

MINUTES

MONTANA SENATE 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Dick Pinsoneault, on February 8, 1991,
at 10:00 a.m.

ROLL CALL

Members Present:

Dick Pinsoneault, Chairman (D)
Bill Yellowtail, Vice Chairman (D)
Robert Brown (R)
Bruce Crippen (R)
Steve Doherty (D)
Lorents Grosfield (R)
Mike Halligan (D)
John Harp (R)
David Rye (R)
Paul Svrcek (D)
Thomas Towe (D)

Members Excused: Joseph Mazurek (D)

Staff Present: Valencia Lane (Legislative Council).

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Announcements/Discussion: Chairman Pinsoneault announced that Senator Mazurek was excused to work on the water compact with the Cheyenne Tribe this date.

Chairman Pinsoneault also announced that amendments to HB 24 and SB 154 would be delivered to committee members' desks. He asked that they look at the amendments very carefully and be prepared for executive session.

HEARING ON SENATE BILL 228

Presentation and Opening Statement by Sponsor:

Senator Bill Yellowtail, District 50, said SB 228 addresses judicial salaries in Montana. He told the Committee Montana should strive to ensure that the best lawyer in the courtroom is the judge, and said compensation of Montana's judiciary is the lowest of all the states.

Senator Yellowtail stated compensation for a judge should be fair and sufficient to not make judges and their families

sacrifice. He explained that Jim Oppedahl, Court Administrator, conducted a judicial salary study (Exhibit #1).

Senator Yellowtail advised the Committee section 2, page 6 sets out present salary levels, imposed in the 1989 Session; section 3 discusses responsibilities of Montana judges; section 4, page 11 begins the comparison exercise; section 6, page 15 provides a consumer price index comparison; section 7 compares Montana judicial salaries to other states.

Senator Yellowtail explained that the average judicial salary in Montana is \$56,000; the national average is \$83,749; and a western states average (WY, ID, ND, SD, WA) is \$72,800. He said California tops the list at \$115,000, and that the gap between Montana and other states is growing dramatically. Senator Yellowtail referred to the chart on page 22 for judicial salary increases since 1986.

Senator Yellowtail said page 24 of the analysis addressed inability to compete with the private sector in attracting good attorneys to the bench. He stated that good attorneys make 30 percent higher salaries. Senator Yellowtail explained that Idaho received an 8 percent increase this year and a 5 percent increase last year; North Dakota's increase was 9.2 percent for the biennium; South Dakota received an 8 percent increase; and Wyoming gave its supreme court an 18 percent increase and its district judges a 12 percent increase.

Senator Yellowtail advised the Committee SB 228 provides for phased-in salary increases in section 1, and addresses salaries for the chief justice, justices of the supreme court, and district court judges. He said the revenue source is addressed in sections 3 and 4, in a \$10 increase in filing fees paid to the clerk of the district court. He added that the proposed increase in judicial salaries would put them closer to the average for neighboring states.

Proponents' Testimony:

Chief Justice Gene Turnage, told the Committee he had distributed a letter noting key points (Exhibit #2). He explained he was speaking for the Supreme Court, and the District Courts for an acceptable increase in judicial compensation. He stated this is a policy issue to assure that Montana will attract and keep the most competent members of the State Bar of Montana.

Chief Justice Turnage said the courts have jurisdiction and power over interests of all descriptions, and this authority depends upon discretionary analysis'. He explained that these decisions are vital to and have an in-depth effect on the lives of Montanans. The Chief Justice commented that the laws passed are not self-executing, and that it takes a complex, cooperative effort of the entire justice system to ensure the safety of the people in their daily living. He said he hoped the Committee can accept the

question of judicial salaries as one of its priorities. Chief Justice Turnage thanked the Committee for the opportunity to testify.

Joy Bruck, League of Women Voters of Montana, told the Committee she rarely participates in salary deliberations, but believes present judicial salaries undercut attraction of, and are responsible for losses of competent judges as well. She read from a prepared statement in support of the bill (Exhibit #3).

James Tutwiler, Montana Chamber of Commerce, said businesses in Montana frequently work with business regulations and that they consider the judicial system to be a vital part of making up the business environment in Montana. He said Montana needs to attract the very best, and asked the Committee to support the bill.

Judge Frank Davis, Montana Judges Association, said he also supported the bill as a lawyer and a private citizen (Exhibit #4). He asked the Committee to address the problem to the point described in this legislation, and said the preamble of the bill sets forth the basis for salary increases. Judge Davis explained that the judges have been able to show the merits to everyone but the Legislature.

Former Chief Justice Haswell, told the Committee he was appointed to a "blue ribbon" committee on this issue. He advised committee members that last year in the Fifth Judicial District, he presided over 728 cases. He said that this past week he began in Dillon, went on to Virginia City, then to Bozeman, Boulder, and Butte. He added that he now has to return to Boulder and Butte, and said that if a judge were paid like a mechanic or a plumber he would have made more than \$80,000 last year. The former Chief Justice commented that it is relevant to ask where they are going to get the income to cover salary increases.

John Alke, Montana Defense Trial Lawyers, told the Committee he is 39 years old, and has been practicing law for 15 years. He commented that he is doing significantly better than judges' remuneration. Mr. Alke compared the legal profession to the medical profession, and said good people are well-compensated. He urged the Committee to pass this legislation.

