

MINUTES

MONTANA SENATE
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Bruce D. Crippen, on January 31,
1989, at 10:00 a.m.

ROLL CALL

Members Present: Chairman Crippen, Vice Chairman Bishop,
Senator Beck, Senator Brown, Senator Halligan, Senator
Harp, Senator Mazurek, Senator Pinsoneault, Senator
Yellowtail

Members Excused: Senator Jenkins

Members Absent: None

Staff Present: Valencia Lane, Legislative Staff Attorney,
Rosemary Jacoby, Committee Secretary

Announcements/Discussion: There was none.

HEARING ON HOUSE BILL 59

Presentation and Opening Statement by Sponsor:

Representative Spaeth of Joliet, District 54, opened the hearing. HB 59 would allow the State Bar to have access to a individual's criminal history record if applying for the Bar. One responsibility by the Supreme Court is to complete a fitness check, particularly relating to criminal history, on people who apply to take the bar in the State of Montana, he said. At the present time, the bar can only receive information from the State of Montana, but also would like to have access to information from the federal government. The FBI indicated that unless the state changed its law, there would be no access to that information. Persons having criminal backgrounds may not become lawyers; thus the reason for proposing the legislation. He urged support of the bill.

List of Testifying Proponents and What Group they Represent:

Annie Bartos, the State Bar of Montana

List of Testifying Opponents and What Group They Represent:

None

Testimony:

Annie Bartos, said that, in 1986, the Montana Supreme Court, by a Supreme Court order, established a Committee on Character and Fitness. This committee acts on behalf of the Supreme Court to determine the moral character and fitness of every person who applies for licensing to practice law in the State of Montana. She said, because of a lawyer's high fiduciary position of trust, it was important to make the determination of any possible criminal history. Presently, the bar has attempted to use the FBI for obtaining this information, but have been told that they could not use the Crime Information Center's information unless Montana had a statute which would give our agency access to that information. She asked the committee to pass HB 59.

Opponents: None.

Questions From Committee Members: There were none.

Closing by Sponsor: Representative Spaeth closed.

DISPOSITION OF HOUSE BILL 59

Discussion: There was none.

Amendments and Votes: There were none.

Recommendation and Vote: Senator Mazurek MOVED that HB 59
BE CONCURRED IN. The MOTION CARRIED UNANIMOUSLY.

HEARING ON SENATE BILL 196

Presentation and Opening Statement by Sponsor: Senator Yellowtail, District 50, opened the hearing. SB 196 would increase salaries of Supreme Court Justices and District Court Judges and separated salaries of nonpartisan judicial officers from salaries of partisan elected officials. SB 196 proposes \$10,000 increases for Supreme Court Justices and District Judges of the State of Montana. He stated that statistics show Montana is ranked 50th in the nation in offering official salaries. Though the salaries would remain lower than the national average, they would not be an embarrassment to the state. SB 196 would make the State of Montana slightly higher than North and South Dakota, but lower than Idaho and Wyoming. He felt the long-term commitment to serve Montana was deserving of the proposed raise in pay. He said that the actual pay could serve as a deterrent to the best qualified lawyers becoming involved in the judicial system for the State of Montana, and urged support of the bill.

List of Testifying Proponents and What Group they Represent:

Judge Joel Roth, Montana Judge Association
Max Hansen, State Bar of Montana
Margaret Davis, Montana League of Women Voters
Rick Bartos, Governor's Office
Pam Miller, Montana Liability Coalition
Ben Everett, MTLA
Sue Weingartner, Montana Defense Trial Lawyer
Bob James, Montana Defense Trial Lawyer
James Tutwiler, Montana Chamber of Commerce
Jean Turnage, Chief Justice for the State of Montana

List of Testifying Opponents and What Group They Represent:

None

Testimony:

Judge Joel Roth, District Judge of Great Falls, representing Montana Judge Association, stated the association consisted of all District Judges in the State of Montana. There are 36 District Judges in the State of Montana are 36 in number. He pointed out that Montana Judges were the lowest paid judges in the entire United

States. They have not had an increase in salary for over 3 1/2 years. He suggested that at the present time, the salaries that are being paid to the Montana judges are not proportional to their responsibilities. He pointed out some responsibilities that judges regarding criminal cases have are: 1. To issue search warrants and arrest warrants; 2. To preside over trials; and 3. To decide whether or not other governments can come in or out of a case. He felt that civil cases took more time than criminal cases as far as the judges time was concerned. He pointed out the responsibilities of a judge in a civil case which included money, property of other people, automobile accidents. assuring that the trial proceed in a orderly fashion and setting up counselling with attorneys. He also stated there are difficult types of cases the judges deal with including divorce, determinations regarding mentally disordered, sexual abuse of children, juvenile delinquency, etc. He concluded by stating that judges work more than 40 hours a week and are also required to continue their judicial education to keep up with the current status of the law. He asked the committee to consider both bills.

Max Hansen, representing the Montana State Bar, stated that the State Bar was in support of SB 176. The State Bar of Montana felt that this legislation was an important public policy issue. He felt that the judges perform jobs with high degree of impartiality and fairness. He reiterated that the salaries fall below the national average. The State lacks \$26,000 of being in line with the nation average for Supreme Court Justices and \$40,000 for District Court Judges. He stated that private practitioners can earn approximately 30% more than a city or District Court Judge. This discourages qualified candidates for

seeking the bench. He felt that the state government has recognized the need to make salary commensurate with responsibility. He felt that the judiciary deserved as much compensation as a doctor. He urged the committee's support of SB 196.

Margaret Davis, representing the Montana League of Women Voters, stated that they endorsed SB 196. She pointed out that since 1972, the League has had a position on judicial system in the state. (See Exhibit 1 for further testimony).

Rick Bartos, representing the Governor of Montana, Stan

Stephens, stated that, in the Governor's State of the State Address, he mentioned the judicial salaries. The position of the Governor was to seriously consider the increase in judicial salaries at this time. The integrity of judicial system is at stake and it is in the best interests of the people of Montana that a sound judicial system continue. He felt that we need competitive salaries for a judiciary with those surrounding states. He encouraged this committee to give a favorable position on SB 196 and the Governor as well is endorsing SB 155.

Pam Miller, representing the Montana Liability Coalition, stated that they supported the fact that the Montana judicial system should be paid a salary commensurate with their responsibility. She pointed out that in the past, Montana Liability Coalition tort reform bills had imposed more responsibility on judges and would probably increase it further in the future. The Liability Coalition requested a Do Pass on the judicial salary increase bill.

Ben Everett, representing MTLA, stated that he spoke in favor of SB 196. He pointed out that judges literally make life and death decisions on a daily basis. They must uphold our constitution by passing an appropriation that will allow the State of Montana to pay judges adequately. He felt that the judges salaries are well below the minimum wage for their responsibilities. He stated that it was time for judicial salaries to be raised.

Sue Weingartner, representing Bob James, President of the Montana Trial Lawyers who was unable to attend the hearing, stated that the Montana Trial Lawyers supported an increase funding for judges. (See Exhibit 2 for further testimony).

James Tutwiler, representing the Montana Chamber of Commerce, asked to be on record in support of SB 196. (See Exhibit 3 for further testimony).

Jean Turnage, Chief Justice of the Montana Supreme Court, supported the legislation of SB 196. He felt that, in 10 years this problem would result in a failure to attract the best people to serve on the bench, he said. The state does not need less than a first rate judiciary. There will be a great turnover in the membership of the bench in this state in the near future, he said. The Supreme Court justices average

age is 67.9 years. The District Court bench will also have a great turnover. Judges have great discretion in deciding almost every issue that comes before them, he told the committee. The judges standard review indicates that their discretionary decisions would not be overturned unless there was clearly erroneous or abusive use of the position. The increase in salaries is not going to guarantee that the people of Montana would receive the best to serve; but if they are not increased, the bench will not attract the "brightest and best," he said. He urged consideration to solve judicial salary increase proposed in SB 196. Justice Turnage presented a letter to the committee from James Murry of the AFL-CIO who supported the bill. (See Exhibit 4.)

Opponents:

None

Questions From Committee Members: Senator Halligan stated that in the 8 years he had been in the legislature, various ways had been discussed to attract quality district judges. He felt there would be more legislative support for SB 196 if it was known that this was a long-term look at general improvement of the judiciary. He felt that the State Bar should add

credibility to this issue by taking a very serious look at the judiciary and the use of "masters."

Max Hansen stated that many judges are using special masters and mediators in some of the busier judicial districts. The State Bar is undertaking to make the judicial system more efficient through use of the use of alternative dispute resolution. This resolution is being used in other jurisdictions with great success. He stated that the State Bar was going to set up a pilot program this year in Bozeman in Judge Geary's department. They would bring in a trained mediator who would train other attorneys and judges throughout the state to take cases that have been brought up in Judge Geary's court for resolution. They will have various attorneys of Gallatin County submit those cases to alternate dispute resolutions, rather than go through the trial process. They feel that is one of the more important programs the State Bar of Montana had implemented recently and would like to see it implemented in every judicial district.

Senator Pinsoneault asked if the Governor had given any

indication of where the legislature might get the money. Rick Bartos replied that the Governor made it clear in the State of the State address that the state must be very frugal with the money left in the state budget.

Senator Beck asked if this would take the money away from the programs that already exist. Rick Bartos replied that it does not, to his knowledge. There are various sources of money used to fund the judicial salary, he said. Both of these bills do not specifically identify the property tax as the basis for funding the salary increases.

Senator Mazurek replied to Senator Beck that the salaries of judges were paid out of the state's general fund.

Closing by Sponsor: Senator Yellowtail closed by stating that the State of Montana is a failure in maintaining a responsible salary structure for the judicial system. He pointed out, just as a matter of interest to the committee, that the highest salaries were in New York

where the associates of the Supreme Court Justice are paid \$115,000 per year. He said it would not be realistic for Montana to consider that salary, but felt strongly that Montana should retain independence in deciding salaries. Statistics reveal in 1977, Montana ranked 42nd in the nation for salaries for the Supreme Court Justice and 29th for the District Court Judge. He reminded the committee that this was a committee bill and urged support.

