the loaning of a piece of equipment such as an armored vehicle. The funding mechanism in the original bill has been stricken, and we are now just dealing with the authority which is the main issue with them. Sheriff O'Reilly also stated that whenever a federal agency is involved, they pick up the majority of the cost. He stated the cost of the Holter Lake incident was \$1.2 million, while the cost to Lewis and Clark County was only \$20,000. That would continue even with this bill, so the impact to the state is minimal.

Bill Fleiner, Captain, Lewis and Clark County Sheriff's Office, and Chairman of the Montana Sheriffs and Peace Officers Association Tactical Task Force, stated the Task Force has been preparing a manual for law enforcement administrators throughout the state which will address three major areas of concern relating to tactical incidents: authority, resources, and training. Captain Fleiner noted SB 353 is the result of the work of the Task Force.

Greg Hence, Lieutenant, Missoula County Sheriff's Department, in charge of the Special Weapons and Tactics Team, and member of the Montana Sheriffs and Peace Officers Association serving on the Tactical Task Force, spoke in support of SB 353.

Peter Funk, Department of Justice, voiced the Department's support for this bill for the reasons described above. He stated they also supported the bill in the Senate in its original form with the Attorney General having a role as far

as approving authorizing expenditures. He indicated the Attorney General had no problem with the House reinserting the funding mechanism.

Testifying Opponents and Who They Represent:

None.

Opponent Testimony:

None.

Questions from the Committee: Rep. Boharski asked why the National Guard would not have law enforcement status. Sen. Crippen indicated that the National Guard would not be involved other than for transportation. Sheriff O'Reilly indicated the reason the bill is specific is there are two different functions: One is a civilian law enforcement function as opposed to a military operation. Tactical teams are not set up to conduct military operations, rather they are to go in and make a law enforcement arrest to diffuse the situation. When the military is involved, more lives are placed at jeopardy because their philosophies and rules and regulations are much different from civilian law enforcement. They only want to be able to use a piece of equipment or to have the pilots fly them from one point to another. It is not intended that they be used in any fashion as a peace officer or in a peace officer function.


Rep. Mercer stated a concern about local government liability and the language in new section 3 of the bill relating to a tactical incident exceeding the capability of a local law enforcement agency. He was concerned because of the local law enforcement agency macho factor and the legal issue that is created if someone were to say it did exceed your capability and, therefore, you should have called someone in. He wondered if that section should just read local law enforcement agencies may request the assistance of a tactical team in the event of a tactical incident rather than creating a standard they have to meet as far as exceeding their capability. Sen. Crippen responded the liability issue was touched on briefly in the Senate's executive session although they did not deal specifically with section 3. He did not feel that would chance any of the substantive part of the bill insofar as the ability of the requesting agency to make a timely request and have it acted upon in a timely manner which he felt was the real key.

Rep. Brown asked if this bill could apply to situations such as strikes or something similar to labor disputes. Sheriff O'Reilly indicated the intent is not to use this as a strike breaking force or anything of that nature although conceivably it could be if guns were involved. Captain Fleiner stated the Task Force manual addressed strike

situations in the sense they would be included under civil disorder situations. Sheriff O'Reilly clarified civil disorder situations are addressed at Aryan nation/white supremacist situations. Rep. D. Brown stated he was concerned someone could construe this to include the strike circumstance. Sen. Crippen stated that concern was also brought up in the Senate's executive session. He indicated page 1, line 20, tactical incident is defined as any situation in which it is reasonable to expect loss of life or the taking of a hostage unless extraordinary steps are taken. Rep. D. Brown stated the Decker situation with the bullet holes and slashed tires fits this situation.

Closing by Sponsor: Sen. Crippen stated he would leave it up to the wisdom of the House as to whether they would get involved in the funding mechanism.

ADJOURNMENT



REP. DAVE BROWN, Chairman

DB/je

6108.MIN

DAILY ROLL CALL

JUDICIARY

COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date MARCH 16, 1989

NAME	PRESENT	ABSENT	EXCUSED
REP. KELLY ADDY, VICE-CHAIRMAN	X		
REP. OLE AAFEDT	X		
REP. WILLIAM BOHARSKI	X		
REP. VIVIAN BROOKE	X		
REP. FRITZ DAILY	X		
REP. PAULA DARKO	X		
REP. RALPH EUDAILY	X		
REP. BUDD GOULD	X		
REP. TOM HANNAH	X		
REP. ROGER KNAPP	X		
REP. MARY McDONOUGH	X		
REP. JOHN MERCER	X		
REP. LINDA NELSON	X		
REP. JIM RICE	X		
REP. JESSICA STICKNEY	X		
REP. BILL STRIZICH	X		
REP. DIANA WYATT	X		
REP. DAVE BROWN, CHAIRMAN	X		



STANDING COMMITTEE REPORT

March 16, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that SENATE BILL 363 (third reading copy -- blue) be concurred in as amended .