Erik Thueson, President, Montana Trial Lawyers Association, and Helena attorney, provided copies of prepared testimony (Exhibit #5). He advised the Committee he would share his own experience, and said that during the past several years he had participated in finding qualified judicial candidates. Mr. Thueson explained that his job is made very easy, by the fact that it is nearly impossible to recruit candidates. He said the system needs successful candidates who want fairness and not zealots, for practical and realistic reasons.

Mr. Thueson stated that all who were approached felt honored to be asked, but declined because of the "huge financial

sacrifice". He said it is very difficult to recruit qualified candidates because judicial salaries are falling so far behind. Mr. Thueson commented that he believes the bill drafters are being very conservative.

Christian MacKay, for Don Judge, AFL-CIO, read from a prepared statement (Exhibit # 6).

Allen Chronister, State Bar of Montana, said he strongly supported SB 228. He stated that, prior to today's hearing, the area newspapers also strongly supported judicial salary increases.

Mr. Chronister told the Committee he believes in "attracting and retaining" people for the bench. He said he was certain the judges feel the salary disparity frequently when attorneys appear before them. He urged the Committee to support SB 228.

Opponents' Testimony:

There were no opponents of SB 228.

Questions from the Committee:

Chairman Pinsoneault asked Jim Oppedahl, Administrator, Supreme Court, how other states fund judicial salaries. Mr. Oppedahl replied they are generally funded through general fund appropriations. He said some states have local supplements, such as Illinois and Alaska.

Senator Svrcek asked for the percentage of the proposed increase from that of 1989. Senator Yellowtail replied it is a 10 percent increase.

Senator Halligan commented that he did not sign the bill because of the nature of the source of funds. He said Montana has a median income of \$14,000, and that he believes the bill would hit the little people with a quick fix instead of addressing the problem up front. He asked why the general fund was not the source for judicial salary increases. Senator Yellowtail replied that he disagreed, as it is a political reality that general fund resources are limited. He said the bill is a realistic approach to providing a discernable source of funding to show responsibility. He added that this is a, "high enough priority that needs to be addressed".

Senator Crippen asked what percent of fees used now go into the general fund and then come back out. Jim Oppedahl replied the judges are currently paid from general fund support, and that district court fees go to the general fund.

Senator Crippen asked if the proposed revenue would go to the general fund where the Legislature could spend it elsewhere. He commented that his point is that there is competition already, and asked if other states' fees go into their general funds. There was no response to Senator Crippen's question.

Senator Towe asked Jim Oppedahl if there were special allocation of marriage license and divorce fees. Mr. Oppedahl replied that marriage license fees to go the general fund, where they are split for several service areas.

Senator Doherty commented that Cascade County has a serious district court funding problem. He asked which is the higher priority, funding the district courts or judicial salaries. Michael Chrichton replied they are of equal priority.

Senator Rye commented that there are only two supreme court judges with eight years or more of experience. Jim Oppedahl replied he could not speak for individuals, but he believed 50 percent of judges lost in the last 4 years were due to salaries and personal reasons. He commented that a large part of personal reasons were the salaries, and said one judge took a federal bench job at a \$30,000 increase.

Closing on the bill:

Senator Yellowtail told the Committee he was privileged to carry the bill, since he is not an attorney and has no vested interest in judicial salaries. He said he appreciated the support of the non-legal community.

Senator Yellowtail stated he could see where it would be tempting to say the proposed increases are too much. He said that is not a fair and valid comparison since nearly 100 positions in the University system pay more than judicial salaries, and 70 pay more than the Chief Justice. He stated that the Committee must apply priorities with regard to the Montana judicial system, and restated that "judges ought to be the best lawyers in courtrooms".

EXECUTIVE ACTION ON SENATE BILL 51

Motion:

Discussion:

Senator Fred VanValkenburg, sponsor of SB 51, provided the Committee with amendments to the bill. He stated that section 45, on page 37 (yellow copy), pertains to authority to establish roadblocks. He explained that lines 2-5 reinsert stricken language because the Lewis and Clark County Sheriff was concerned about the ability to establish roadblocks for a short period of time and in a limited geographic area for incidents such as an escapee from the prison or a state institution.

Senator VanValkenburg said it is a very necessary law enforcement procedure, and that he did not believe it was the

intent of the Criminal Procedures Commission to omit roadblocks. He explained that he felt it was important to bring the issue to the Committee before it is taken up on the floor. Senator VanValkenburg said he consulted with John Connor and Mike Sherwood both of whom were members of the Commission.

Amendments, Discussion, and Votes:

There were no amendments and no votes.

Recommendation and Vote:

There was no recommendation or vote.

HEARING ON SENATE BILL 227

Presentation and Opening Statement by Sponsor:

Senator Bill Yellowtail, District 40, said SB 227 is a simple bill requiring a cap on the number of gaming machines in Montana that a single manufacturer or distributor can have an interest in. He told the Committee SB 227 is directed at the issue of monopoly in the state, and that the 500 machine limit is somewhat arbitrary. Senator Yellowtail commented that control of vertical integration will be addressed by another bill.

Proponents' Testimony:

Jim Sewell, Helena attorney, advised the Committee he is involved in a small distributorship with his family which operates in Powell County. Mr. Sewell said he believes it is important that the Legislature address monopoly, as 24 operators control 50 percent of the business in the state.