HEARING ON SENATE BILL 155

Presentation and Opening Statement by Sponsor: Senator Crippen of Billings, District 45, opened the hearing. SB 155 would index the salaries paid Supreme Court Justices and District Court Judges to the average salary paid similar officials in certain Western states. He stated that SB 155 would devise a mechanism for the salaries of the Chief Justice, Supreme Court Justices and District Court Judges are arrived at through an indexing method. He pointed out that the "whereas's" do refer to the situation in the State of Montana pertaining to the judicial system and to other states. He pointed out, in the index, the Supreme Court Administrator would consider the annual salaries that would be paid to the Chief Justice, Supreme Court

justices and District Judges including the water judge, averaging earned state salaries. Beginning on the even numbered years, an average of the Chief Justices salary in the neighboring states is taken and applied to Montana. The figure arrived at would be referred to the legislative fiscal analysts and to the Governor's office for budgeting and program planning. This figure would apply to the odd-numbered years, he stated. Beginning July 1, 1989 there is a second increase in the bill on page 3, lines 1-2. The following year, 1990, this same method would be used to index. A Supreme Court administrator would then calculate the average salaries of our neighboring states and present that to the Governor and legislative fiscal analyst to be used in the following biennium. This would provide the legislature with a practical and workable mechanism for keeping judicial salaries up to

date without having a constant struggle. It would insure that the judicial compensation would be reasonable and fair, but not out of step with the salaries in our neighboring states. He stated that the fiscal note showed that the first year would be a 22% increase for Supreme Court Justices, and an 18% increase for the district court judges.

List of Testifying Proponents and What Group they Represent:

Maggie Davis, Montana League of Women Voters
Rick Bartos, The Governor's Office
Judge Roth, Montana Judges Association
Max Hansen, Montana State Bar
Ben Everett, Montana Trial Lawyers Association
Sue Weingartner, Montana Defense Trial Lawyers
Jean Turnage, Chief Justice of the Supreme Court

List of Testifying Opponents and What Group They Represent:

None

Testimony:

Maggie Davis, representing the Montana League of Women Voters, supported SB 155.

Rick Bartos, representing the Governor of Montana, Stan Stephens, stated that this bill provided a measure that would determine the competitive salaries for judges.

Judge Roth, representing the Montana Judges Association, supported of SB 155.

Max Hansen, stated that the State Bar felt that SB 155 was the better of the two salary bills.

Ben Everett, representing MTLA, stated SB 155 provided the legislature to increase judicial salaries. He stated that the association supported SB 155.

Sue Weingartner, representing the Montana Defense Trial Lawyers, supported SB 155.

Jean Turnage, Chief Justice of the Montana Supreme Court,

stated that his personal view was that SB 155 was the best bill. It would avoid continued struggle in the legislature's efforts to deal with salaries, he said.

Opponents:

None

Questions From Committee Members: Senator Pinsoneault asked for a comparison in dollar figures with Senate Bill 196. Senator Crippen stated that this bill provided an increase of \$63,054, which is almost identical to SB 196.

Senator Yellowtail asked how could they justify the Governor's salary. He also asked if that salary was higher or lower than the national average and surrounding states. He stated, if we were to follow this approach with one branch of our government, how would we justify not doing it with setting the salaries with other elected officials. Senator Crippen replied that the state should use that method for the paying officials. The legislative body has not had the courage to do that, he said. He submitted that this was a methodology that has been used with other members of government and could be used more extensively. He said it is presently used in the University System. Senator Crippen stating that, in 1981, there was a commission assigned the responsibility of determining what the legislative salaries should be. Some of those salary increases were substantial compared to what was being paid at the time. The commission worked hard and came up with a salary proposal, but the legislature did not agree with the proposal, and the commission disbanded. He thought that the index was a fair and reasonable method and should be considered.

Senator Beck asked, if the State of Montana used indexing of the neighboring states, how did those states set their salaries. Senator Crippen replied that other states probably go through the same process.

Senator Halligan asked if they have looked at case load correlations with other states. Jim Oppedahl, Administrator of the Supreme Court, replied that they had not looked directly at that item, although they had prepared a workload in Montana for both the Supreme Court and District Court level. They found that the case load was at or higher than the national average. He stated that most states look at CPI and the cost of living. He said Idaho's salaries are nearly even with CPI.

Closing by Sponsor: Senator Crippen closed by stating that he supported SB 155 because providing a fair method that the public would accept. He said that the State would be neither at the top nor at the bottom. He pointed out that the indexing method would allow the state to see where they actually should be. The state's judicial system and elected officials were capable and deserved more than being at the bottom, he said and he urged the committee's acceptance of SB 155.

HEARING ON SENATE BILL 241

Presentation and Opening Statement by Sponsor: Senator Mazurek of Helena, District 23, opened the hearing. SB 241 would revise the Judges' retirement system and would encourage younger judges to stay on the bench. It would reallocate the distribution of District Court fees to maintain the actuarial soundness of the system. He pointed out Section 2 of the bill which stated that, under the present system, the judges retirement pay is based upon years of service and percentage of contribution. Once a judge serves the first fifteen years of his term of office or service to the state he is provided a retirement allowance of 3 1/3% per year. At present, after a judge has served for fifteen years, his retirement benefit is reduced from 3 1/3% to 1% for each additional year of service. He explained that SB 241 would minimize the penalty by cutting from 1% to 2%. He continued to say that the proposal would be

funded out of the general fund. However, that general fund allocation comes from fees paid for the

substitution of judges and also \$35 would come from the Marital Dissolution Fee. The Appropriation Subcommittee has already taken the \$40 "displaced homemaker fee" and the New Horizons program, he said from the Unemployment Administrator Tax Account. This bill would allow about \$492 per year of service to a District Judge. Judges pay 7% of their salary per year just to judicial retirement. Only 19 district judges would be affected by this bill. The Public Employees Retirement System administers this program and has concern for actuarial soundness. He stated that the bill would cost \$98,000 a year with a \$67,000 for cushion. The cushion would go to a retirement account only until the actuarial soundness is restored; then the money would then go back to the general fund. He asked for favorable consideration.

List of Testifying Proponents and What Group they Represent:

Larry Nachtheim, Public Employee Retirees Division
Tom Schneider, MPEA
George Bousliman, State Bar of Montana
Jean Turnage, Chief Justice of the Montana Supreme Court

List of Testifying Opponents and What Group They Represent:

None

Testimony:

Larry Nachtheim, representing Public Employee Retirees Division, stated that the Board stood in support of SB 241. He stated that SB 241 would provide funding for the retirement system's present shortfall. (See fiscal note).

Tom Schneider, representing the MPEA, stated he wrote the original retirement act and was asked to give some background on the subject. He stated that, when he wrote the original act in 1967, he did not envision eliminating the service credits after fifteen years at 1%. The original retirement system limited benefits to 75%, but provided the full 3 1/3% per year for credit until the person reached retirement age. He continued to say that all retirement systems administered in the State of Montana have now taken off the restrictions

which cut back benefits and the limitations, except for the judges system and that is what this bill would do.

George Bousliman, representing the State Bar of Montana, stated this bill would encourage young judges to stay on the bench. He supported SB 241.

Jean Turnage, Chief Justice of the Montana Supreme Court, encouraged the committee to consider SB 241. He pointed out that, at this time, the District and Supreme Court judges have to reach the age of 65 before they are eligible for retirement, as well as having the cut back benefits.

Opponents:

None

Questions From Committee Members: Senator Halligan thought the use of Dissolution of Marriage fees could cause problems. Senator Mazurek stated, this year the budget subcommittee had "freed up" \$40 of the \$100 fee, taking only \$35 which, is freeing up an additional \$5 for the programs. He said that \$23,000 of it would come from the substitution of judges. Jim Oppendahl stated the funding of the judicial system had used as the District Court fee, instead of taking a certain percentage of all fees. This bill would attempt to make up the salaries shortfall in the judges retirement system.

Closing by Sponsor: Senator Mazurek closed by stating that judges need credit for what they pay in. He urged the committee to support SB 241.

DISPOSITION OF SENATE BILL 157

Discussion: There was none.

Amendments and Votes: Senator Halligan moved to amend SB 157. (See Exhibit 5.) The motion CARRIED UNANIMOUSLY.

Recommendation and Vote: Senator Halligan moved that SB 157 DO PASS AS AMENDED. The motion CARRIED unanimously.

DISPOSITION OF SENATE BILL 145

Discussion: Valencia Lane, Legislative Staff Attorney, stated that there were two sets of amendments. The first set of amendments (Exhibit 6) was prepared at the request of the committee. She pointed out they were to amend the Title to clarify that "maintenance" was addressed in the bill. She then stated that the next two amendments change page 2, line 5-8, to address the concern that the benefits be only those based upon remuneration of employment. It states clearly that the Disability related benefits were not addressed by this bill. She also explained that the definition in 42 U.S.C. 662 (f) applied to both Veteran and Social Security benefits. (See Motion A below.)

Valencia Lane explained that the second set of amendments (Exhibit 7) were brought to her by Senator Eck at the request of Judge Michael Keating, and would apply to a couple that is separated but not divorced.

Senator Yellowtail stated that the bill was adequately appropriate to child support. He felt maintenance was an entirely different matter, and deserved separate consideration.

Senator Jenkins asked Valencia Lane to define what the difference was between support maintenance. She replied that support is money owed, usually under a court order for the support of a child, whereas maintenance went to support the spouse or former spouse. She stated that the bill was worded to state "child support maintenance" only.

Senator Jenkins asked if the maintenance could be health insurance for the child and Valencia Lane stated that the maintenance was a set figure, which didn't include insurance or clothing.

Amendments and Votes:

Motion A. Senator Mazurek MOVED the Exhibit 6 amendments to SB 145. The MOTION CARRIED UNANIMOUSLY.