Signed: \_\_\_\_\_  
Dave Brown, Chairman

[REP. MERCER WILL CARRY THIS BILL ON THE HOUSE FLOOR]

And, that such amendments read:

1. Title, line 6.

Following: "CREDIT

Insert: "WHERE THE CONSIDERATION TO BE PAID BY THE INDIVIDUAL IS  
\$10,000 OR LESS"

2. Title, lines 7 and 8.

Strike: ", REGARDLESS" on line 7 through "DELETING" line 8

Insert: "; CHANGING"

3. Page 1, following line 25.

Insert: "(b) any contract by an individual for the acquisition of  
real or personal property, services, or money or credit  
where the total consideration to be paid or furnished by the  
individual is \$10,000 or less;"

Renumber: subsequent sections



EXHIBIT 1  
DATE 3-16-89  
SB 196

Box 1176, Helena, Montana

JAMES W. MURRY  
EXECUTIVE SECRETARY

ZIP CODE 59624  
406/442-1708

Testimony of Jim Murry on Senate Bill 196 before the House State Administration Committee, March 16, 1989

Madam Chair and members of the Committee, for the record, I am Jim Murry, Executive Secretary of the Montana State AFL-CIO and am here today in support of Senate Bill 196.

Our organization supports appropriate salary and wage increases for workers at all levels, and therefore endorses the effort to raise the salaries of the members of our state's judiciary.

As has been reported in the news media, salaries for Montana's judges and other top state government officials rank at or near the bottom when compared with those paid by other states. While this may appear shocking and is certainly responsible for much of the support for raising judicial salaries, we would like to point out that the same is true for many Montanans.

According to data collected by the U.S. Department of Labor, the most recent figures for average annual pay of workers ranks Montana 47th out of the 50 states. That's down from our rank of 38th in 1980. Clearly, many good Montanans are suffering from this "bottom of the scale" problem.

It is only fair to all concerned that the most competent, qualified individuals possible be seated in these positions of authority. Certainly, pulling Montana's judicial salaries out of last place could help attract or retain high-caliber judges.

With growing caseloads and the increasing complexity of many cases, our judges must also rank among the most productive in the nation, and deserving of commensurate salary levels. The Montana State AFL-CIO supports the efforts to raise judicial salaries as we do those to raise workers' wages across the spectrum.

Thank you.



*H. Judiciary Clerk*

EXHIBIT 2.  
DATE 3-16-89  
H/SB 196

LEAGUE OF WOMEN VOTERS OF MONTANA

16 March 89

Joe Bruck, president

1601 Illinois, Helena, Montana 59601

SB 196: An act increasing salaries paid Supreme Court justices and district court judges....

The League of Women Voters of Montana supports SB 196.

The League rarely participates in the debate on salary setting for any elected officials. However, the current low level of judicial compensation is undercutting the court system's ability to attract qualified personnel in the future from among Montana's best and brightest young legal minds. Aspiring to a position on the bench is in danger of becoming only attractive to those who can afford to do so.

For many years, the League has supported efforts to attract better judges to the bench, to adequately fund the judiciary, and to upgrade the administration of the court system. We have seen major initiatives in these areas wither from a lack of public interest and sometimes even legal professional interest. In the short-term, the only practical answer to maintaining the high quality of our courts is to assure that the salary paid judges is competitive and appropriate to the responsibility these positions carry.