Opponents' Testimony:

Gary Beck, lobbyist, Montana Video Lottery Consultants, said he has seen legislation that, on its face, appears to be reasonable, but after examination, discrimination against one particular individual is found. Mr. Beck asserted that person is Larry Lippman, Bozeman, who, he said, would be most affected by this legislation. Mr. Beck said Larry Lippman's level of interest is at 480 machines in two operations in Montana. He stated the bill would take Mr. Lippman out of competition in Bozeman and Billings.

Mr. Beck added that he believes there are valid points concerning vertical integration which should be addressed by class of licensure rather than the number of machines owned by an individual. He told the Committee he found this legislation to be obnoxious abuse of the Legislative process, and requested that the bill be tabled and that the Committee look at a more reasonable approach.

Questions From Committee Members:

Senator Crippen asked Senator Yellowtail to define who a distributor is. Senator Yellowtail replied it is a matter of licensure with distinctions. Bob Robinson, Gambling Control Division, stated a distributor does not own the location, and is a licensed entity owning machines which are placed in operating locations.

Senator Crippen asked if an individual could be an owner and not a distributor, and if someone could own 500 machines and not be covered by the bill. Bob Robinson replied that the language is fairly broad, and said someone could have an interest and not be a distributor. He commented that the language may need to be tightened up.

Senator Crippen stated the bill needs to be amended, and that if ownership were reduced to 50 machines, it would catch more people.

Senator Towe asked if a distributor's license were only paid for once. Senator Yellowstone replied that is correct.

Senator Doherty asked if there are existing anti-trust laws, and why they could not deal with this situation. Senator Yellowtail replied it is fair to say that statute has not been exercised frequently in recent history.

Senator Doherty asked how many manufacturers would be hit by the bill. Bob Robinson replied the bill applies to manufacturer/distributors with no differentiation.

Senator Halligan asked if anti-trust racketeering played a part. Bob Robinson replied he was not one to say how it applies. He said the federal Johnson Act prohibits shipping devices to areas where they are not legal.

Senator Grosfield asked how many people would be affected if the number of machines were reduced to 200. Bob Robinson replied he had an analysis and could provide copies for the Committee. He stated that only one distributor has nearly 600 machines; 4 have between 300-400 machines; 4 have between 200-300 machines; 15 have between 100-200 machines; and 70 have less than 30 machines (Exhibit #7).

Gary Beck added that the vast majority of business is done with places having less than five coin-operated machines. He advised the Committee that the company he works for takes care of maintenance, licensing, and gross revenue.

Chairman Pinsoneault asked about the cost of machines. Gary Beck replied it was between \$2000 and \$2500, but is now about \$5000 for a new machine.

Senator Crippen asked how fast the cost of a new machine (\$5000) could be recouped. Gary Beck replied that average net income is \$10,000 to \$15,000 annually. He explained this amount is split between the operator and distributor, and that the machines are usually paid for in less than one year.

Senator Grosfield asked what a typical split is. Gary Beck replied that it was traditionally 50/50. He said competition has changed it to 60 percent to the owner and 40 percent to the operator.

Closing by the bill's sponsor:

Senator Yellowtail told the Committee this is a policy issue addressing the matter of potential monopoly. He admitted 500 machines may be rather arbitrary, and said he was sorry that Gary Beck chose to call the bill obnoxious. Senator Yellowtail stated it was not his intent to take Larry Lippman out of competition, and said that if the cap is removed then the potential for monopoly is there. He said these are the choices.

HEARING ON SENATE BILL 204

Presentation and Opening Statement by Sponsor:

Senator Del Gage, District 5, said SB 204 was requested by the Board of Crime Control concerning sentencing alternatives.

Proponents' Testimony:

John Connor, Department of Justice (DOJ), Board of Crime Control Drug Strategy Commission, said the Commission exists for the purpose of obtaining anti-drug abuse funds and for establishing a statewide drug abuse strategy. He said the need to look at sentencing alternatives was realized during the interim.

John Connor said the bill expands 45-9-202, MCA, by offering discretionary alternatives to the court. He told the Committee the bill provides that the court can impose fines; allows commitment to residential treatment facilities for not more than two years; allows community service and drug treatment program sentences. He said these options are a condition to deferred and suspended sentences, and provide for intensive supervision through probation offices.

John Connor explained that the rest of the provisions follow the concept of rehabilitation rather than penalizing. He stated the bill contains immunity from liability as communities are very reluctant to get involved in community service. John Connor added that language can be revised or brought to the attention of the offender at the time of sentencing. He said immunity does not apply to abuse or to gross neglect.

John Connor advised the Committee he believes the bill applies a sensible approach to a serious matter.

Harley Warner, Montana Association of Churches, read from prepared testimony in support of the bill (Exhibit # 8).

Ed Hall, Drug Strategy Commission, Board of Crime Control, said SB 204 is the second of three pieces of legislation. He encouraged the Committee not to think of this legislation in terms of lesser sentences, but as optional sentencing (Exhibit # 9).

Ed Hall said he was sure a greater number of states would be revoking drivers' licenses for drug offenses. He stated alternative sentencing is one more tool for the courts, and provides more flexibility for the judicial systems. Mr. Hall encouraged the Committee to support the bill.

Dan Russell, Administrator, Corrections Division, Department of Institutions (DOI), said SB 204 is consistent with DOJ and DOI efforts. He explained the bill addresses intensive supervision and encourages development and use of community service. Mr. Russell said Missoula has a pilot community service program, and urged the Committee to support the bill.