Senator Yellowtail MOVED a substitute motion to amend the Title to strike "or child support related maintenance"; further on page 2, line 8, strike ":"; line 9, sub (a), strike insert line 10,11, and 12. The motion FAILED with Senators Beck, Mazurek, Yellowtail and Crippen voting YES.

Senator Halligan moved the Exhibit 7 amendments for SB 145. The motion CARRIED UNANIMOUSLY.

Recommendation and Vote: Senator Halligan moved SB 145 DO PASS AS AMENDED. The motion CARRIED UNANIMOUSLY.

DISPOSITION OF SENATE BILL 172

Discussion: Senator Mazurek asked if this type of conduct was already illegal. Senator Pinsoneault replied that this type of conduct would be a misdemeanor. Valencia Lane stated that solicitation was illegal.

Senator Pinsoneault stated that he would like to change the charges to become a felony.

Senator Beck asked what were the general rules dealing with the case mentioned in earlier testimony. He asked if the lawyer would lose his license to practice his profession? Senator Pinsoneault stated that he "might" lose his license to practice his profession. He added that the particular lawyer in point did lose his license as he plead guilty.

Senator Beck asked if anything would have been gained if he had gone to prison.

Senator Pinsoneault replied that if the person was placed in prison he would never have done it to being with.

Senator Yellowtail stated that he agreed that perhaps it should be left up to the professional licensing organization to oversee the doctors or lawyers. He didn't feel that SB 145 should go to the extent of a felony.

Senator Pineseault said that the County Attorney could still treat it as a misdemeanor if he chose to do so. There are exceptions in the law that say, under certain circumstances, mandatory punishment don't apply, he said.

Amendments and Votes: There were none.

Recommendation and Vote: Senator Pineseault moved SB 172 DO PASS. The motion FAILED with Senators Harp, Jenkins and Pineseault voting yes.

DISPOSITION ON SENATE BILL 180

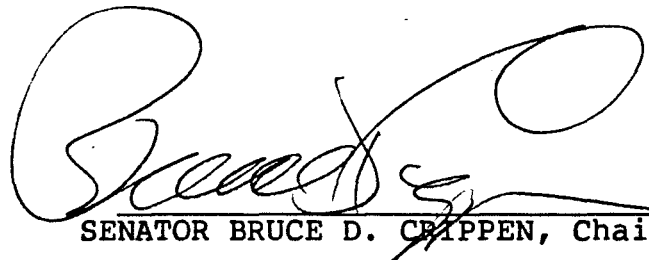
Discussion: There was none.

Amendments and Votes: There were none.

Recommendation and Vote: Senator Mazurek moved SB 180 DO PASS. The motion CARRIED with Senators Harp and Pineseault voting no.

ADJOURNMENT

Adjournment At:



SENATOR BRUCE D. CRIPPEN, Chairman

BC/rj

min131rj.sr

ROLL CALL

JUDICIARY

COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date Jan. 31, 1989

NAME	PRESENT	ABSENT	EXCUSED
SENATOR CRIPPEN	✓		
SENATOR BECK	✓		
SENATOR BISHOP	✓		
SENATOR BROWN	✓		
SENATOR HALLIGAN	✓		
SENATOR HARP	✓		
SENATOR JENKINS			
SENATOR MAZUREK	✓		
SENATOR PINSONEAULT	✓		
SENATOR YELLOWTAIL	✓		

Each day attach to minutes.

SENATE STANDING COMMITTEE REPORT

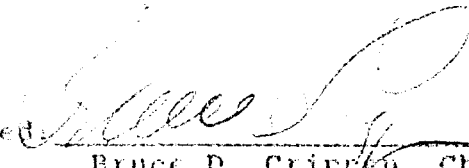
January 31, 1989

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration
HB 59 (third reading copy -- blue), respectfully report that HB 59
be concurred in.

Sponsor: Spaeth (Crippen)

BE CONCURRED IN

Signed: 

Bruce D. Crippen, Chairman

J.C. 189
1/31/89
2:20 P.M.

SERATE STANDING COMMITTEE REPORT

January 31, 1989

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration SB 157 (first reading copy -- white), respectfully report that SB 157 be amended and as so amended do pass:

1. Page 2, line 4.
Following: "injury"
Strike: "or condition"

2. Page 2, lines 6 and 7.
Following: "injury" on line 6
Strike: the remainder of line 6 through "condition" on line 7

3. Page 2, line 10.
Following: "injury"
Strike: "or condition"

AND AS AMENDED DO PASS

Signed: Bruce D. Crippen
Bruce D. Crippen, Chairman

*HC 189
2/1
9:24 am*

SENATE STANDING COMMITTEE REPORT

January 31, 1989

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration SB 145 (first reading copy -- white), respectfully report that SB 145 be amended and as so amended do pass:

1. Title, line 7.

Following: "SUPPORT"

Insert: "OR CHILD SUPPORT-RELATED MAINTENANCE"

2. Page 2, line 5.

Following: "Veterans'"

Strike: "benefits"

Following: "and"

Strike: remainder of line 5 through line 6

3. Page 2, line 7.

Following: "legislation"

Insert: "benefits based upon remuneration for employment, as defined in 42 U.S.C. 662(f)."

4. Page 2, line 10.

Following: "a"

Insert: "spouse or"

5. Page 2, line 11.

Following: line 10

Insert: "spouse or"

6. Page 2, line 12.

Following: "owed"

Insert: "or owing and the judgment debtor is the parent of the child"

AND AS AMENDED DO PASS

Signed: _____

Bruce D. Crippen, Chairman

H.C.
2/1/89
9:24 a.m.

SENATE STANDING COMMITTEE REPORT

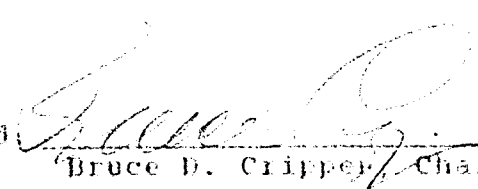
January 31, 1989

HON. PRESIDENT:

We, your committee on Judiciary, having had under consideration SB 172 (first reading copy -- white), respectfully report that SB 172 do not pass.

DO NOT PASS

Signed:


Bruce D. Crippen, Chairman

Handwritten:
J.C.
1/31/89
5:20 p.m.

SERATE STANDING COMMITTEE REPORT

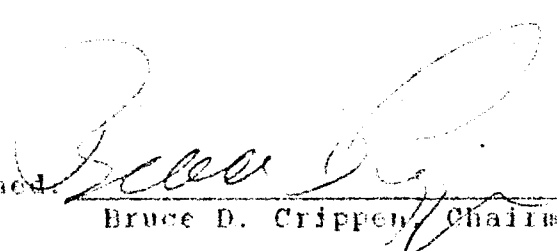
January 31, 1989

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration SB 180 (first reading copy -- white), respectfully report that SB 180 do pass.

DO PASS

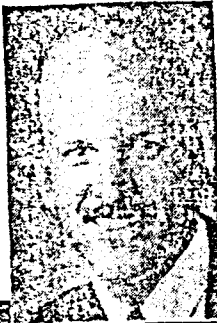
Signed:



Bruce D. Crippen, Chairman

H. C. 189
1/31/89
9:20
P.M.

Increased judicial salaries are only fair ^{SB} 196



President's Message

By Max Hansen, Dillon

Last month in the President's Message I briefly highlighted the issue of judicial compensation. This month, I would like to expand on this important issue.

When the Montana Legislature convenes in January, the State Bar of Montana will have an opportunity to discuss a number of important public policy issues with legislators. None is more important than that of reasonable and realistic compensation for Supreme Court justices and District Court judges.

I'll cut through the preliminary generalities. Judges in Montana are not adequately compensated. My belief is based on the premise that reasonable compensation should be related to the degree of responsibility, complexity, education, experience, and judgment required to do a job. On this score, Montana judges are underpaid by every reasonable comparison.

The charts on pages 3 and 4 illustrate the inadequate compensation all Montanans should be concerned about.

Compared to similar judges, Montana's Supreme Court justices and District Court judges are the lowest paid in the country. Even if U. S. territories like Puerto Rico, the Virgin Islands, and Guam are included in the comparison, Montana judicial salaries are still rock-bottom. Montana judges have no less responsibility than their colleagues across the country. They are just paid a lot less.

Closer to home, the comparisons are no better. Compared to salaries paid to judges in neighboring states, Montana judges are not only dead last, but the gap is widening. While neighboring states continue to keep judicial salaries in relative step with the national average, Montana's judicial salaries have been frozen since 1984.

Even when compared to Montana attorneys, our judges are losing ground. Based on a 1985 State Bar survey of Montana attorneys, our justices and District Court judges would make approximately 30 percent more in private practice than they earn as judges. The widening gap between what practicing attorneys earn and what the state will pay to attract competent, qualified attorneys to judicial positions is a problem that will eventually come home to roost with consequences that affect all Montanans.

By the time the 1991 Legislature meets, more than half the judges who are on the bench today will be eligible for retirement and free to return to the private practice of law. Judicial salaries must remain competitive with the private sector if Montana wants to maintain her experienced judges and attract the best attorneys to judicial positions when vacancies occur.

I would like to cite one last example of how dismal judicial salaries have become. More than 40 administrators in the executive branch (which includes the Montana University System) are better paid than the Chief Justice of the Montana Supreme Court.

The widening gap between what practicing attorneys earn and what the state will pay to attract competent, qualified attorneys to judicial positions is a problem that will eventually come home to roost with consequences that affect all Montanans.

I am not arguing that administrators are paid too much. In fact, national surveys for the University System, to take one example, show that our faculty is significantly underpaid. The fact that numerous positions are compensated more than judges in Montana simply reinforces my argument that judges are drastically underpaid for the complex duties and responsibilities they handle daily. Justices and judges are individuals whom we trust to make fair, honest, and timely decisions on issues of life and death, marriage and divorce, child support, and many other important matters. We should compensate judges, as we do others, based on their responsibilities.