Margaret S. Davis  
316 Flowerree  
Helena, Montana 59601  
443-3487

# SUPREME COURT JUSTICE SALARIES

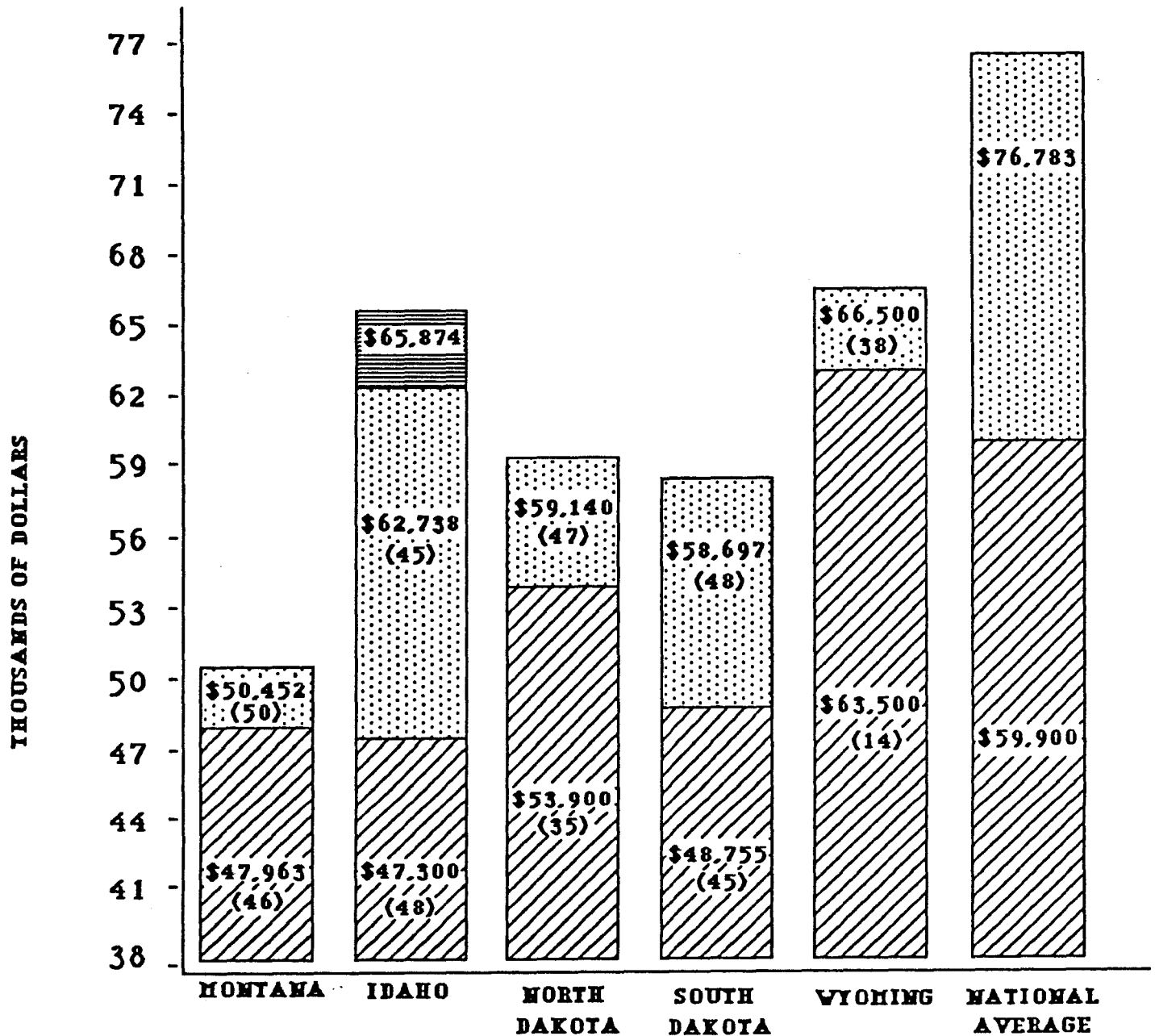
1984 & 1988

COMPARED WITH MONTANA'S  
NEIGHBORING STATES

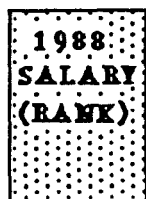
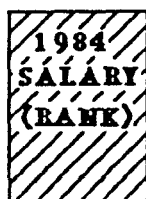
EXHIBIT 3

