

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN RUSSELL FAGG, on March 16, 1993, at 8:00 a.m.

ROLL CALL

Members Present:

Rep. Russ Fagg, Chairman (R)
Rep. Randy Vogel, Vice Chairman (R)
Rep. Dave Brown, Vice Chairman (D)
Rep. Ellen Bergman (R)
Rep. Vivian Brooke (D)
Rep. Bob Clark (R)
Rep. Duane Grimes (R)
Rep. Scott McCulloch (D)
Rep. Jim Rice (R)
Rep. Angela Russell (D)
Rep. Tim Sayles (R)
Rep. Liz Smith (R)
Rep. Bill Tash (R)
Rep. Howard Toole (D)
Rep. Tim Whalen (D)
Rep. Karyl Winslow (R)
Rep. Diana Wyatt (D)

Members Excused: Rep. Jody Bird

Members Absent: None

Staff Present: John MacMaster, Legislative Council
Beth Miksche, Committee Secretary

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

Committee Business Summary:

Hearing: SB 23, SB 368, SB 4, SB 5, SB 242
Executive Action: SB 70, SB 229, SB 238, SB 124, SB 251

HEARING ON SB 23

Opening Statement by Sponsor:

SEN. GARY AKLESTAD, Senate District 6, Galata, said this bill revises the laws relating to the investigation and removal of children from the home in cases of suspected child abuse or neglect. He said that the changes are not major but are necessary so that state law does not conflict with federal law.

PROVISION 1: Section 1, 43-3-201, page 2, lines 4 and 5. Change "reasonable cause to suspect" to "reasonable cause to believe." This is language that is included in other state laws.

PROVISION 2: Section 2, 43-3-202, page 5, lines 19-24. Mandates a third party at the presence of visual or audio taping while a child is being interviewed. The third party would monitor the interview and see that the professional conducting the interview, i.e., social worker, county attorney, or peace officer, does not ask the child misleading questions. The third party may be the child's guardian ad litem.

PROVISION 3: Section 5, 41-3-403, page 9, lines 1-4. The Department of Family Services would have to give notification to the parents within four hours of that child being taken away.

Proponents' Testimony:

SEN. JIM BURNETT, Senate District 42, Luther, presented written testimony. EXHIBITS 1 through 9

Dr. John Cannell, psychiatrist, Missoula, presented written testimony. EXHIBITS 10 through 15

Jerry O'Neill, Vocal of Montana, discussed the problems faced by a friend who has been charged with child abuse.

Mary McCue, Montana Clinical Mental Health Counselors Association (MCMHCA), declared that MCMHCA has had experience working with children who have been repeatedly abused or neglected and with parents who have wrongfully been accused of abusing their children. For this reason, they support this bill and believe it provides protection to parents unjustly accused and that it won't hinder abuse investigations.

Opponents' Testimony: None

Informational Testimony: None

Questions From Committee Members and Responses:

REP. DUANE GRIMES referred to SEN. BURNETT'S amendments which state criminal charges must be filed within 20 days. He inquired if 20 days would give adequate time to file a complaint when there really is a major threat to a child. SEN. BURNETT said his amendment came from SB 41. Under the present system and under civil law, a child can be taken from his home and the parent will not be charged; therefore, there's no recourse for the parent. Under criminal law, law enforcement must charge the perpetrator who then has recourse to address the conflict. Currently, since

law enforcement can operate under civil and criminal law, the systems usually favor criminal law. Giving 20 days is adequate time to make the determination, but law enforcement can delay the time to 60 days.

REP. HOWARD TOOLE asked SEN. BURNETT if he sponsored a bill similar to SB 23, what happened to it, and whether the amendment taken from that bill was reviewed by the Department of Family Services. SEN. BURNETT responded that REP. TOOLE was referring to SB 41, which did not pass the Senate. The bill was reviewed by DFS, and they were opposed to some of the provisions which were mentioned in SEN. AKLESTAD'S introduction.

REP. TOOLE asked the same question of Hank Hudson, Director of DFS. Mr. Hudson said he had not seen the amendment but understands that it required that a person be charged with a crime within a "certain number of days." He added this was, in some form, part of SB 41, and the DFS opposed it at that time. One of the reasons DFS opposed this was because it would stifle one of the vehicles that the DFS uses to keep families together: programs in which the family agrees to cooperate. The only due course would be the alternative to file charges.