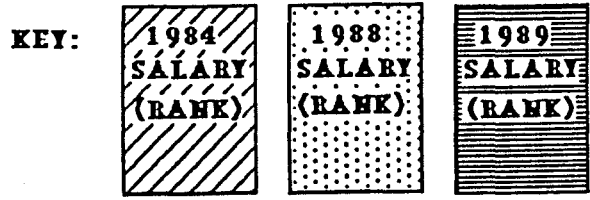
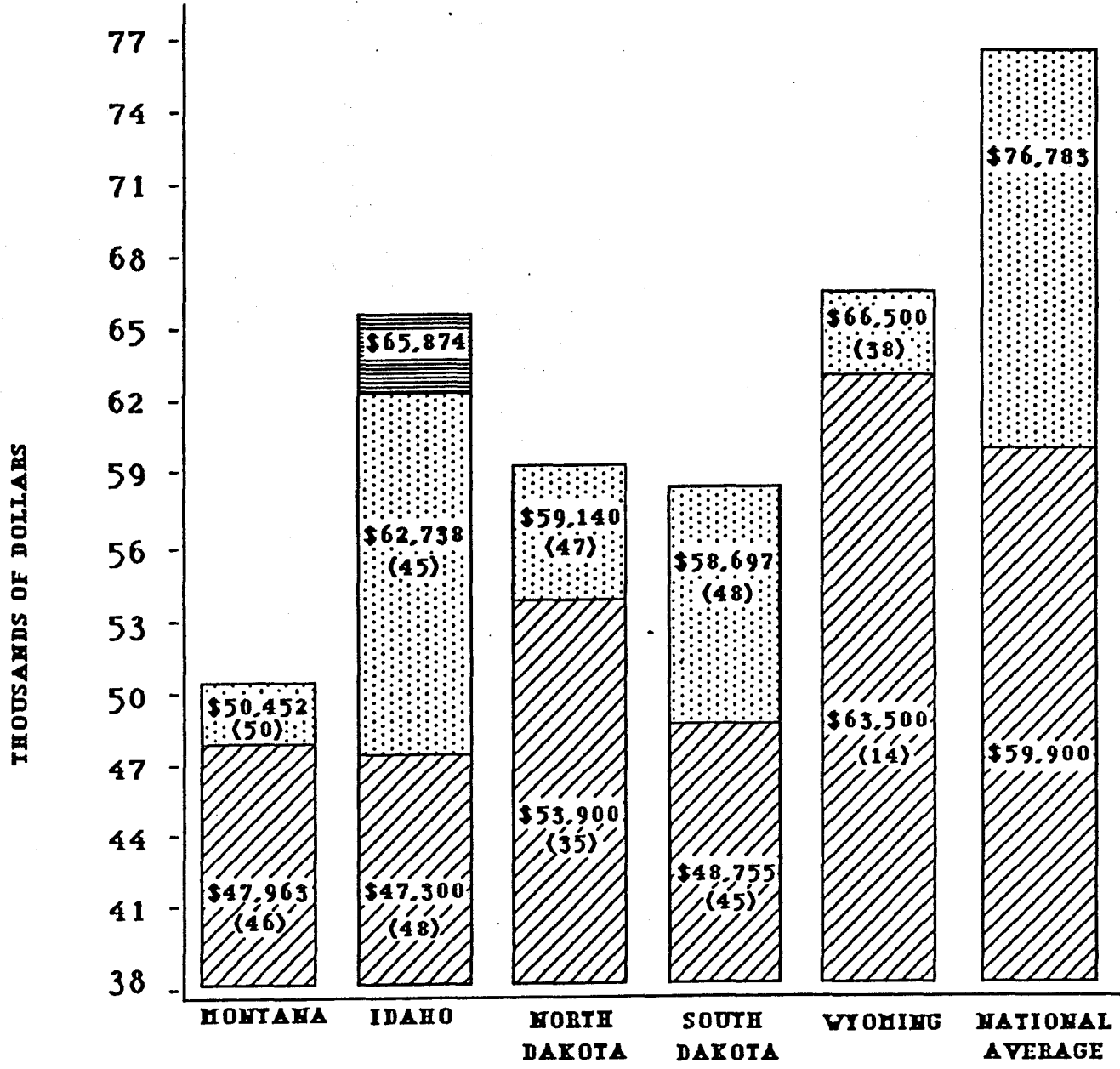
In summary, we need to pay Montana judges more for many reasons. First, it is only fair. Second, adjustments are needed simply to keep pace with inflation. Beyond fairness and simple adjustments for inflation, however, the fundamental reason for realistic and reasonable compensation for judicial officers is the necessity to attract and hold the most competent and qualified attorneys for judicial positions. In the next few years, this is going to be increasingly important as judges contemplate retirement or ponder the differential between judicial salaries and the earning power of private attorneys.

Montanans expect and deserve a first-rate judicial system. They expect and deserve first-rate judges who are competent, know the law, and apply it fairly and without favor. Montanans have been lucky so far. They get far more than they pay for. Why, given our expectations, should we continue to compensate judges in a manner we know is not competitive with the private sector and is not even close to judicial salaries in neighboring states? — ML

SUPREME COURT JUSTICE SALARIES

1984 & 1988

COMPARED WITH MONTANA'S NEIGHBORING STATES

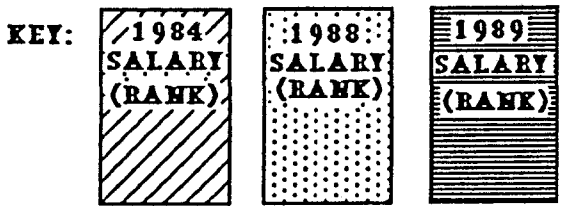
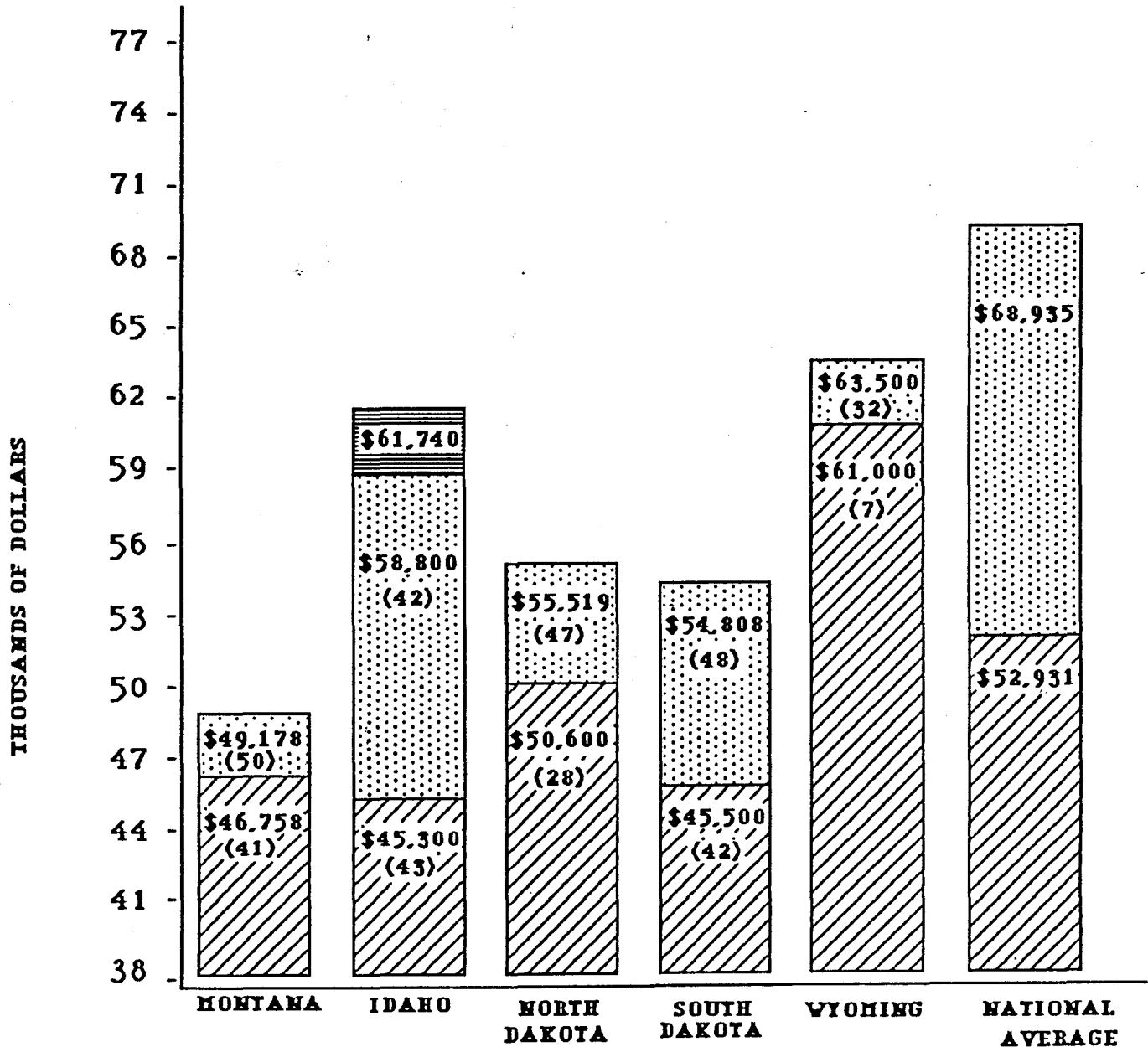


SOURCE: NATIONAL CENTER FOR STATE COURTS, SALARY SURVEYS, MAY 1984 AND JULY 1988

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

SENATE JUDICIARY

EXHIBIT NO. 1

DATE ~~1/30~~ 1/31/89

BILL NO. SB 196

31 JAN 89

LEAGUE OF WOMEN VOTERS OF MONTANA

Joy 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 salary setting debate on any elected officials. We endorse this bill without commenting on the mechanism by which the pay increases would be determined.