DATE 3-16-89

HB SB 196

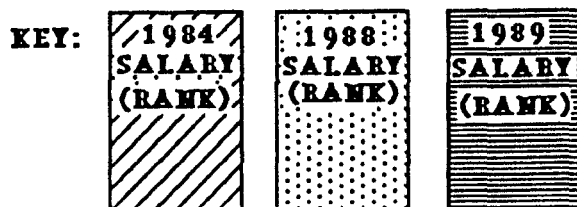
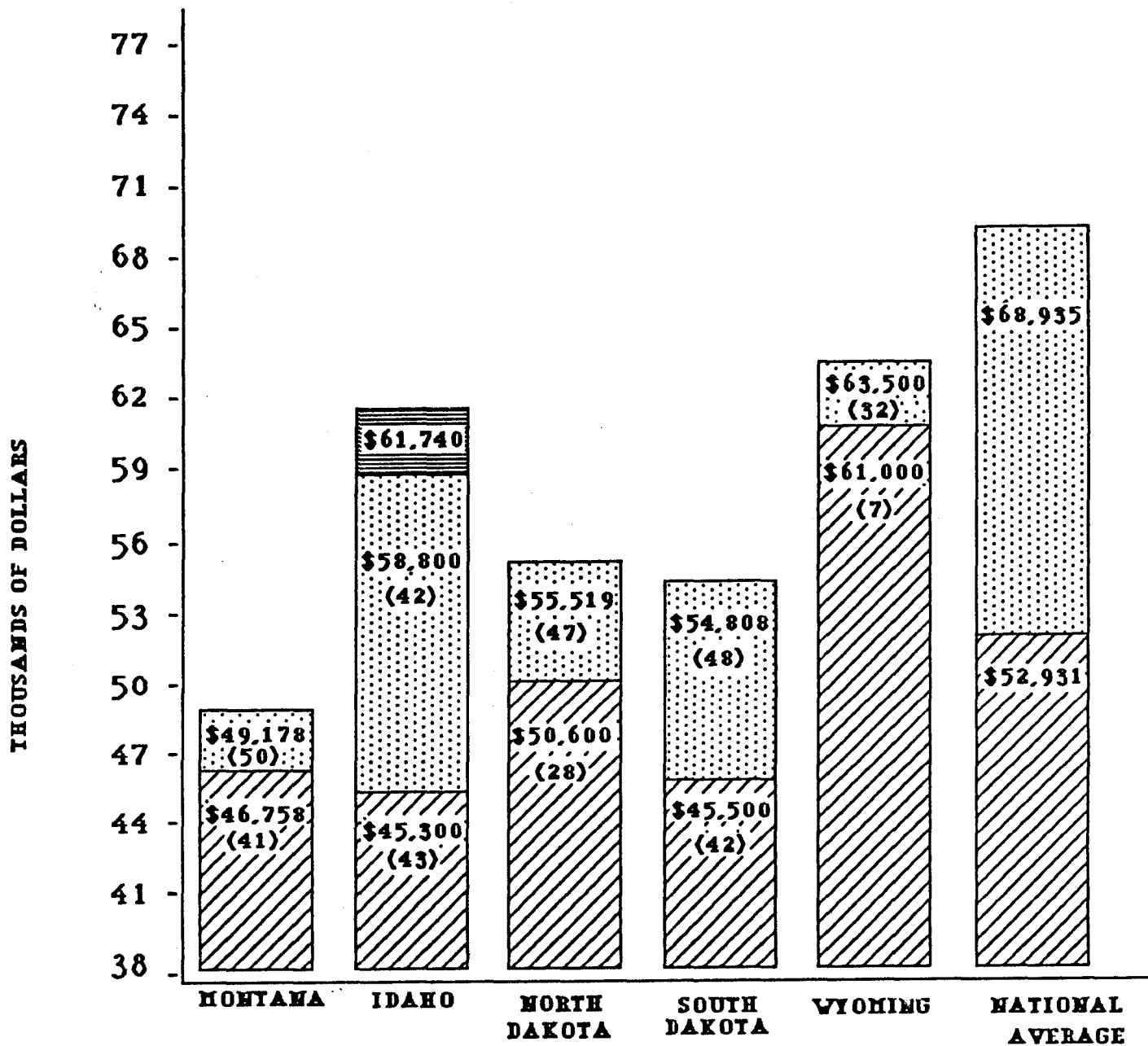


KEY:



SOURCE: NATIONAL CENTER FOR STATE COURTS, SALARY SURVEYS, MAY 1984 AND JULY 1988

# DISTRICT COURT JUDGE SALARIES 1984 & 1988 COMPARED WITH MONTANA'S NEIGHBORING STATES



SOURCE: NATIONAL CENTER FOR STATE COURTS, SALARY SURVEY, MAY 1984 AND JULY 1988

THE SUPREME COURT OF MONTANA

EXHIBIT 5  
DATE 3-16-89  
H# SB 196

J. A. TURNAGE  
CHIEF JUSTICE



JUSTICE BUILDING  
215 NORTH SANDERS  
HELENA, MONTANA 59620-3001  
TELEPHONE (406) 444-2621

TO: Chairman Jan Brown and Chairman Dave Brown; Members of  
the House State Administration and House Judiciary  
Committees  
FROM: J.A. Turnage, Chief Justice *J.A. Turnage*  
DATE: March 16, 1989

I am delighted to have this opportunity to speak to the members of two House Committees today in support of SB 196.