REP. TOOLE asked Mr. Hudson what impact this amendment would have on DFS. Mr. Hudson asserted that it would be a significant impact on the DFS, courts, and the attorneys. Every case involving abuse is considered a criminal case, and it will change the nature of the DFS system.

REP. RANDY VOGEL referred to page 5, lines 19-24, and asked SEN. AKLESTAD if he had ever been present during the course of an interview with a child in a neglect or abuse situation. SEN. AKLESTAD said he has never had the opportunity. He mentioned that it is difficult to sit in one of these interviews. He tried, through the courts, to view videotaping of an interview and was not able to do so. He said these are "in-house" operations.

REP. VOGEL said that he has had to interview neglected and abused children, and they are very fragile; he wondered why, if they're being videotaped, there should be a third person in the room. SEN. AKLESTAD said many times, one of the parents or both parents are videotaping the interview; this is why it may be necessary to have a third party person in the room to make sure the appropriate questions are being asked. SEN. AKLESTAD thinks that a professional needs to ask professional questions without getting involved with the parents and the child. He said that the problem with not having a professional third party is that videotape is so limited and protected.

REP. SCOTT MCCULLOCH said he has been teaching for ten years and he has been involved in situations where he knows parents neglect and abuse their children. Although he understands how a third person may be necessary in many of these cases, he also knows

that too many adults in a room, especially strangers, could confuse and scare children. He asked Mr. Hudson how he felt about that and the entire bill. Mr. Hudson said DFS is comfortable with the bill, and the requirement to notify families within four hours, or as soon as possible, is absolutely necessary. The change in the standard is a slightly higher standard, which is acceptable. The third party issue is one which has generated the most controversy. DFS is not opposing that, but representatives from DFS have interviewed third-party professionals and parents who have been in this situation. Most had given the same answer - that children are scared already, and the more people in the room, the harder it will be for children to talk. It is DFS's responsibility to find that third party; if parents don't trust DFS now, it will be difficult to find a third party who will be trusted by the parents.

Mr. Hudson stated that DFS doesn't discuss its cases publicly, and it doesn't bring cases before the legislature because of standards of confidentiality. On the other hand, DFS wants to improve and do a better job; therefore, DFS doesn't oppose the bill.

Closing by Sponsor:

SEN. AKLESTAD said SB 23 strengthens the law for people who have been wrongfully accused of child abuse. He believes it is a step in the right direction. When dealing with criminal law, a person is innocent until proven guilty. In this area, you are guilty until proven innocent, and SEN. AKLESTAD is not sure that is right, even under the realm of criminal law. The purpose of this bill is to try to subject some reasonableness into the statute. It protects the parent, children and still allows DFS to do its job in a reasonable manner.

HEARING ON SB 368

Opening Statement by Sponsor:

SEN. STEVE DOHERTY, Senate District 20, Great Falls, said this bill agrees to the partial withdrawal of the Confederated Salish and Kootenai Tribes to Public Law 280 jurisdiction on the Flathead Reservation. He said that SB 368 represents an historic mark in this state's relationship with the Confederated Salish and Kootenai Tribes (CSKT).

SEN. DOHERTY explained that the idea of retrocession is to step back from concurrent state jurisdiction and to allow tribal jurisdiction. Civil matters are described on page 2, lines 1-8 of the bill. The bill would allow the Attorney General and the Governor, in the case of criminal matters, to negotiate with the tribes for an agreement. In the case of civil matters, the Governor and the tribes would negotiate and try to come to an

agreement.

Proponents' Testimony:

Michael T. Pablo, Chairman, Confederated Salish & Kootenai Tribes, presented written material. EXHIBIT 16

Majel Bird, Lead Prosecuting Attorney, Confederated Salish & Kootenai Tribes, stated that SB 368 would allow the tribes to assume criminal, misdemeanor jurisdiction over all Indians on the reservation. According to the Montana Uniform Trial Report, this would be approximately 400 to 450 new misdemeanor cases. Last year the arrests in Lake County were approximately 930, of which 438 were Native American people; therefore, they are looking at increasing the current case load in their tribal court by 400 to 450 new cases.