Opponents' Testimony:

Mike Sherwood, Montana Trial Lawyers, stated he was an opponent because clause 3 allows immunity (Exhibit #10). He said the bill would grant specifically developed governmental programs immunity when they are not careful in dealing with immunity.

Mr. Sherwood commented this is a poor way to handle immunity, and said another bill in the House addresses quasi-judicial immunity. He stated there are inherent hazards, requiring a conscious decision on the part of the Legislature not to grant immunity on careless auto claims.

Mike Sherwood said the bill requires people to supervise drug offenders, who are often addicts, in public service. He stated these people should be required to be as careful as they are with others in society.

Questions From Committee Members:

Chairman Pinsoneault asked Mike Sherwood if, as a defense attorney, the bill would at least provide something to avoid putting certain persons in jail. Chairman Pinsoneault said he had a problem with Mr. Sherwood's testimony. Mike Sherwood replied that as a representative of the Montana Trial Lawyers Association, clause 3 is critical to the bill. He said that as a lawyer handling 350 felony and 25 major drug cases, he is a lot like a social worker since 95 percent of his cases do not go to trial.

Mr. Sherwood explained that the client admits to charges which are usually the result of an underlying problem. He said his job is to put together a program for post-rehabilitation prior to judgement, which can mostly be done without this bill.

Chairman Pinsoneault commented that there are minimal penalties. He asked Mike Sherwood to provide an amendment to address immunity, and said he believes SB 204 is a good bill. Mike Sherwood replied he would meet with the Association on this matter.

Senator Towe stated that if sections 3 and 7 were stricken there would be no immunity. He added that as counsel for Alternatives, Inc. for the past ten years, the organization has been sued only two or three times concerning supervision. He explained that Alternative's, Inc. always had the insurance to cover the suits, and said he supported the bill.

Senator Towe asked John Connor about immunity. John Connor replied he believes sections 3 and 7 are critical to community service. He commented that he had prosecuted cases similar to those described by Mr. Sherwood, and that he believes immunity is a public policy consideration because "people sue governmental entities over virtually nothing". John Connor added that DOI experienced a lot of problems, and that without immunity, community service would be "gutted".

Senator Towe invited John Connor to come to Billings to see how Alternatives, Inc. works. John Connor replied that rural counties need something on the local level.

Senator Towe said part 1 of the Code, in 45-1-902, used to be presumptive sentencing, and is now changed to impose a fine. John Connor replied that presumptive sentencing is still in the law for persons under 21 years of age.

Senator Towe commented that lines 19-20 addresses offenders as habitual and excessive users of dangerous drugs. John Connor replied it was intended to take this language out of the bill, as some offenders are not habitual or excessive users. He said page 2 allows a lot of discretion and has intrinsic value in allowing the courts to address each case specifically.

Chairman Pinsoneault commented that Judge Davis made several comments asking that this legislation be available.

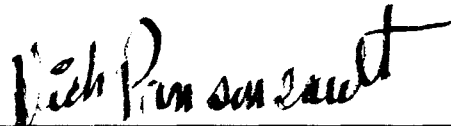
Senator Grosfield asked if the bill addresses drug testing only once each month. Dan Russell replied it ought to be more often and is now being done several times during the week. John Connor added that this language came from a model alternative sentencing act, and that maybe it should be changed.

Closing by Sponsor:

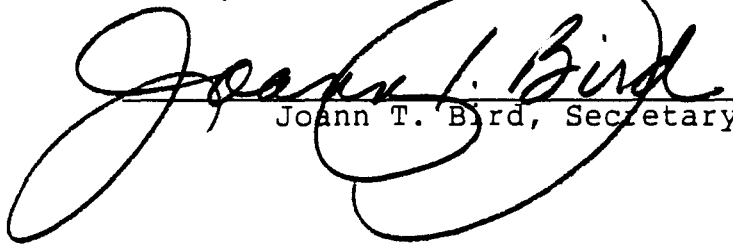
Senator Gage advised the Committee there are different towns where judges may not be convinced of these alternatives or where programs are not available. He said he believes the Committee needs to look at immunity very carefully, and that SB 204 is a good bill. Senator Gage asked the Committee to give the bill favorable consideration.

ADJOURNMENT

Adjournment At: 12:10 p.m.



Senator Dick Pinsoneault, Chairman



Joann T. Bird, Secretary

DP/jtb

ROLL CALL

SENATE JUDICIARY

COMMITTEE

52nd LEGISLATIVE SESSION -- 1999

Date 8 Feb

NAME	PRESENT	ABSENT	EXCUSED
Sen. Pinsoneault	✓		
Sen. Yellowtail	✓		
Sen. Brown	✓		
Sen. Crippen	✓		
Sen. Doherty	✓		
Sen. Grosfield	✓		
Sen. Halligan	✓		
Sen. Harp	✓		
Sen. Mazurek	✓		
Sen. Rye	✓		
Sen. Svrcek	✓		
Sen. Towe	✓		

Each day attach to minutes.

CX # 1
SB228
2-8-91

A JUDICIAL SALARY STUDY
AND RECOMMENDATIONS TO THE
MONTANA SUPREME COURT

*Prepared by the
Office of the Court Administrator
Montana Supreme Court*

January 1, 1991

Copies of This Study Are Not Printed At Public Expense

THE SUPREME COURT OF MONTANA

Ex 2
SB 228
2-8-91

J. A. TURNAGE
CHIEF JUSTICE

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



TO: Chairman Pinsoneault and Members, Montana Senate
Judiciary Committee
FROM: J. A. Turnage, Chief Justice *J. A. Turnage*
DATE: February 8, 1991

Thank you for the opportunity to speak to members of this Committee in support of Senate Bill 228.