It is not often that the Judiciary is honored by the chance to present an important proposal to a joint meeting of two House committees at the same time. This "extra ordinary" hearing highlights the importance of SB 196.

All of the essential arguments have been made today about the necessity to provide fair and adequate compensation for Montana Judges. I trust that everyone has noted that the arguments have been made by representatives of a wide spectrum of our citizens: Judges, a representative of Governor Stephens, a representative of a major labor organization, the chamber of commerce, the State Bar of Montana and other legal organizations, and the League of Women Voters -- which as we all know simply represents good government.

Boiled down, all the arguments have a unified message:

If Montanans are to keep and maintain a first rate judicial system -- we simply must have a compensation system which can reasonably be expected to retain and recruit our best lawyers to become judges.

The Montana Judiciary needs your help this Session and in future Legislative Sessions to improve our judicial system. The Judiciary has presented a package of bills to the 51st Legislature aimed at improving that system:

SB 196 is aimed at one element of improvement-- recruiting and maintaining good judges.

We have several other bills whose primary purpose is judicial improvement:

SB 241 is part of the package to retain experienced

EXHIBIT 5  
DATE 3-16-89  
~~HB~~ SB 196

judges after 15 years of service;

HB 320 asks for improvement funding for court automation; and

SB 116 asks for revisions in the judicial budget process to make it more efficient.

Judicial improvement is not a sport for the short-winded, but we must begin now with meaningful measures. Members of these two committees and of the 51st Legislature have a unique opportunity to give real meaning to the phrase "Judicial Improvements" and to help the Judiciary make real progress in judicial administration in our last decade of the 20th Century.

SB 196 is an essential part of our judicial improvement package. Because -- when all else is said and done -- retaining and recruiting good judges is the firmest foundation upon which to build a first rate judicial system.

Thank you for the opportunity to talk with you this morning. I hope that you will support our improvement efforts and recommend a DO PASS on SB 196!

## Judges' pay raise must be approved

The Legislature is considering two bills which would raise salaries for judges in Montana from the worst in the nation to near the regional average.

This comes at a time when many citizens are fuming about the proposed raise for members of Congress and other federal officials. The climate is as chilly as the arctic winds blowing across the Treasure State.

But judges must be paid more. Low salaries offer good attorneys no incentive to enter the judiciary. Last fall, 19 of the 26 district court seats up for election were uncontested. Montana's judiciary is aging, and there is no prospect that a high quality of justice can be maintained.

Supreme Court justices currently earn \$50,452 per year and district court judges are paid \$49,178 annually. Both figures are the lowest in the nation.

Two bills for higher pay were heard by a State Senate committee this week.

One measure, SB196, provides for a flat \$10,000 increase later this year for Supreme Court and district judges, then another smaller raise next year. That would bring salaries to \$62,952 for the Supreme Court and \$61,678 for the district courts by mid-1990.

Another measure, SB155, would push salaries up this year to \$61,768 at the Supreme Court and \$58,156 at the district court level. In succeeding years, pay would be automatically adjusted to the average salary paid to judges of similar rank in Idaho, Wyoming, North Dakota and South Dakota.

This indexing method would provide reasonable pay that is not out of line with neighboring states, and it would avoid a continued legislative struggle to keep judges' pay current, said the bill's sponsor, Sen. Bruce Crippen, R-Billings.

There was no opposition to either bill at the hearing.

Judges have a tremendous responsibility in our lives. Their decisions have a direct or indirect bearing on virtually every aspect of what we do. Montanans expect a lot of work and a lot of quality from those who wear the black robes in the criminal and civil courts.

We expect the best and the brightest. Since that is the case, we must provide judges with decent compensation.