To give the committee an idea of how effectively the tribes can assume this new case load, Ms. Bird gave an overview of the tribal court. In 1992, there were 98 criminal cases, 31 child protective cases and 58 juvenile delinquency petitions. In the handling of criminal cases in the Salish & Kootenai Tribal court, there is no distinction between Indian and non-Indian victims. The court has two prosecuting tribal attorneys, two attorneys who are defenders, an attorney chief judge, and an attorney of the appellate panel; therefore, the tribe has professional people from the bottom to the top.

Law enforcement consists of 11 tribal officers, nine of which are post-certified and eligible for cross-deputization. There is a full-time probation officer. During this past year there were times when the tribe always had three officers on duty, compared to Lake County, which had only one officer on duty at night. The jail is capable of holding 22 prisoners, and it averages from 5 to 8 prisoners per day.

Ms. Bird referred to a letter from the Missoula County Commissioners supporting this bill; they feel that the tribe has made concessions to accommodate local concerns by taking felony jurisdiction out of the bill and only asking for partial retrocession of misdemeanor crimes.

Ms. Bird said she believes due process has been a very big issue for Indian people. In the tribal system, every defendant has a court appearance within 48 hours, consistent with federal law under the 1992 Rider case. All of the people have representation at their initial appearance unless they are arrested on a weekend, and then they will have representation on the following Monday morning. Ms. Bird noted that SEN. BILL YELLOWTAIL, Senate District 50, Wyola, has been compiling statistics for the Tribal Legal Department; some of his statistics show that people have sat in the Lake County Jail for 27 days before they ever had an opportunity to see a public defender.

Ms. Bird discussed the services available for her people in terms of rehabilitation. Ninety percent of the cases run through their judicial system are alcohol-related. This is a problem specific to tribal populations. The CSKT provides community services that are culturally relevant and designed specifically to combat this problem. There is a tribal alcoholism program, one of the biggest programs for an Indian tribe in the nation; there is a tribal mental health program; alternative sentencing through the adult probation officer which includes house arrest and community service.

One of the main issues, according to **Ms. Bird**, is that the tribe can provide more effective restitution to a victim than Lake County can. When a tribal judge orders restitution against a defendant, the Salish and Kootenai tribe attorney can use that judgement to attach the defendant's tribal/county dividend. The Salish and Kootenai tribal people all received \$1,200 in per capita dividends per year. Therefore, if restitution is necessary, the dividend can be attached. This cannot be done without a tribal court order.

Ms. Bird discussed briefly the Salish and Kootenai Tribe code. The criminal sections were adopted in 1982, and it is revised as necessary. Out of this code in 1982, the tribe used a lot of the same language use in the Montana Code Annotated (MCA) and adopted the 1970 revision of the laws. The tribal laws are very similar to MCA laws. The major difference is that penalties are restricted by the Indian Civil Rights Act to apply \$5,000 and one year in jail. In criminal activity, the Indian Civil Rights Act limitation does not limit the CSKT; the tribe currently has people who are in tribal jail for three years.

A proposed law enforcement agreement was submitted to the tribes by the county, the main thrust of which was to only transfer misdemeanor jurisdiction to the trials. That is exactly what the CSKT is asking for now. They are not asking for anything more than misdemeanor jurisdiction over Indian people on the reservation.

In closing, **Ms. Bird** said that the Supreme Court has stated that nothing in the act was meant to undermine or destroy existing tribal governments. Without partial retrocession, the CSKT continues to be restricted from full, effective self-government.

Jack Worshow, Probation Officer for CSKT, stated that there was no probation officer in place when he was hired. He implemented the probation officer program as well as a restitution program.

Joe MacDonald, private citizen, presented written testimony.
EXHIBIT 17

Joseph Mazurek, Montana Attorney General, stated he believed it appropriate to comment on this legislation since the state is charged with responsibility under this act to consult with

Governor Racicot until an agreement is reached. He said he and Governor Racicot believe that SB 368 makes a reasonable attempt to address the issue. The Department of Justice is committed to working with local government to ensure that they are protected in that process. The Department of Justice believes it is important that government consult with affected parties, including local government, before entering into agreements.

Attorney General Mazurek emphasized that negotiations and their subsequent agreements are much preferable to litigation and disputes such as these, and he also believes that holds true in water negotiations, gaming, taxation and other matters. He believes that this legislation contemplates those sort of discussions, and he pledged everyone's cooperation beyond what is required of the bill in working with the Governor to try to reach agreement. This proposal is a much more reasonable approach from what was offered in 1991, and he asked the committee for its very serious consideration.