The current level of 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 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
816 Flowerree
Helena, Montana 59601
443-3487

To a large degree the integrity of the Mt court system rests on the caliber of the 44 persons who serve as judges and justice

SENATE JUDICIARY
E. NO. 2
DATE 1-31-89
BILL NO. SB 196



MONTANA
DEFENSE
TRIAL
LAWYERS, INC.

36 South Last Chance Gulch, Suite A
Helena, Montana 59601
406-443-1160

January 30, 1989

Senate Judiciary Committee
Room 325, Capitol Building
Helena, MT 59601

RE: SB 196
SB 195
Judicial Salaries

Dear Members of the Committee:

The Montana Defense Trial Lawyers, Inc. supports increased funding for judges. Our organization consists of 300 lawyers who deal primarily in defending lawsuits. We have also been active in drafting legislation and sponsoring continuing legal education programs.

We recognize there are many important issues facing our state. Few, however, have such long-range impact upon our society as does the quality of our Judiciary. While the Executive and Legislative branches change faces every few years, the Judicial branch is different. Judges tend to stay judges. Lawyers view a move to a judicial office as a career change. They don't view themselves as politicians. On average, current supreme court justices have served almost 13 years and district court judges over nine years.

Judges taking office in the next few years will be on the bench well into the 21st century. Their decisions will have far-reaching effects upon the economic and social issues of our state. The power, and therefore the responsibility, of the Judiciary is great. For those reasons, it is important for Montana to attract the best-qualified lawyers to judicial positions. We do not need a Judiciary composed primarily of lawyers who are independently wealthy, those who have a personal political agenda, or those who seek the position because it merely provides them with job security and a pay raise. We should have a judicial system which will encourage the best of our profession to aspire to become judges.

Exhibit 2

1/31/89

SB 196

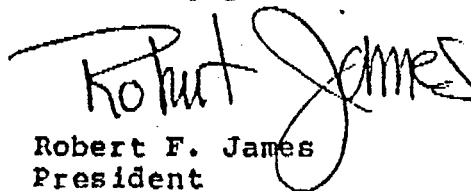
Senate Judiciary Committee
January 30, 1989
Page 2

While we have many fine judges, some serve a great personal and financial sacrifice. There is no reason to expect that will continue to be the case. Montana must address the future of our Judiciary. The risks are too great to entrust our third branch of government to anyone but the most competent and qualified attorneys.

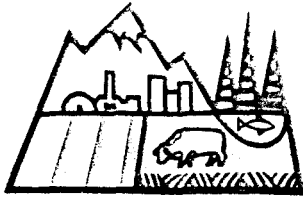
Montana has been lucky. It has had dedicated judges who have worked hard to become well-educated in the law and respected by their peers. In our opinion, that may change if judges are not adequately compensated for their responsibilities. As salaries now stand, the best and the brightest will not want to become judges. In all probability, approximately two-thirds of Montana's Judiciary will change in the next five to seven years.

For these reasons, we respectfully urge the Committee to support increased judicial salaries.

Sincerely yours,



Robert F. James
President
Montana Defense Trial Lawyers, Inc.



SENATE JUDICIARY
EXHIBIT NO. 3
DATE 1-31-89
BILL NO. SB 196

MONTANA CHAMBER OF COMMERCE

P. O. BOX 1730 • HELENA, MONTANA 59624 • PHONE 442-2405

TESTIMONY OF THE MONTANA CHAMBER OF COMMERCE
BY JAMES TUTWILER, PUBLIC AFFAIRS MANAGER
ON SENATE BILL 196

JANUARY 31, 1989

Mr. Chairman, members of the Committee, I am James Tutwiler, Public Affairs Manager of the Montana Chamber of Commerce. The Montana Chamber wishes to be on record as a proponent of Senate Bill 196.

Our interest in seeing a substantial raise in salaries for the Supreme Court Justices and District Court Judges goes beyond the desire to avoid being ranked last in such salaries among all states -- or the fact that there is a staggering gap of 20 to 26 thousand dollars between Montana salaries and the national average.

Justices and judges command a major role in interpreting and ruling on a myriad of laws that directly impact the conduct of business by both the private and public sector in the state. Indeed, such interpretation of the law profoundly affects the very way in which our economy runs.

The complexity and far reaching effects of judicial rulings are aptly reflected in the major liability law reforms undertaken by the last session of the legislature. Some of these reforms are being litigated today in the high court.

In Montana we have been fortunate to have exceptionally capable men and women on the bench. Such is the case today. However, the

capable, the most experienced judges to our courts when the salaries afforded them is shockingly out of balance with salary levels in competing states.

For these reasons Mr. Chairman, members of the Committee we hope you will support SB 196.



SENATE JUDICIARY

EXHIBIT NO. 4

DATE 1-31-89

BILL NO. SB 196 & 155

JAMES W. MURRY
EXECUTIVE SECRETARY

110 WEST 13TH STREET
P.O. BOX 1176
HELENA, MONTANA 59624

(406) 442-1708

January 31, 1989

The Honorable Bruce Crippen
Chairman, Senate Judiciary Committee
Montana State Senate
Capitol Station
Helena, Montana 59620

Dear Senator Crippen:

I apologize for not being able to appear before your committee, but unfortunately, my schedule called for me to be out of state. I would, however, appreciate you including this letter into your committee's official deliberation on Senate Bills 155 and 196.

The Montana State AFL-CIO supports appropriate salary and wage increases for workers at all levels, and therefore endorses the efforts of Senate Bills 155 and 196 to raise the salaries of the members of our state's judiciary.

As has been reported extensively in recent weeks, the salaries for Montana's judges and other top state government officials rank at or near the bottom when compared with those paid by all other states. While this may seem shocking and certainly is responsible for much of the support for raising judicial salaries, I want 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.

As Montana enters the 1990s, we are finding our state's economy closely linked with those of our sister states and the nation. The rapid rise of multinational corporations and globally-structured economic enterprises leaves open the door for multiple legal questions regarding rights to privacy, ownership, taxation and jurisdiction. As the rights of individuals butt head to head with those of vast economic enterprises, our judicial system will be called upon to play the important role of mediator.

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.

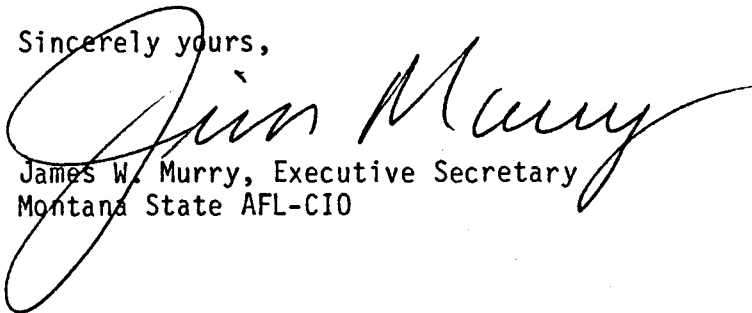
Senator Bruce Crippen
Page Two
January 31, 1989

With their growing caseloads and the increasing complexity of many cases, our judges and justices 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.

We leave to you the matter of choosing which proposal and which salary levels are the most appropriate at this time. We simply want to endorse very strongly the need for judicial salary increases in Montana as part of an overall effort to attract and retain the most competent people possible into our state's judicial system.

Thank you for considering our testimony.

Sincerely yours,

A handwritten signature in cursive script that reads "Jim Murry". The signature is written in black ink and is positioned above the typed name and title.

James W. Murry, Executive Secretary
Montana State AFL-CIO

cc: Members of Montana Senate Judiciary Committee

Mazurek

SENATE JUDICIARY

EXHIBIT NO. 4, a, p. 1

DATE 1-31-89

BILL No. SB 155
GAVEL Spring, 1988

EASY LIFE ON THE BENCH?
YOU BE THE JUDGE

The following article is taken from the
National Judicial College ~~GAVEL~~ Spring, 1988
issue:

You are the judge on a typical day. You arrive at work early to wade through the volumes of paperwork -- two hours in your office before you even set foot in the courtroom. On this typical day, you must:

1. Decide who will get custody of the children in a bitterly contested divorce.
2. Determine jail vs. probation for a convicted felon who has a secure job and supports a family.
3. Rule on evidenciary pre-trial motions, each ruling a potential basis for appeal.
4. Divide Grandma's estate (she died without a will) fairly between contending parties.
5. Give an interview to a reporter during lunch hour.
6. Rule on an injunction to stop construction on a multi-million dollar project.
7. Determine whether probable cause exists to issue a search warrant on a private residence.
8. Decide whether an alleged abuser's constitutional rights of due process have been violated.
9. Decide whether a 16-year old defendant should be tried as an adult.

Virtually every decision you make -- in the adversary courtroom setting -- will be unpopular with someone. At least one party will be upset as you say yes or no, guilty or not guilty, grant or deny, sustain or overruled.

Sound easy? A well-paid semi-retirement? An intoxicating chance to wield enormous power? It should be obvious that judging is one of the most stressful and difficult jobs in America.