We tend to favor SB155 as the best method of providing decent compensation. A periodic adjustment in pay, based on a regional formula, is fair and appropriate. It also would avoid the major budget crunch that has occurred during those infrequent sessions when lawmakers were shamed into playing "catch up" with judicial salaries.

One bill or the other deserves passage in the full House and Senate.

EXHIBIT 6  
DATE 3-16-89  
H/SB 196



Ex. #6

3-6-89

SB 196

MISSOULIAN, DECEMBER 1, 1988

## MISSOULIAN EDITORIAL

# Judges deserve better pay

## Higher salaries could improve Montana's judicial system

**I**n a world where you usually get what you pay for, Montana is pinching pennies in the wrong place by paying its Supreme Court and District Court judges many thousands of dollars less than they deserve.

Low salaries offer good attorneys no incentive to enter the judiciary. What's more, low pay makes it tough for good judges to stay in office. Most competent attorneys can earn as much or more in private practice than they'd earn as a judge or justice.

Surveys conducted by the National Center for State Courts and distributed by the State Bar of Montana rank Montana last in the nation for judicial salaries.

Supreme Court justices earn \$50,452 a year — \$26,331 less than the average state supreme court justice in America.

Montana's justice salaries don't look much better compared with those paid by neighboring states. Wyoming pays its high court justices \$66,500 a year, while Idaho and North Dakota pay their justices \$62,738 and \$59,140, respectively.

Montana penny-pinches on its District Court salaries, too. District Court judges earn \$49,178 a year, far below

the national average of \$68,935.

Wyoming pays its District Court judges \$63,500 a year — far more than Montana pays its Supreme Court justices. District Court judges in Idaho earn annual salaries of \$58,800, and their pay is scheduled to increase to nearly \$62,000 next year. North Dakota District Court judges are paid \$55,519 a year.

Worst of all, Montana's judges have been losing ground in comparison with their peers. Four years ago, Montana's Supreme Court justice salaries ranked 46th in the nation — now they're 50th. The ranking for District Court judge salaries has slipped from 41st to 50th in those same four years.

Is there any wonder that both Supreme Court justices up for election Nov. 8 ran unopposed, as did 19 of the 26 District Court judges seeking election this year?

Judges shoulder tremendous responsibility in our society. Their decisions have at least an indirect bearing on virtually every aspect of our lives. We owe it to ourselves to recruit the best and brightest judges possible, and we owe the men and women of the bench an appropriate income.

Higher pay, alone, won't solve all the problems facing Montana's judiciary. The state's antiquated court system is badly in need of reform. But better salaries are essential if Montana hopes to maintain, much less improve its judiciary.

Ex. #6

3-16-89

SB 196

## Opinion

The Daily Inter Lake, Nov 27, 1988

# Judicial pay raise is judicious move

How can you seriously argue that a public official who makes \$50,000 a year is underpaid?

Well, it's tough, especially when a good share of the taxpayers who are paying his salary get less than half that.

Determining what a job is worth is always subject to disagreement. Nor is drawing comparisons with salaries paid in different occupations totally convincing. We're often confronted with lists comparing salaries of teachers, postal clerks, stockbrokers, railroad workers, athletes and entertainers, and the only thing such lists show is that our priorities are seriously out of whack.

The group doing the comparing at the moment is Montana's judiciary — the state's 36 district judges, who earn a little less than \$50,000 a year, and seven Supreme Court justices, who earn just a little more than \$50,000.

Few folks are shedding tears over the judges salaries. The fact is, obviously, at \$50,000 a year, they can drive to the poor farm in fairly comfortable fashion. And in earning nearly eight times the minimum wage as they do, they're neither eligible for nor do they need food stamps.

Even so, \$50,000 is way below what their colleagues in other states earn — district judges in Montana earn \$20,000 less than the national average. Montana Supreme Court justices earn \$28,000 less than the national average. They have gone longer without a raise than all but two states.

In fact, when you compare judicial salaries in Montana with those in other states and U.S. territories, Montana ranks dead last.

Someone has to be last, of course, and if only our pride were at stake, we could stand it.

Unfortunately, there is more at stake.

Montana judges are guardians of our state Constitution, our whole fabric of law. A hundred and fifty legislators pass laws for the governor to sign, but it is the judges who interpret those laws, who must decide how they apply to individual citizens. It is the judges who have the power to rule on disputes, to decide the custody of a couple's children, to confiscate property, to deny a man freedom or take his life.

Montana has the distinction of having the nation's lowest paid judges. What most of us would want sitting in judgment in a critical situation is not the cheapest, but the best.