The following individuals support SB 368:

REP. FLOYD "BOB" GERVAIS, House District 9, Browning
REP. JAY STOVALL, House District 98, Billings
Brenda Desmond, Indian Law Clinic, Missoula
Martina Savich, Board of Directors, Montana Human Rights Network
Board of County Commissioners, Missoula County. EXHIBIT 18

Opponents' Testimony:

Mark E. Nelson, private citizen, Ronan, presented written testimony. EXHIBIT 19

REP. ERVIN DAVIS, House District 53, Charlo, expressed his opposition to SB 368 because this legislation "ought not to interfere with local problems and people's differences." He said that most people don't understand the jurisdictional issues involved, either with or without retrocession. REP. DAVIS affirmed that one of the biggest problems is interracial marriages; if retrocession does occur, it will cause divisiveness within individual households.

Mike Hutchin, Chairman, Lake County Board of Commissioners, presented written testimony. EXHIBIT 16

Dave Stipe, newly elected Commissioner, Lake County Board of Commissioners, said that one thing not being worked at well is cooperation. While there is a Cooperative Law Enforcement Agreement, the people of the reservation and Lake County are not cooperating. EXHIBIT 20 The Flathead Reservation is very integrated racially, and a substantial portion of tribal members have non-tribal members in their immediate family. This is not a case of two groups being functionally separate. This makes it very impractical for two separate law enforcement agencies to

function completely independent of each other. **Mr. Stipe** believes there should be a cooperative effort by both sides with open communications. He would like to see the people of Lake County live and work side by side with minimal amount of tension.

Joe Gelrich, Lake County Sheriff and Coroner, said that **Mr. Gelrich** promised **SEN. DOHERTY** two years ago that Lake County would do the best it could to work out an agreement so this legislation would not be brought up again in the 1993 legislature. There have been three meetings over the past two years, one of which was with the Attorney General's office. In 1991, leaders of Lake County drafted a proposed agreement (**EXHIBIT 20**) that addressed all concerns addressed two years ago. Since then, there has been no response to this proposal. **Mr. Gelrich** wished the committee could have heard testimony two years ago or to have heard the testimony of **Doris Poppler, U.S. Attorney** in which she said the hardest part of her job was explaining to people on the other reservations why their crimes were not prosecuted. She said the CSKT had the best system of any reservations in Montana. **Mr. Gelrich** asked the committee to give Lake County a chance to improve on its system.

Mitchell Young, Deputy County Attorney, Lake County, said this bill is a preferable commitment than the 1991 proposal. He noted, however, that what this current bill does not have is any kind of concrete details for a grievance.

Arthur Barber, Bureau of Indian Affairs, stated that he has worked for over 100 tribes during his career. Those tribes have either had their own tribal police or let the Bureau of Indian Affairs provide it. Their level of services range from totally inadequate to very marginal - nothing would pass for adequate law enforcement services, both in the law enforcement area or the judicial side. Most of the problems obtaining law enforcement, however, was from political interference and the federal government not providing proper funding or staffing. **Mr. Barber** feels that the CSKT has the one of the best law enforcement offices and judicial systems in the country.

Glen Frame, private citizen, Former Lake County Sheriff and Coroner, Lake County, stated that he fully agrees that the tribe has good police officers, and he believes their criminal justice system is very good. He objected to the method by which this is being brought up; he doesn't believe this is a legislative act issue, and the legislature should not be involved. **Mr. Frame** said that most of the people living on the reservation and Lake County don't really understand partial retrocession and wouldn't care anyway. The only people who do care should be negotiating the law enforcement agreement. The present agreement is the very best that can be brought about; if it needs to be fine tuned, then he agreed to fine tune it. **EXHIBIT 21**

Questions From Committee Members and Responses:

REP. VIVIAN BROOKE asked **Attorney General Mazurek** questions regarding his work with the Water Compact Commission as a Senator, whether he worked with tribal, state and federal jurisdictions and involved county government. **Attorney General Mazurek** said the counties have been involved, and it has been the practice of the Reserve Water Compact Commission to visit the affected area and discuss negotiations. They encourage local people to follow the negotiations, to attend sessions and to participate in building negotiation strategies.

Attorney General Mazurek stated that this is a sovereign-to-sovereign, government-to-government relationship, and the committee's job and **Attorney General Mazurek's** job, as elected officials of the state of Montana, is to ensure that the voice of local government and local citizens are taken into account in those discussions.