I strongly urge your support of this important legislation. It is a vital step that we must take if Montana is to maintain her fine judicial system.

The fundamental reasons the Legislature must seriously consider a competitive salary for Montana's Judges are that:

- ♦ Montana deserves a first-rate judicial system.
- ♦ Inadequate pay undermines the judicial system by deterring the best qualified and experienced attorneys from seeking judicial careers.
- ♦ Montana is losing experienced judges. In the past six years there has been a 50% turnover in district court judges. On the Supreme Court, only two justices have more than six years experience.
- ♦ Judicial salaries in Montana are dead-last in the country, even behind the U.S. Territories, and falling significantly behind even neighboring Idaho, Wyoming, and North Dakota.
- ♦ Montana salaries are so low that neighboring states are even **increasing the gap** between their salary level and that of Montana. In 1986, the salary for a Justice of the Supreme Court in Montana was \$50,452 and for an Idaho Justice it was \$54,770 -- a total difference of \$4,318. Unless the 1991 Legislature acts to increase judicial salaries, the difference between the same two positions in Montana and Idaho will be over \$18,000.
- ♦ The average Montana lawyer, the group from which judges are drawn, makes approximately 30% more than judges.
- ♦ Montana judges, unlike any other public servant, are **prohibited** by the Constitution from having outside earned

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2-8-91

income. They are not allowed to supplement their judicial salaries with other employment -- and of course, they cannot practice law.

In addition, in order to draw judicial retirement they **must be available** to serve as a retired judge when called upon. Even when they do serve in this capacity, their pay for this service is reduced by the amount of their retirement benefit.

I hope that you will join me and other proponents here today in support of Senate Bill 228. We must maintain the good judges we have and assure that we are able to recruit the best candidates when vacancies occur.

Thank you for your time and your attention.

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2-8-91

THE BILLINGS GAZETTE

Page
4A

Wednesday, January 16, 1991

Opinion

State judges under paid

By any standard, Montana judges are underpaid.

One might expect their pay to be less than the national average. Montana wages are less than the national average in nearly every field.

GAZETTE OPINION

But one would not expect that Montana Supreme Court justices would be paid a full one-third less than the average pay for similar positions elsewhere.

One would not expect that state district court judges would be paid 27 percent less than the average of their peers elsewhere in America.

Even more startling is the breach between Montana judges and those from surrounding states.

Montana's chief justice earns \$57,722 a year. The figures budgeted for surrounding states are: North Dakota, \$70,243; Wyoming, \$72,000, Idaho, \$76,201; South Dakota, \$66,700, and Washington, \$89,300.

Montana district court judges are paid only 80 percent of the averages of district court judges for those states.

During the 1989 Legislative Session, Chief Justice J.A. Turnage testified:

"If Montanans are to keep and maintain a first rate judicial system, we simply must have a compen-

sation system which can reasonably be expected to retain and recruit our best lawyers to become judges. If embarrassment at being 50th (in judicial pay) in the nation were all that was at stake. I believe we could certainly stand it. But the consequences of such low salaries go beyond embarrassment and threatens to undermine the judicial system itself. The current level of salaries offers little hope of ensuring the future of our currently first rate system."

It is a terrible that the chief justice has to go to the Legislature hat in hand to plead the obvious.

The world has become so complex that governmental agencies sue each other so the courts can tell them who is responsible for what. What is the formula for "equal" education, equal taxes, equal opportunity? The courts are ever more frequently being called in to balance the state constitution against the reality of daily life in Montana.

We don't seem to recognize the importance of the role judges play in our society. We don't seem to recognize the quality of the judges we are blessed with. We don't seem to realize that we cannot maintain that high quality without paying them commensurate with their worth.

Those are simple points. The Legislature must grasp them this session.

4A

Give judges a pay hike

Montana used to have a commission that studied judicial salaries and made recommendations to the Legislature regarding salaries for district court judges and supreme court justices.

The commission's recommendations were duly noted by the Legislature — and then ignored. Small wonder the commission was finally abolished.

In any event, judicial salaries, when adjusted for inflation, actually decreased by 32 percent from 1977 through 1990.

The 1989 Legislature granted supreme court and district court judges \$3,000 a year raises for 1990 and '91. This year supreme court judges will receive \$56,452. The chief justice makes \$57,722. District court judges will be paid \$55,178.

Even with a total raise of \$6,000 a year over two years, Montana ranks 50th — dead last — in the salaries it pays its judges.

Montana salaries are so low that neighboring states are even increasing the gap between their salary levels and that of Montana. For example, in 1986 the salary for a Montana Supreme Court justice was \$50,452 and for an Idaho justice it was \$54,770 — a difference of \$4,318. Unless the current Legislature increases judicial salaries, the 1991 dollar difference between the same positions in Montana and Idaho will be more than \$18,000.

"If embarrassment at being 50th in the nation were all that was at stake, I believe we could certainly stand it," Chief Justice Jean Turnage said. "But the consequences of such low salaries go beyond embarrassment and threaten to undermine the judicial system itself. The current level of salaries offers little hope of ensuring the future of our current first-rate system."

AN IR VIEW

The \$56,452 paid to Montana Supreme Court justices compares to a national average of \$83,749 and an average in neighboring states of \$73,808. The \$55,178 paid to Montana district court judges compares to a national average of \$75,419 and an average in neighboring states of \$68,531.