Adequate compensation is one way to continue to attract and retain quality judges. But if the pay scale keeps sliding in relation to what top lawyers can earn in private practice, we can expect the quality of the judiciary to slide as well, maybe not today, maybe not next year, but eventually it will.

While judicial posts are not going begging and are not likely to, two Supreme Court justices and several district judges were unopposed in the last election.

The issue may not yet rank as an emergency, but before it becomes one, the Legislature should act. State judges have two proposals, one for about \$12,000 in raises over two years, and the other that would raise them to the pay level of judges in neighboring states. If lawmakers can't buy either plan, something more modest at least is in order.

Judicial pay is not an issue most lawmakers are apt to have much sympathy for. But by doing something now, the state can head off trouble down the road.

Ex. #6

SB 196

3-16-89

Tuesday, December 6, 1988

The Billings Gazette

# opinion

The Billings Gazette is dedicated to the quality of life in Montana while recognizing that the quality of life must be maintained.

## Expertise costly commodity

Montana has reached a point of diminishing returns.

Budget cuts are generally good. They force elected officials and bureaucrats to reassess their services, to attempt to do more for less.

### GAZETTE OPINION

They take the "that's the way we've always done it" out of the system and replace that philosophy with "how can we do it for less?"

But some areas of state government have been cut to the point where their lifeblood is spilling in legislative halls.

Consider, for example, the salary levels of the judiciary in the state.

Montana Supreme Court justices and District Court judges are paid less than their contemporaries in Idaho, Wyoming and North and South Dakota.

Even worse, we pay our judiciary substantially less than any other state in the union. We are the Appalachia of court systems dead last, worst anywhere.

The problem isn't unique to the court system, of course. We are also dead last in salary levels for uni-

In short, the state of Montana is in the pits.

Good for us, you say? We're saving taxes, aren't we?

But that's not necessarily so.

Universities and court benches are all part of the marketplace. Both judges and professors have an expertise that translates into dollars.

In these litigious, technical times, we need real expertise in both areas, but we can't expect to have that if we refuse to pay the going rate.

Already there has been an exodus of some of the state's best and brightest, and that hurts us all.

There is proposed legislation now that would raise judges' salaries by \$10,000 in fiscal year (FY) 1990 and \$2,500 in FY 1991. We are so far behind that raises of that magnitude would still leave our pay scales hovering near the bottom.

Given the hard times the Big Sky is facing now, the proposal may be too precipitous. We should ease into the plan, reaching those levels in, for example, a five-year period.

We simply can no longer ignore the inevitable. Expertise costs money, but without expertise we have no hope at all.

# Judges need a raise

## *Present pay rates won't lure the best lawyers to the bench*

It's fortunate some old adages, like "you get what you pay for," don't always apply. Otherwise, Montana justice would be the worst in the nation.

The fact is our judges are the poorest paid judges in the United States of America. Judges in Guam make a better living. Montana judges not only need a raise, but those of us concerned with keeping the best possible people on the bench need to give them one.

It's not that our judges are starving. A lot of Montanans would salivate at the very idea of making \$50,000 a year, but few would be willing or capable of taking on the job's awesome duty to impartially decide who's right, who's wrong, who's guilty and who's innocent under the increasingly complicated doctrines of state, federal and common law.

More to the point, few Montana lawyers — or, at least, few of the very best lawyers — are willing to put on the black robe and serve their state in what is such a critical, yet thankless job.

In this world of material incentives, you'd have to wonder about the sanity — or talents — of a top lawyer who turns down \$100,000 a year or better to take a \$50,000 judicial post along with its accompanying ethical restrictions against accepting outside income. Even the average private attorney earns roughly 30 percent more than a Montana judge who's likely to be snowed under with work of the most soul-straining nature.

The danger that only second or third-rate lawyers will be interested in running for district judgeships or a seat on the state Supreme Court is not so far-fetched.

While many communities, such as Bozeman, are fortunate to have chosen judges from among their best legal minds, others haven't been so lucky. We've seen voters in other parts of the state left with only one choice for their local

watched from the sidelines.

In light of this, Montana judges are pushing for better pay, specifically raises in the \$10,000 range, enough money to make their salaries at least comparable to those of judges in the neighboring states of Wyoming, Idaho, South Dakota and North Dakota. Such raises would cost the state an estimated \$500,000 a year.