REP. ANGELA RUSSELL asked **Mr. Smith, attorney, CSKT**, to address what treaty negotiations entail. **Mr. Smith** said the final concept of state-tribal relations is that it is a government-to-government relationship. Throughout the history of this government, under the U.S. Constitution, Indian people are unique among this country in that they have a political identity, and that political identity is their government. The CSKT is not just a racial minority; it is a sovereign government which entered into agreements with the federal government before the state or counties existed. He explained that four counties touch the Flathead Reservation, but of them are exclusively on the Flathead Reservation. There are four political subdivisions of the state to deal with.

REP. RUSSELL asked what kinds of savings retrocession will effect. **Mr. Smith** said the fiscal note attached to the full retrocession bill in the 1991 session did not quantify the savings, but it did mention there would be savings to the county and state. Based on **Mr. Smith's** analysis of the Indian percentage in the Lake County jail, approximately 50 percent of those inmates, on average, are Indian; most of those misdemeanor cases would reduce the counties' costs significantly. In terms of civil areas, such as juvenile delinquency, the state institutions would still pick up the costs of those cases.

REP. RUSSELL noted her concern about the disparity in numbers of Indian people within the prison system. She asked why Lake County sends so many Indian people to prison compared to other counties in the state. **Sheriff Gelrich** said that the main problem with tribal members in the Lake County jail is their addiction to alcohol. **REP. RUSSELL** asked **Sheriff Gelrich** if this problem is particular to the Salish and Kootenai Tribe, to which **Sheriff Gelrich** said it is not. He added that it is not a racial problem but a tremendous problem with alcohol and drugs.

REP. RUSSELL said she recognizes that Indian people have a problem with alcohol but that counties with larger Indian populations than Lake County do not send this number of people to prison. Ms. Bird reminded the committee that on the other Montana reservations with federal jurisdiction, those people are sent to federal prisons. There are about five to eight people in jail in Lake County on the average per day; as she testified before, the Salish and Kootenai Reservation has programs set up specifically to deal with alcohol problems.

REP. TOOLE asked Sheriff Gelrich why Lake County law enforcement objects strongly to the bill when it is almost identical to the cooperative agreement proposal in terms of limiting tribal prosecution to misdemeanors with no felonies. Sheriff Gelrich said this bill is just a "foot in the door" to throw out the PL 280 concept. A felony is a felony; he believes that if a person is convicted of a felony, he should go to prison. Under this bill, there are certain felonies being negotiated through Governor Racicot, and he believes they should continue to go through state court.

REP. TOOLE stated that opponents have commented about the quality of the tribe's judicial and law enforcement systems. He doesn't think that's a concern of the Sheriff and asked his opinion. Sheriff Gelrich said he believes the tribe can handle the misdemeanors, but they should not be handling felony cases.

REP. TOOLE noted that one of the things included in the proposal is that Lake County officers who are post-certified would be appointed as tribal officers, and tribal officers that are post-certified would be appointed as Lake County deputies. He asked Sheriff Gelrich whether that is in place now. Sheriff Gelrich said that is not in place now and that no one wants that to take place.

REP. TOOLE said that, basically, everything in this bill is acceptable to Sheriff Gelrich and his staff, except that they want the county, not the state, to control certain jurisdictions. Sheriff Gelrich pointed out that in the agreement, anything that looks like it may be a felony is discussed by the county attorney's office and the tribal legal department; they decide what is and what is not categorized as a misdemeanor or felony and whether these convictions are going to be handled in tribal court or state court.

REP. TOOLE said there has not been an agreement on some of these subsidiary issues to this point; he wondered whether, if this bill is passed, there is any reason why Lake County can't reach an agreement on these subsidiary issues once the basic print work is in place. Sheriff Gelrich said he didn't want to lose any portion of the system now in place. He indicated that there must be some agreement as to how the Indian's misdemeanors would be handled.

REP. VOGEL addressed his questions and comments to Jack Moser, probation officer. REP. VOGEL referred to a statement by Ms. Bird that this bill is necessary to maintain the cultural relevancy and rehabilitation of the tribe. Mr. Moser said this bill is not necessary. REP. VOGEL also asked what effect the bill would have on case loads, jail expansion and costs. Mr. Moser said it appears it would double the case loads, but the costs would still be less than if the cases were handled by the federal government.