1-3185

	Highest Court		Intermediate Appellate Court		General Trial Court		Date of Last Salary Change
Alabama	82,880	(17)	81,880	(12)	56,760 (15)	(80,880)	10-1-88
Alaska	85,728 (11)		79,992 (14)		77,304 (14)	77,304†	7-16-85
	to 97,728				to 90,828	to 90,828	
	85,728†				77,304†	77,304†	
Arizona	84,000 (14)		82,000 (11)		80,000 (10)**	80,000	1-1-89
Arkansas	66,010 (39)		63,763 (32)		61,513 (35)	61,513	7-1-86
California	103,469 (2)		97,003 (2)		84,765 (4)	84,765	1-1-88
Colorado	72,000 (32)		67,500 (29)		63,000 (34)	63,000	7-1-88
Connecticut	81,920 (19)*		76,172 (19)*		72,766 (20)*	72,766	7-1-88
Delaware	84,400 (13)				79,900 (11)	79,900	7-1-88
Florida	92,822 (6)		87,362 (7)		81,902 (7)	81,902	7-1-88
Georgia	80,514 (21)		79,931 (15)		67,158 (13)	67,158	7-1-88
					(91,158)	(91,158)	
					77,973†	77,973†	
Hawaii	78,500 (25)		73,500 (23)		69,500 (24)	69,500	1-1-86
Idaho	62,738 (45)		61,738 (34)		58,800 (42)	58,800	7-1-88
Illinois	93,266 (4)		87,780 (6)		75,113 (16)	75,113	7-1-87
Indiana	66,000 (40)		61,000 (35)		56,000 (45)	56,000	7-1-87
Iowa	72,900 (30)		69,800 (27)		66,000 (30)	66,000	7-1-88
Kansas	70,142 (35)		67,638 (28)		60,978 (38)	60,978	8-1-88
Kentucky	66,946 (37)		64,213 (31)		61,481 (36)	61,481	7-1-88
Louisiana	74,966 (28)		71,767 (25)		68,569 (25)	68,569	12-1-87
Maine	77,300 (26)				73,100 (19)	73,100	7-1-88
Maryland	86,900 (10)		83,800 (9)		82,200 (5)	82,200	7-1-88
Massachusetts	90,450 (8)		83,708 (10)		80,360 (8)	80,360	7-1-88
Michigan	100,000 (3)		96,000 (3)		84,600 (2)	84,600	1-1-88
					(92,000)	(92,000)	
					92,000†	92,000†	
Minnesota	80,010 (23)		73,811 (22)		70,770 (22)	70,770	1-1-89
Mississippi	70,800 (34)				61,200 (37)	61,200	7-1-88
Missouri	81,009 (20)		75,447 (20)		69,885 (23)	69,885	7-1-88
Montana	50,452 (50)				49,178 (50)	49,178	7-1-85
Nebraska	63,512 (44)				58,750 (43)	58,750	9-3-87
Nevada	73,500 (29)				67,000 (28)	67,000	1-5-87
New Hampshire	70,102 (36)				68,269 (26)	68,269	1-1-89
New Jersey	93,000 (5)		90,000 (4)		85,000 (3)	85,000	7-1-86
New Mexico	62,184 (46)		59,052 (37)		55,980 (46)	55,980	7-1-88
New York	115,000 (1)		102,500 (1)		95,000 (1)	95,000	10-1-87
North Carolina	79,668 (24)*		75,432 (21)*		66,972 (29)*	66,972	7-1-88
North Dakota	59,140 (47)				55,519 (47)	55,519	7-1-86
Ohio	85,250 (12)		80,000 (13)		65,250 (33)	65,250	1-1-89
					to 75,750	to 75,750	
Oklahoma	71,406 (33)		66,944 (30)		59,506 (41)	59,506	7-1-88
Oregon	72,362 (31)		70,639 (26)		65,645 (31)	65,645	7-1-88
Pennsylvania	91,500 (7)		89,500 (5)		80,000 (10)**	80,000	7-3-87
Rhode Island	82,967 (16)*				74,317 (18)*	74,317	7-3-88
South Carolina	83,883 (15)		79,690 (16)		79,690 (12)	79,690	6-2-88
South Dakota	58,697 (48)				54,808 (48)	54,808	7-1-88
Tennessee	65,650 (41)		63,125 (33)		60,600 (40)	60,600	7-1-83
Texas	80,371 (22)		72,334 (17)		57,257 (21)	57,257	9-1-88
			(79,371)		(78,371)	(78,371)	
			79,371†		72,442†	72,442†	
Utah	64,000 (42)		60,800 (36)		57,600 (44)	57,600	7-1-88
Vermont	63,900 (43)				60,700 (39)	60,700	7-1-88
Virginia	88,286 (9)		83,872 (8)		81,959 (6)	81,959	7-1-88
Washington	82,700 (18)		78,600 (18)		74,600 (17)	74,600	7-1-88
West Virginia	55,000 (49)				50,000 (49)	50,000	7-1-84
Wisconsin	76,859 (27)		72,366 (24)		67,842 (27)	67,842	8-1-88
Wyoming	66,500 (38)				63,500 (33)	63,500	7-1-88
Mean (Average)	77,231		76,694		69,439	69,439	
Median	77,900		76,172		68,419	68,419	
Range	50,452		59,052		49,178	49,178	
	to 115,000		to 102,500		to 95,000	to 95,000	
District of Columbia	95,000				89,500	89,500	3-1-87
Federal System	110,000		95,000		89,500	89,500	3-1-87
American Samoa	69,000						N/Att
Guam					60,000	60,000	7-23-85
Puerto Rico	60,000				42,000	42,000	10-1-86
					to 48,000	to 48,000	
Virgin Islands					62,000	62,000	10-1-86

Future Salaries

Connecticut: Effective July 1, 1989: Supreme Court chief justice \$94,925, associate justices \$86,835; chief court administrator \$90,694; Appellate Court chief judge \$85,726, judges \$80,742; Superior Court judges \$77,132. Effective July 1, 1990: Supreme Court chief justice \$100,621, associate justices \$92,045; chief court administrator \$96,136; Appellate Court chief judge \$90,870, judges \$85,587; Superior Court judges \$81,760.

Idaho: Effective July 1, 1989: Supreme Court chief justice \$67,374, associate justices \$65,874; Court of Appeals judges \$64,874; District Court judges \$61,740; full-time lawyers of the Magistrate Division \$49,392-55,566; full-time lay judges of the Magistrate Division \$19,845-39,139.

Kentucky: Effective July 1, 1989: Supreme Court chief justice \$71,728, associate justices \$70,293; administrative director of the court \$64,555; Court of Appeals chief judge \$68,141, associate judges \$67,424; Circuit Court judges \$64,550.

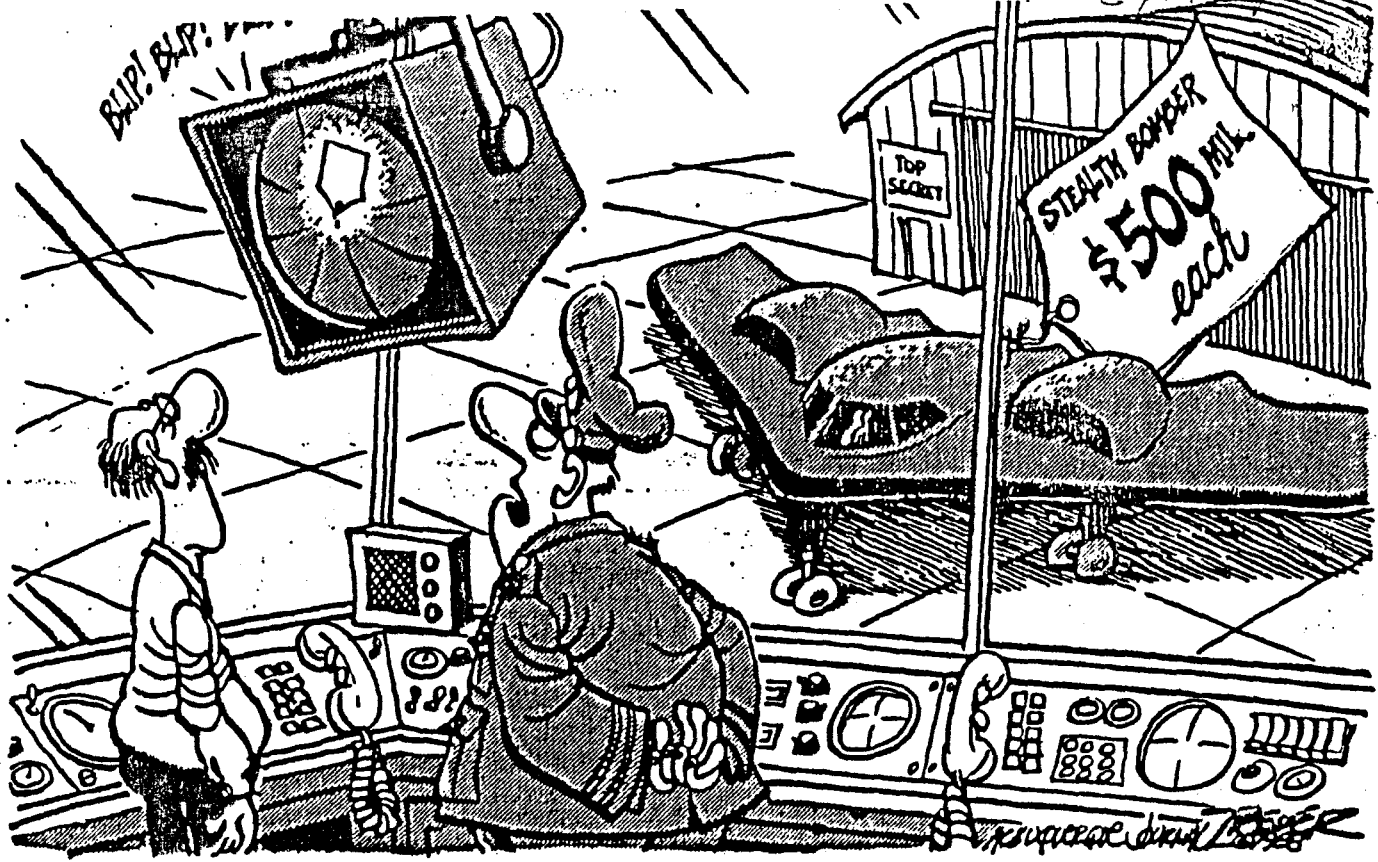
Minnesota: Effective January 1, 1990: Supreme Court chief justice \$90,520, associate justices \$84,011; state court administrator not to exceed \$74,309; Court of Appeals chief judge \$80,817, judges \$77,502; District Court judges \$74,309.

Mississippi: Effective July 1, 1989: Supreme Court chief justice \$77,000, presiding justice \$76,400, associate justices \$75,800; Circuit Court judges \$66,200; Chancery Court judges \$66,200.