In terms of \$2 billion state budgets, that's not a lot of money, but we expect to see the judges' proposal to meet strong resistance, much of it from strapped Montana taxpayers who can't expect to make that kind of money themselves and fundamentally resent any government employee who does.

The fact that the average private-sector Montanan makes less than the average public-sector employee in this state doesn't bode well, either.

Similarly, we're likely to see a judicial pay hike opposed by those who have a general low regard for the legal profession and others who have specific beefs against this judge's ruling or that Supreme Court decision.

Nor is it likely that judges will be singled out for raises while hundreds of other state employees are deserving of pay hikes as well.

But the case for making better judicial pay a legislative priority must be made.

It's always shaky to argue that one person's job is more critical or more important than another, but there's no question a judge's job is critical, important and often a miserable one. Within the boundaries of law, they hold no less than the power of life and death in their hands.

As one judge put it, Montana taxpayers have been getting a bargain on judges. We Montanans have never been ones to turn down a good deal, but neither are we willing to accept cut-rate, discount justice.

Even the loudest critics of Montana's judiciary should see the benefit of better judicial salaries designed to lure the best and brightest lawyers to the bench and

PROPOSED AMENDMENT TO SB 54  
THIRD READING COPY

EXHIBIT 7.  
DATE 3-16-89  
~~HB~~ SB 54

Page 2, line 11, following "days." insert:

If the person to whom the levy is directed notifies the department within 30 days of the date of the warrant levy that the person has no relationship with the judgment debtor, or if the person has a relationship with the judgment debtor and informs the department when the relationship is terminated, the department must withdraw the levy upon such notice.



Arbitration and Mediation  
Service Company (AMSCO)

203 FRATT BUILDING 2817 2ND AVE. N.  
BILLINGS, MONTANA 59101 (406) 245-6122

EXHIBIT 8  
DATE 3-16-89  
H# SB 363

March 15, 1989

Mr. Dave Brown  
Chairman, House Judiciary Committee  
Capitol Station  
Helena, Montana 59620

Re: Senate Bill 363  
Uniform Arbitration Act Amendment

Dear Mr. Chairman

I am the owner of AMSCO, a new Montana corporation. We have just recently organized to provide alternative dispute resolution services. We will provide a service to the legal and business community by making arbitration and mediation readily available for all types of disputes, ranging from domestic relations to business and commercial arguments.

It is no secret that our public court system is severely crowded. The problem is not unique to Montana; in fact several other states are in much worse shape. But only in Montana do we have a provision in the Uniform Arbitration Act that adds to the congestion. Senate Bill 363 will eliminate this problem.

In 1988 in the 13th Judicial Distric, which includes Yellowstone County, there were 458 criminal cases filed. At the same time there were 2857 civil cases filed. This creates a work load that is impossible for the five judges there to handle effectively. Criminal cases of course get priority, which means that civil cases get postponed. This can wreck havoc, for instance, on a business whose bond is jeopardized as a result of a pending litigation. It can also result in growing animosity between business associates that find themselves on opposite sides of a dispute.

Alternative dispute resolution is a recognized format that serves as a good substitute in a variety of cases. It is endorsed by the State Bar Association, as evidenced by the establishment of their ADR standing committee. It has received high praise from such notables in the legal profession as Max Hanson, President of the state bar, and Professor William Corbett of the University Law School, who teaches courses in mediation.

Section 27-5-114 (2) (c), which this bill addresses, makes it impossible for two parties to write into their contract that a small future dispute shall be arbitrated. No other state has such a provision, nor does the federal arbitration act contain any such language. Senate Bill 363 is a good piece of legislation because it gives back to the public the right to provide for arbitration in a contract in the event of a future dispute of \$35,000 or less. We should not legislate away this right. I respectfully ask for your support of Senate Bill 363. Thank you.

Sincerely,

  
Lewis F. Penwell

Member American Arbitration Association

## JUDICIARY

BILL NO. SENATE BILL 54

DATE MARCH 16, 1989

SPONSOR SEN. CRIPPEN

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

## VISITORS' REGISTER

JUDICIARY

COMMITTEE

BILL NO. SENATE BILL 363

DATE MARCH 16, 1989

SPONSOR      SEN. CRIPPEN

[illegible]

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.



## JUDICIARY

BILL NO. SENATE BILL 353

DATE MARCH 16, 1989

SPONSOR SEN. CRIPPEN

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.