REP. CLARK said that Mr. McDonald's testimony was that Lake County would save money in misdemeanor crimes, court care and prison costs if the bill passes; he asked Mr. McDonald to explain. Mr. McDonald said the county would not have to board those prisoners anymore and would not have hearings in the Justice of Peace court. From that answer, REP. CLARK assumed the county is saving money and shifting the burden to the tribe. Mr. McDonald agreed with REP. CLARK.

REP. LIZ SMITH asked Mr. Pablo why he was not able to respond to the Lake County commissioners in regard to the last two years' communications from them. Mr. Pablo said he did return a response in October 1991. He said the agreement has not changed since then. The point of this bill is misdemeanors, and everything else has to be negotiated. The Governor and the Attorney General accepted those negotiations.

Closing by Sponsor:

SEN. DOHERTY affirmed that the CSKT has a government-to-government negotiation with the State of Montana, and it is the State's job to determine the best policy. He mentioned the question regarding the shifting of costs and said that operational charges would come from the CSKT.

Regarding federal issues, SEN. DOHERTY said there's a new administration in Washington, D.C.; if opponents don't want local and state input and if they take this bill to Washington, it's going to be a lot harder. What's being proposed is something that's prudent, cautious, and something that will involve a lot of negotiation.

HEARING ON SB 4, SB 5, SB 242 Combined

Opening Statement by Sponsor:

SEN. JIM BURNETT, Senate District 42, Luther, reviewed these three bills which include constitutional ballot issues. EXHIBITS 22 through 25

SB 4: Amending the Montana Constitution to transfer the authority to determine who may be admitted to the State Bar from

the Montana Supreme Court to the legislature. **SEN. BURNETT** read a letter from a constituent who has been denied the Montana State Bar examination by the Supreme Court even though he took and passed the California Bar examination the first time. The California Bar examination is considered one of the toughest in the country, but the Supreme Court has changed the rules and made it impossible for this person to take the examination for the Bar in Montana.

SB 5: Amending the Montana Constitution to abolish the requirement that a Supreme Court justice or District Court judge be admitted to the practice of law in Montana prior to the date of appointment or election. **SEN. BURNETT** said this would allow any person of knowledge, character and capability to be eligible to run for judge.

SB 242: Amending the Montana Constitution concerning the Judicial Standards Commission. **SEN. BURNETT** said this calls for the removal of a judge by a trial procedure.

Proponents' Testimony:

Jerry O'Neill, private citizen, Kalispell, spoke on SB 5. He mentioned that many of our best state and national leaders did not have law degrees, i.e. Abraham Lincoln and Harry Truman never went to law school but were otherwise trained and prepared to take on the responsibility as a judge. It is **Mr. O'Neill's** opinion that if only attorney's are elected as judges, it doesn't give persons, who may be just as experienced in law as attorneys, the chance to run for a judicial position.

Hugh Giuseppe, private citizen, testified in support of SB 5. He said he does not believe there is enough access to courts for common people. **Mr. Giuseppe** also believes that lawyers are not the only "capable human beings" to serve on the Supreme Court. In essence, this bill is saying that every homemaker, doctor, teacher, welder, and accountant in a constituent's voting district is not capable to determine who they want to interpret the laws by which they, themselves, are governed. He believes people have the right to vote for whomever they want to be a judge, whether that person has a law degree or not. **Mr. Giuseppe** said special interest groups should not decide who citizens can vote for.

George Stapleton, private citizen, expressed his distress about this bill. He reprimanded both the Senate Judiciary and House Judiciary committees for passing amendments to which he was opposed.

Arwood Stickney, private citizen, spoke in support of SB 4, SB 5, and SB 242. He brought a copy of the Bill of Rights to the committee and said 99 percent of laws are taken from the Bill of Rights.

Pascal Redfern, owner of a paralegal business, Missoula, stated he supports SB 4, SB 5, and SB 242. Many people cannot afford attorneys, and paralegals provide the services most people need. People who want to run for judicial branch of office cannot do so because of the Constitution. He would like the people to decide in elections who has the working knowledge to be judges.

John Rice, private citizen, said he supports SB 242 because he believes the general public needs better access to the court system. He also added that many people cannot afford an attorney and that seeking legal advice from a paralegal is just as good.