Nebraska: Effective July 1, 1989: Supreme Court chief justice and associate justices \$66,689; District Court judges \$61,687. Effective July 1, 1990: Supreme Court chief justice and associate justices \$70,023; District Court judges \$64,772.

Tennessee: Effective January 1, 1990: Supreme Court justices \$85,500; Court of Appeals and Court of Criminal Appeals judges \$81,500; Circuit, Chancery, and Criminal Court judges \$78,000.

* The base pay is supplemented by increments for length of service.
 ** Tie rank.
 † Median salary. If more than half the salaries are the same as the minimum or the maximum salary, then the median (the midpoint above which and below which half the salaries fall) is either the minimum or maximum salary.
 ‡ Date not available.



"UH... YEAH, THE ENGINEERS ARE STILL WORKING ON A WAY TO DISGUISE THAT..."

MISSOULIAN, DECEMBER 1, 1988

MISSOULIAN EDITORIAL

Judges deserve better pay

Higher salaries could improve Montana's judicial system

In 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 4a, p. 4, 52
1988

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 bench, while better lawyers

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 keep them there.

Opinion

BOZEMAN, DAILY CHRONICLE

Sunday, December 11, 1988

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.



Raising undern

By JAMES J. KILPATRICK
WASHINGTON — Prediction No. 2: There won't be any significant new federal taxes during the 101st Congress. Prediction No. 2: If so, the country emerges from the swamp of deficit by 1993. The situation is not nearly as the prophets of doom would have believed.

Prediction No. 1 is based on clear evident facts of political life. As for George Bush is not going to advocate higher taxes. Congressional Democrats will not sponsor an increase on the Any hike in taxes would have to be bipartisan proposal, signed and see advance of introduction.

If Bush relents on his most explicit campaign pledge, prospects will

Letters

Support local industry,
use real Christmas greens

Valley Community College in its quest for a home. We have been "making do" for a long time, and it is exciting to think of moving to buildings that are truly designed for college

Opinion

The Billings Gazette is dedicated to the continued growth of Billings and Montana while recognizing that our unique quality of life must be maintained and preserved.

W R G

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 university professors.

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.

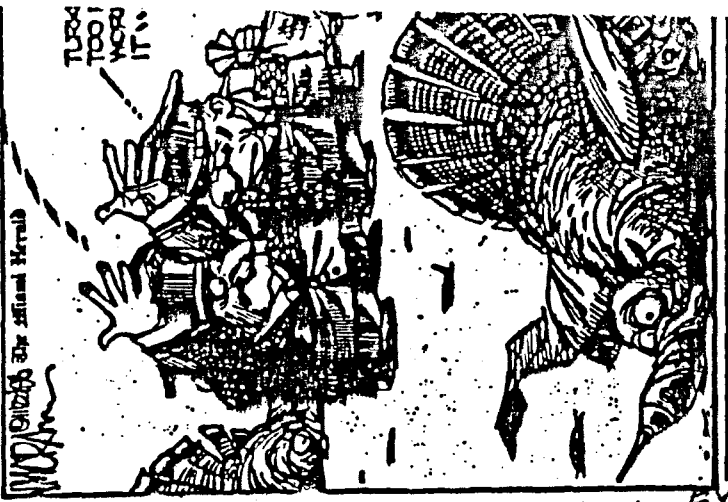
In these litigious, technical times, we need real expertise in both areas, but we can't expect to have that if we refuse to pay the going rate.

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.



Bush un the Sovi

Ex da. p. 6

LEAGUE OF WOMEN VOTERS OF MONTANA 31 JAN 89

Joy Bruck, president
1601 Illinois, Helena, Montana 59601

SB 155: An act indexing the salaries paid Supreme Court justices and district court judges to the average salary paid similar officials in certain western states,...

The League of Women Voters of Montana supports SB 155.

The League rarely participates in the salary setting debate of any elected officials. We endorse this bill without commenting on the mechanism by which the pay increases would be determined.

The current level of 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 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
816 Flowerree
Helena, Montana 59601
443-3487

SENATE JUDICIARY

Advised

Montana Judges' Association

DATE 1/31/89

BILL NO. SB 155, 196, 241



JUSTICE BUILDING — ROOM 315
215 NORTH SANDERS
HELENA, MONTANA 59620-3001
TELEPHONE (406) 444-2621

February 3, 1989

Senator Bruce Crippen
Montana State Senate
Capitol Building
Helena, Montana 59620

Re: Testimony before Senate
Judiciary Committee on Senate
Bills 155, 196, and 241

Dear Senator Crippen:

Following my oral presentation to the Senate Judiciary Committee on January 31, 1989, one of the committee staff members asked me to write-up my testimony and submit it to the Committee.

Enclosed is my written testimony as best I can recall it.

Thanks for the opportunity to appear before your Committee and for your assistance with our bills.

Very truly yours,

Joel G. Roth

JOEL G. ROTH
DISTRICT JUDGE - GREAT FALLS
PRESIDENT - MONTANA JUDGES ASSOCIATION

Montana Judges' Association

SENATE JUDICIARY

EXHIBIT NO. Addendum

DATE 1/31/89 B1

BILL NO. SB 155, 196, 241

JUSTICE BUILDING — ROOM 315
215 NORTH SANDERS
HELENA, MONTANA 59620-3001
TELEPHONE (406) 444-2621



February 3, 1989

Testimony Before the Senate Judiciary Committee on Senate Bills
155, 196 and 241.

January 31, 1989, 10:00 A.M.

Old Supreme Court Courtroom

Good Morning Senators.

My name is Joel Roth. I am a District Judge from Great Falls having served in that position for 12 years.

I am appearing before this Committee as spokesman for and President of the Montana Judges Association. Our Association consists of 36 District Judges, 7 Supreme Court Justices, and the Workers Compensation Court Judge, a total of 44 active judges. The Association also includes several retired District Court Judges and Supreme Court Justices.

I wish to make two strong statements before I proceed with the rest of my remarks.

1. MONTANA JUDGES ARE THE LOWEST PAID JUDGES IN THE ENTIRE UNITED STATES!!

2. MONTANA JUDGES HAVE NOT HAD A SALARY INCREASE FOR OVER THREE AND ONE-HALF YEARS!!

I believe it is an accepted fact in the employment arena that an employer pays his employees a salary which is commensurate and proportional to the responsibility which that employee is required to and does shoulder. Hence, the more responsibility the employee exercises, the more salary he is entitled to. The economic system in the United States assumes that basic principle.

Montana Judges are not presently being paid an adequate compensation for the responsibilities they are required to shoulder. A salary increase is needed and overdue.

On the national scene, Montana Judges' salaries are approximately \$20,000 below the national average.

When comparing Montana Judges' salaries to the average of the salaries paid to our counterparts in our neighboring states (Idaho, Wyoming, North Dakota, and South Dakota), we are about \$10,000 below those salaries.

Montana Judges are daily making significant decisions that affect the lives and property of other persons.

For example, in the area of criminal law, judges decide whether or not to issue Search Warrants and Arrest Warrants and to determine the amount of bail. Judges preside over jury trials and rule on admissibility of evidence. After a conviction it is the judge who sentences the convicted felon and determines whether to impose a fine or deprive the defendant of his liberty by ordering a jail sentence or a prison sentence. In the extreme case of homicide, the judge decides whether or not to impose the death sentence. In every criminal case the property and freedom of the criminal defendant is at stake and in a capital case the very life of the felon is at stake. Judges do make life and death decisions.

Civil cases demand more of the judges' times than do criminal cases. I am now referring to negligence cases (auto accidents), products liability cases, malpractice cases, suits to enforce contractual obligations, and suits affecting ownership and interests in property. Judges are responsible to move those civil cases through the Court system in an orderly fashion by setting deadlines, ruling on pre-trial motions and presiding over bench trials and jury trials. Money damages and property interests of people are involved in those cases. A relatively new approach to try and reduce the number of civil cases that go to trial has been adopted by the judges in Montana: a mandatory pre-trial settlement conference is a last ditch effort to get the case settled by a conference of the opposing attorneys and their clients with a judge who will not be presiding at the trial.

Contested divorce cases are emotionally charged situations where the custody of minor children is at issue and hotly contested. Judges are responsible to award custody of children, to set child support payments and to divide the property and debts of the couple. Not an easy task but one required of judges. Divorce cases are extremely stressful to all concerned, including judges. The very future lives of children and adults are involved.

Judges are responsible to decide whether or not a person is suffering from a mental disease or illness which requires a commitment to our state mental hospital. Only a judge can commit a person to the state hospital on an involuntary basis.

Probably the most gut-wrenching cases a judge is confronted with are Youth Court cases involving physically or sexually abused minor children. The judge has the responsibility of protecting the interests of children and of removing them from their natural or step-parents home if the situation demands that drastic action. Investigations are ordered and if a re-unification plan is not complied with the judge can and does terminate parental rights with their children so the child can be formally adopted. A more serious affect on people's lives is difficult to imagine.

In other Youth Court cases, the judge is responsible to decide whether or not a delinquent youth (one who has committed a criminal offense) should be committed to the Pine Hills School or the Mountain View School. An extremely critical decision is often required as to whether or not a delinquent juvenile should be transferred into adult court for criminal prosecution as an adult.

I would submit that judges work much longer than a 40 hour work week. Evening work and weekend work is common.

Judges are required to participate and attend judicial education seminars, workshops and lectures in order to keep up to date with the never ending changes in the law.

Montana Judges are elected state officials who run as non-partisans. Judges generally commit themselves to a long term judicial career once elected. Judicial standards prohibit a judge from working a second job to supplement his salary. The state pays the judges' salaries and you committee members are part of the legislators who will set the judges' salaries.

On behalf of all the District Judges and Supreme Court Justices, I urge you to increase the salaries so as to adequately compensate the judges for the responsibility they bear as the judicial branch of our state government.

The judges favor both salary bills. If one bill is to be preferred over the other, the judges would recommend the indexing bill, i.e., SB 155 which ties our salaries into the average salary of our neighboring states. That would avoid the constant legislative struggle over judges salaries at each legislative session.