(The neighboring states used in the comparison are Washington, Idaho, Wyoming and North and South Dakota.)

Washington pays the highest salaries in the region, \$89,300 for supreme court justices and \$80,500 for district court judges.

But the other states used in the salary survey also pay their judges considerably more than Montana. For example, North Dakota pays its justices \$11,890 more and its district court judges \$7,791 more. Wyoming pays justices \$15,548 more and judges \$13,572 more.

In 1977, Montana Supreme Court justices ranked 42nd in the nation in salary and district court judges were ranked 29th. Since that time Montana judicial salaries have reached the point that even the state court administrators in all but two states (Montana and Wyoming) are paid more than Montana district court judges.

We urge legislators to bring judicial salaries in line with our neighboring states. They deserve it.

The time has come to pay our judges an adequate salary

Montana's judicial salaries are nothing short of shameful.

They are short of everything else — far short of the national average, short of the regional average by an ever increasing ratio and short by a long shot of the wages a competent attorney can make in private practice.

During the 1989 Legislative session, Chief Justice J.A. Turnage summarized the need for a pay increase for the states judges: "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."

We agree.

The modest increase the last Legislature gave the judges wasn't enough. The state's ability to recruit and keep good judges is still in jeopardy.

"Not only are we still dead last in national rankings, Montana salaries are so low that neighboring states are even increasing the gap between their salary levels and that of Montana," Turnage said recently, pressing for action by the 1991 Legislature.

He provided an example. Five years ago, a Montana Supreme Court justice received \$50,452. Our next door neighbor, Idaho, paid its high court justices \$54,770 — a difference of \$4,318. The gap between the two justices this year will be more than \$18,000 if this Legislature doesn't take action.

A new bill to boost the salaries again is currently being drafted at the request of Rep. Jan Brown, D-Helena.

Without a bill in hand, we support the concept of a pay raise for Montana's district and high court judges.

Montana's judges shoulder a heavy burden. The decisions they hand down have direct and indirect bearing on virtually every aspect of our lives. We expect much and pay little for a demanding job.

The judicial system is at risk when good judges cannot afford to serve on the bench. It's time to pay for the first-rate judicial system we have.



2X3
SB 228
2-8-91

SB 228 An act increasing the salaries paid Supreme Court justices and District Court judges;...

The League of Women Voters of Montana supports SB 228.

The League rarely participates in the debate on salary setting for any elected officials. However, the current low level of judicial compensation (we are 50th in the nation) is not only undercutting the court system's ability to attract qualified personnel from among Montana's best and brightest young legal minds, but we are losing experienced judges as well. 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 qualified persons to serve on the bench, to adequately fund the judiciary and to upgrade the administration of the court system. 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.

Joy Bruck, President
League of Women Voters of Montana

Ex. 4
SB 228
2-8-91

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Dated this 8 day of FEB, 1991.

Name: FRANK M DAVIS

Address: 436 S IDAH

Telephone Number: 683-5841

Representing whom?

DISTRICT JUDGES

Appearing on which proposal?

Judicial SALARY Bill

Do you: Support? ☒ Amend? ☐ Oppose? ☐

Comments:

Will TESTIFY &
SUBMIT STATEMENT

Ex 4
SB 228
2-8-91

STATEMENT OF HON. FRANK M. DAVIS
IN SUPPORT OF SENATE BILL 228
(JUDICIAL SALARIES)

Mr. Chairman and
Members of the Committee:

I appear in support of this Bill as President of the Montana Judges' Association, which includes our 36 District Judges, as well as the seven Judges on the Supreme Court. I, of course, am not a completely disinterested witness. You as a jury are entitled to take that fact into consideration in weighing the merits of my testimony. I am in the autumn years of my judicial career, but I would be here as a lawyer and private citizen, because I consider it so important to not only the judiciary, but to the citizens of this state.

The Bill's preamble set forths the unarguable facts. I won't take up your time or encumber the record with a reiteration of those facts, which I believe are self explanatory.

I simple plead with you to address this problem at least to the extent provided for in the proposed legislation. Even if the bill passes - the Montana Judiciary will still be in a comparative proverty position in relation to the nations judges generally. At the last session, you recognized the problem and gave us some relief - which was most appreciated, but still left the problem unsolved.

The title, distinction, and respect that goes with the role of a judge is important, flattering and appealing - but it doesn't send ones children to college or pay the mortgage.

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Fortunately, I sent five children to college and paid the mortgage, but from a private law practice. I could not have done it on the judges salary. We have had judges resign when confronted with these realities.

The irony of this, is that we have been able to sell the merits and righteousness of our cause to almost everyone, but the Legislature. The State Bar has worked, studied and lobbied the issue of adequate pay for judges for years. Of course the lawyers know the problem. The lawyer sees the after hour light burning in the Courthouse, and he finds his judge not at home, or in church on Sunday, but at the office agonizing over a difficult decision involving his clients property, or life. The media, with few exceptions, agree, as do almost every other group having contact with the Court. The late Chief Justice Haswell appointed a special blue ribbon citizens committee to address the problem. The committee headed by Bill Coldiron consisted of representatives from the bar, labor, management, mayors, service clubs, and the media. That committees findings made five or six years ago are really embraced in the preamble of the Bill.

I have tried to think of some graphic way to dramatize to our representatives the responsibility on the shoulder of a district judge. What I would like to do is have a legislative committee of non-lawyers follow a typical judge who serves multiple counties, on one of his typical weeks. In my district I presided over and made decisions in 728 different cases, traveled 20,000 miles, and served as guardian for some 200 residents of the Developmental Center at Boulder. My case load, I believe is

typical. If the committee does not have a copy of the Chief Justice's 1990 Judicial Report, I will furnish you one. What if a judge were paid a plumbers or auto mechanics hourly rate? I did some rough calculation on my own 728 cases last year, and at a plumbers or mechanics hourly wage, I would have made more money than a Washington District Court Judge - \$80,000 per year.

This Bill is a modest and reasonable request. It has a built in funding mechanism paid for by the people who use the system - the litigants.

We are frequently told by my our representatives, "we know and sympathasize with the problem, but where are we going to get the money?" This is a relevant question and this proposed legislation partially answers that, but even if it didn't, I pose the analogy of the father who's before the judge for failure to adequately support his children. "Judge", he says "I just can't afford it". That is an excuse unacceptable to a judge, as it would be to you. The support of the children he helped create is a priority over all other obligations. Fair and equitable compensation of the judiciary should be a similar priority with this Legislature.

I thank you for this opportunity, your time and consideration. I hope and pray that the Chief Justice and I can go to our colleagues in June and report that the '91 Legislature saw its responsibility, bite the bullet on the priority question at least partially took remedial action. The State does not deserve the stigma it now has.

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POSITION PAPER SUPPORTING JUDICIAL SALARY INCREASE

BY ERIK B. THUESON, PRESIDENT OF THE MONTANA TRIAL LAWYERS

No one would dispute that our judges and justices make some of the most important decision affecting the rights of individuals, business, and government. They are, in essence, referees who decide disputes amongst all segments of society. Amongst other things, they make decisions concerning whether or not dangerous criminals shall be punished or set free. They determine whether government has overstepped the bounds of its constitutional authority and have trampled upon the rights of people. They resolve disputes where, many times, millions of dollars lie in the balance.

It seems obvious that the people of this state expect that the men and women who will make these decisions are the most qualified attorneys in the state. Indeed, it would seem obvious that they are entitled to this level of quality. Otherwise, decisions will be inconsistent. They will be unjust and costly. They will not be a reflection of good government.

The best attorneys in this state, of course, are also the most successful. Obviously, if you are a skillful and experienced attorney, people and businesses will beat a path to your door. Attorneys of this caliber, of course, are also successful economically. These are the people Montanans need as their judges, but we cannot reasonably expect these men and women to make huge financial sacrifices at the peaks of their careers to serve as judges.

Unfortunately, the present salary structure for our judges

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makes it increasingly difficult to attract quality attorneys to become our judges. For instance, the legislature raised the salaries for judges to approximately \$50,000 in 1977. If the judicial salaries were increased according to the state employee grids, the judges should be making at least \$75,000 by now, but they are, of course, making considerably less. If you apply increases in the cost of living over the last 13 years, the judges should be making well over \$75,000, but they again, are not. If you look at the degree to which the dollar has shrunk in the last 13 years, the \$50,000 salary granted in 1977 is worth less than \$25,000 in buying power in today's dollars.

You come up with the same result, if you compare the compensation for our judges to that provided to judges in other jurisdictions. Most of the other states pay their judges \$75,000 or more per year. The federal district judges in this state, for instance, receive compensation exceeding \$120,000 a year and federal magistrates, who do not make decisions as critical or as important as our district judges, receive over \$100,000 per year. Thus, any way you look at it, the judges of Montana are grossly under compensated given the importance of their work.

Judicial salaries, of course, should not be increased simply to keep up with other jurisdictions. But we pay a great price by trying to save dollars by keeping the salaries of judges down. If you cannot attract quality persons to serve on the judiciary, you will not get quality justice. If there are inconsistencies and uncertainties in the law, you breed litigation. You increase the costs of our judiciary far more than the additional funds needed to

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provide reasonable wages to judges. If district judges, for instance, do not have the experience or know how to resolve complex legal questions in the criminal setting, the Supreme Court and appeals court will have no choice but to reverse the decision. Ultimately, the counties will be beset by additional legal costs for a second trial or in the worst case scenario, the counties will not have the funds to retry the criminal and he will go free. In the civil arena, if the judges and justices render inconsistent decisions, this will only breed endless appeals and challenges to the law. Millions of dollars will be wasted. The end result is that we will be paying more money for a judicial system that provides less justice.

We are fortunate to be blessed by people who are willing to make financial sacrifices to be judges. But this is not a universal situation. Certainly logic dictates that if we want qualified men and women to decide society's problems, we will have to pay them a salary commensurate with the importance of their work. Currently, we are not.



DONALD R. JUDGE
EXECUTIVE SECRETARY

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EX 6
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TESTIMONY OF DON JUDGE ON SENATE BILL 228 BEFORE THE SENATE
JUDICIARY COMMITTEE, FEBRUARY 8, 1991

Mr. Chairman, members of the committee, for the record I am Don Judge, Executive Secretary of the Montana State AFL-CIO and I am here today in support of Senate Bill 228.

The remarks of Chief Justice Turnage in his State of the Judiciary address concerning the wages paid to the judiciary in Montana did not go unnoticed by the Montana State AFL-CIO.