The Association also favors the SB 241 relating to Judges Retirement. A veteran judge of 15 years experience or more is presently penalized by earning only a 1% service credit allowance toward his retirement. It should be increased to 2%.

The Committee should note that there was a wide spectrum of support for the three bills being considered. There were no persons who appeared in opposition.

In the jargon of judges, when a case has been presented and is fully argued, the case is considered to be "ripe for decision". I would submit to the senators on this committee that the judges' proposed bills are "ripe for a favorable decision".

196
244

Following my oral presentation, one of the committee's staff members asked me to reduce my oral remarks to writing. Since I cannot recall my oral remarks verbatim, there probably are some differences between the above written statements and the oral presentation.

Respectfully Submitted,

Joel G. Roth
JOEL G. ROTH
DISTRICT JUDGE - GREAT FALLS
PRESIDENT - MONTANA JUDGES ASSOCIATION

TESTIMONY ON
SENATE BILL 241

EXHIBIT NO. 5 A
DATE 1/31/87
BILL NO. SB 241

Presented by: Larry Nachtsheim,
Administrator, Public
Employees' Retirement Div.

Mr. Chairman and Members of the Committee:

The Public Employees' Retirement Board does not oppose this bill.

As the administrator of 8 different retirement systems created by the Legislature, all with different benefit levels and various funding sources, the Board takes a neutral position on changes that are actuarially funded. It is the Board's understanding that this bill will not only provide the funding for the proposed change, but includes provisions to expedite the payment of current contributions.

The delayed contributions currently being made do have an adverse affect upon the retirement system and, if continued, will eventually have a major impact on the funding of the system.

Amendments to Senate Bill No. 157
First Reading Copy (WHITE)

Requested by Senator Nathe
For the Committee on Judiciary

Prepared by Valencia Lane
January 24, 1989

1. Page 2, line 4.

Following: "injury"

Strike: "or condition"

2. Page 2, lines 6 and 7.

Following: "injury" on line 6

Strike: the remainder of line 6 through "condition" on line 7

3. Page 2, line 10.

Following: "injury"

Strike: "or condition"

Amendments to Senate Bill No. 145
First Reading Copy (WHITE)

Requested by Senator Mazurek
For the Committee on Judiciary

Prepared by Valencia Lane
January 30, 1989

1. Title, line 7.

Following: "SUPPORT"

Insert: "OR CHILD SUPPORT-RELATED MAINTENANCE"

2. Page 2, line 5.

Following: "Veterans'"

Strike: "benefits"

Following: "and"

Strike: remainder of line 5 through line 6

3. Page 2, line 7.

Following: "legislation"

Insert: "benefits based upon remuneration for employment, as
defined in 42 U.S.C. 662(f),"

Amendments to Senate Bill No. 145
First Reading Copy (WHITE)

Requested by Senator Eck
(at the request of Judge Michael Keedy)
For the Committee on Judiciary

Prepared by Valencia Lane
January 30, 1989

1. Page 2, line 10.

Following: "a"

Insert: "spouse or"

2. Page 2, line 11.

Following: line 10

Insert: "spouse or"

3. Page 2, line 12.

Following: "owed"

Insert: "or owing and the judgment debtor is the parent of the
child"

51st Legislature

LC 0488/01

LC 0488/01

James BILL NO. *445*
Bob Sproull

1 INTRODUCED BY

2

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT A

5 JUDGMENT DEBTOR IS NOT ENTITLED TO EXEMPT FROM EXECUTION

6 VETERANS' OR SOCIAL SECURITY BENEFITS IF THE DEBT FOR WHICH

7 EXECUTION IS LEVIED IS FOR CHILD SUPPORT; AND AMENDING

8 SECTION 25-13-608, MCA."

9

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 **Section 1.** Section 25-13-608, MCA, is amended to read:

12 "25-13-608. Property exempt without limitation --

13 exceptions. (1) A judgment debtor is entitled to exemption

14 from execution of the following:

15 (1)(a) professionally prescribed health aids for the

16 judgment debtor or a dependent of the judgment debtor;

17 (1)(b) benefits the judgment debtor has received or is

18 entitled to receive under federal social security or local

19 public assistance legislation, except as provided in

20 subsection (2);

21 (1)(c) veterans' benefits, except as provided in

22 subsection (2);

23 (1)(d) disability or illness benefits;

24 (1)(e) benefits paid or payable for medical, surgical,

25 or hospital care to the extent they are used or will be used

1 to pay for the care;

2 (1)(f) maintenance and child support; and

3 (1)(g) a burial plot for the judgment debtor and his

4 family.

5 (2) Veterans' benefits and benefits the judgment

6 ~~debtor has received or is entitled to receive under federal~~

7 ~~social security legislation are not exempt from execution if~~

8 ~~the debt for which execution is levied is for:~~ *in 42 U.S.C. 652f*

9 (a) child support; or

10 (b) maintenance to be paid to a ~~former spouse~~ *spouse or*

11 ~~former spouse~~ *former spouse* is the custodial parent of a child for whom

12 ~~child support is owed."~~ *or owing and the judgment debtor*

13 ~~NEW SECTION. Section 2. Saving clause. [This act]~~

14 does not affect rights and duties that matured, penalties

15 that were incurred, or proceedings that were begun before

16 [the effective date of this act].

-End-



INTRODUCED BILL
SB 145

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
William Evans	LNVMT	SB 196 SB 155	XX	
Joel Roth	Montana judge assoc	as above	XX	
PA. Tennage	Scup. Club	"	XX	
Don Judah	MT STATE AFL-CIO	XX	✓	
Mark Agutter	Colacier Insurance			
BEN EVERETT	MTLA	XX	XX	
GEORGE BOUSLIMAN	STATE BAR OF MT	HB 59 SB 155 SB 196	XXX	
Kial Barros	Governor's office	SB 155	X	
Pam Miller	Mt Liability Coalition	SB 155 SB 196	X	
Larry Nashpheim	PERD (REQUEST OF SPONSOR)	SB 241		
Mark Hume	STATE BAR OF MONTANA	SB 196 SB 155	X	
Amir M. Bentes	STATE BAR of MT	H.B. 59	X	
Lee Weingartner	MT Defense Trial Lawyers	196 155	XX	
Kathy A. Adelson	IND. INS AGENTS ASSOC		X	
Allan Chronister	State Bar	HB 59 SB 155 SB 196	X	
Jim Oppebald	Admin Supreme Ct	SB 176 SB 155		
Jim Schauder	MIPEA	196 SB 155		
James Tutwiler	MT CHAMBER COMMERCE	241 SB 196		✓

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date 1-31-89 House Bill No. 59 Time 11:15

NAME	YES	NO
SEN. BISHOP	✓	
SEN. BECK	✓	
SEN. BROWN	✓	
SEN. HALLIGAN	✓	
SEN. HARP	✓	
SEN. JENKINS	✓	
SEN. MAZUREK	✓	
SEN. PINSONEAULT	✓	
SEN. YELLOWTAIL	✓	
SEN. CRIPPEN	✓	

Rosemary Jacoby
Secretary

Sen. Bruce Crippen
Chairman

Motion: Be Concurred In - Mazurek

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date 1-31-89 Bill No. 157 Time 2

NAME	YES	NO
SEN. BISHOP		
SEN. BECK		
SEN. BROWN		
SEN. HALLIGAN		
SEN. HARP		
SEN. JENKINS		
SEN. MAZUREK		
SEN. PINSONEAULT		
SEN. YELLOWTAIL		
SEN. CRIPPEN		

Unan

Rosemary Jacoby
Secretary

Sen. Bruce Crippen
Chairman

Motion: Amend UNAN Halligan
DPA UNAN Halligan

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date 1-31-89 Bill No. 145 Time 3

NAME	YES	NO
SEN. BISHOP	✓	
SEN. BECK	✓	
SEN. BROWN	✓	
SEN. HALLIGAN	✓	
SEN. HARP	✓	
SEN. JENKINS	✓	
SEN. MAZUREK	✓	
SEN. PINSONEAULT	✓	
SEN. YELLOWTAIL	✓	
SEN. CRIPPEN	✓	

UNAN

Rosemary Jacoby
Secretary

Sen. Bruce Crippen
Chairman

Motion: BDA - Halligan

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date 1-31-89 Senate Bill No. 143 Time 4

NAME	YES	NO
SEN. BISHOP		✓
SEN. BECK	✓	
SEN. BROWN		✓
SEN. HALLIGAN		✓
SEN. HARP		✓
SEN. JENKINS		✓
SEN. MAZUREK	✓	
SEN PINSONEAULT		✓
SEN. YELLOWTAIL	✓	
SEN. CRIPPEN	✓	

4 to 6

Rosemary Jacoby
Secretary

Sen. Bruce Crippen
Chairman

Motion: Yellowtail substitute motion
(see minutes.) - Failed

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date 1-31-89 Senate Bill No. 172 Time 5

NAME	YES	NO
SEN. BISHOP		✓
SEN. BECK		✓
SEN. BROWN		✓
SEN. HALLIGAN		✓
SEN. HARP	✓	
SEN. JENKINS	✓	
SEN. MAZUREK		✓
SEN. PINSONEAULT	✓	
SEN. YELLOWTAIL		✓
SEN. CRIPPEN		✓

3 . 7

Rosemary Jacoby
Secretary

Sen. Bruce Crippen
Chairman

Motion: Do Pass - Pinsonault Failed

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date 1-31-89 Bill No. 180 Time 12 noon ⁶

NAME	YES	NO
SEN. BISHOP	✓	
SEN. BECK	✓	
SEN. BROWN	✓	
SEN. HALLIGAN	✓	
SEN. HARP		✓
SEN. JENKINS	✓	
SEN. MAZUREK	✓	
SEN. PINSONEAULT		✓
SEN. YELLOWTAIL	✓	
SEN. CRIPPEN	✓	

8. 2 ✓

Rosemary Jacoby
Secretary

Sen. Bruce Crippen
Chairman

Motion: D.P. - Mazurek