The Montana State AFL-CIO, its affiliated unions and Montana workers as a whole recognize in order to recruit and retain competent, productive workers, they must be provided a decent wage commensurate with the responsibilities and demands of the job. This philosophy applies to every worker, whether laborer or judge.

We have supported similar calls for raising the salaries for Montana judges in the past and we support the call now.

The Montana State AFL-CIO agrees with a 1989 Great Falls Tribune editorial that said, "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."

When justice is rendered, it should be by those whom we have confidence in, and to whom we have provided a just wage.

There will be those who will say we can't afford to raise judicial salaries, we say how can we afford not to?

The AFL-CIO urges you to support Senate Bill 228 and give it a "do pass" recommendation.

Thank you.

Exhibit 7
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VIDEO GAMBLING MACHINE OWNERSHIP AND PLACEMENT

As of November 1, 1990, 10,488 video gambling machine permits were issued. Of this total, 2,876 machines (27.4 percent) were owned by gambling operators. The remaining 7,612 (72.6 percent) machines were owned by distributors and placed in operators' establishments. The following table categorizes the number of distributors according to the number of machines placed.

NUMBER OF VIDEO GAMBLING MACHINES BY DISTRIBUTORS

<u>NUMBER OF MACHINES</u>	<u># OF DISTRIBUTORS</u>	<u>TOTAL MACHINES PLACED</u>	<u>% OF TOTAL MACHINES PERMITTED</u>	<u>CUMULATIVE % OF TOTAL MACHINES PERMITTED</u>
500+	1	598	5.7%	5.7%
400-499	0	0	0	5.7%
300-399	4	1482	14.1%	19.8%
200-299	4	979	9.3%	29.1%
100-199	15	2114	20.2%	49.3%
90-99	5	485	4.6%	53.9%
80-89	1	83	.8%	54.7%
70-79	2	148	1.4%	56.1%
60-69	4	257	2.5%	58.6%
50-59	4	215	2.0%	60.6%
40-49	8	362	3.5%	64.1%
30-39	3	105	1.0%	65.1%
20-29	10	242	2.3%	67.4%
10-19	24	357	3.4%	70.8%
1-9	39	185	1.8%	72.6%

Source: Gambling Control Division
Department of Justice

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WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Dated this 24 day of February, 1991.

Name: Tim Sewell

Address: Box 801
Helena, MT 59624

Telephone Number: 442-2980

Representing whom?

Cottonwood Vending Co

Appearing on which proposal?

SB 227

Do you: Support? ☒ Amend? ☐ Oppose? ☐

Comments:

Regulation of the size of a distributor's route is
necessary to insure fair competition and
to prevent the distributor business from
being taken over by out of state
interests.

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PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

Exhibit 8
8 Feb 8



MONTANA RELIGIOUS LEGISLATIVE COALITION • P.O. Box 745 • Helena, MT 59624
PHONE: (406) 442-5761

Date Submitted: February 8, 1991
Bill Number: SB 204
Submitted by: Harley E. Warner

WORKING TOGETHER:

American Baptist Churches
of the Northwest

|

Christian Churches
of Montana
(Disciples of Christ)

|

Episcopal Church
Diocese of Montana

|

Evangelical Lutheran
Church in America
Montana Synod

|

Presbyterian Church (U. S. A.)
Glacier Presbytery

|

Presbyterian Church (U. S. A.)
Yellowstone Presbytery

|

Roman Catholic Diocese
of Great Falls - Billings

|

Roman Catholic Diocese
of Helena

|

United Church
of Christ
Mt.-N. Wyo. Cont.

|

United Methodist Church
Yellowstone Conference

|

Chair, members of the committee, I am Harley Warner. I am here representing the Montana Association of Churches.

We feel that no offender should be subjected to more custody and security than he or she needs. We agree that the majority of drug offenders do not pose a substantial threat to society, and can be effectively dealt with in the community.

Community based drug treatment and drug education programs and "intensive probation" should help the offender to remain drug free.

Senate Bill 204 addresses some of our corrections concerns, therefore we rise in support of Senate Bill 204.

DRUG TASK FORCE MEMBERS

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EX 10
SB 204
2-8-91

Testimony of Michael J. Sherwood
MTLA
Opposing SB 204

MTLA opposes this bill due to the immunity clause found in Section Three. This bill immunizes yet another governmental agency from law suit. Court ordered community service typically takes on two forms: (1) cleaning or maintenance of public buildings and facilities, or (2) interacting with the public (often juveniles) in community activities. In either case immunization of governmental agencies from claims arising from a failure to properly supervise convicted drug offenders is poor public policy. Cleaning and maintenance is almost universally done in areas open to the public and interaction with our children should be undertaken only with the utmost care. This bill would condone the following three actions by a supervising agency:

1. A garden rake is left lying, tines up, in the grass by a participant in a community service program because the supervising agency did not bother to inventory its tools. A child falls and impales himself on the tines.

2. A supervising agency is transporting program participants to a job site. The driver runs a stop sign, collides with a vehicle having the right of way and seriously injures the occupants of that vehicle.

3. A convicted addict is allowed to speak at a high school drug education class without any review of his speech by the supervising agency. While the speech talks of the evils of cocaine, it condones marijuana use. While at the school the program participant is able to actually sell marijuana to students.

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If the state wishes to establish these programs whereby convicted drug users will inevitably interact with the public, the agencies overseeing the program participants should be required, at a minimum, to exercise due care in administering and supervising the programs.

DATE 3-8-71

COMMITTEE ON Industry

VISITORS' REGISTER

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