Opponents' Testimony:

Vicki Soderberg, Executive Director, Montana Paralegals Association, spoke in opposition to SB 242. She said the proponents are making some assumptions about requirements for the Bar that are not true. She said the bill doesn't indicate how changing the oversight structure of the Bar from the Supreme Court to the legislature will assist in providing quality, low-cost legal services.

Patrick Chenovick, Supreme Court Administrator, spoke briefly on SB 4 and SB 5. He said that the current administration of the Bar exam maintains the competency of those individuals licensed. Practicing law - whether paralegal, lawyer or judge - requires qualifications. He urged the committee not to pass this bill.

Informational Testimony: None

Questions From Committee Members and Responses: None

Closing by Sponsor: SEN. BURNETT will close on March 17th as the committee's presence was required on the House floor.

EXECUTIVE ACTION ON SB 70

Motion/Vote: REP. BROWN MOVED SB 70 BE CONCURRED IN. Motion carried 17-1 with REP. WHALEN voting no. REP. BROOKE will carry the bill on the House floor.

EXECUTIVE ACTION ON SB 229

Motion/Vote: REP. BROWN MOVED SB 229 BE CONCURRED IN. Motion carried unanimously 18-0. Rep. Larson will carry the bill on the House floor.

EXECUTIVE ACTION ON SB 238

Motion/Vote: REP. WHALEN MOVED SB 238 BE CONCURRED IN. Motion carried unanimously 18-0. REP. VOGEL will carry the bill on the House floor.

EXECUTIVE ACTION ON SB 124

Motion: REP. WYATT MOVED SB 124 BE CONCURRED IN. Motion carried unanimously 18-0. REP. TOOLE will carry the bill on the House floor. Bill scheduled for the consent calendar.

EXECUTIVE ACTION ON SB 251

Motion: REP. SAYLES MOVED SB 251 BE CONCURRED IN.

Discussion:

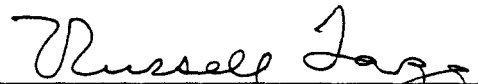
Motion: REP. TASH moved an amendment to strike the effective date upon SEN. TOWE's request. See Standing Committee Report.

Vote: The question was called on REP. TASH's amendment. Motion carried unanimously 18-0.

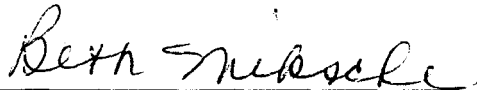
Vote: REP. TOOLE MOVED THAT SB 251 BE CONCURRED IN AS AMENDED. Motion carried unanimously 18-0. REP. TOOLE will carry the bill on the House floor.

ADJOURNMENT

Adjournment: 12:30 p.m.



REP. RUSSELL FAGG, Chairman



BETH MIKSCHKE, Secretary

RF/bcm

HOUSE OF REPRESENTATIVES

Judiciary

COMMITTEE

ROLL CALL

DATE

3-16-93

| NAME | PRESENT | ABSENT | EXCUSED |
|------------------------------|---------|--------|---------|
| Rep. Russ Fagg, Chairman | ✓ | | |
| Rep. Randy Vogel, Vice-Chair | ✓ | | |
| Rep. Dave Brown, Vice-Chair | ✓ | | |
| Rep. Jodi Bird | | | ✓ |
| Rep. Ellen Bergman | ✓ | | |
| Rep. Vivian Brooke | ✓ | | |
| Rep. Bob Clark | ✓ | | |
| Rep. Duane Grimes | ✓ | | |
| Rep. Scott McCulloch | ✓ | | |
| Rep. Jim Rice | ✓ | | |
| Rep. Angela Russell | ✓ | | |
| Rep. Tim Savles | ✓ | | |
| Rep. Liz Smith | ✓ | | |
| Rep. Bill Tash | ✓ | | |
| Rep. Howard Toole | ✓ | | |
| Rep. Tim Whalen | ✓ | | |
| Rep. Karyl Winslow | ✓ | | |
| Rep. Diana Wyatt | ✓ | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |

HR:1993

wp.rollcall.man

CS-09

HOUSE STANDING COMMITTEE REPORT

March 16, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that Senate Bill 251 (third reading copy -- blue) be concurred in as amended .

Signed: Russ Fagg

Russ Fagg, Chair

And, that such amendments read:

Carried by: Rep. Toole

1. Title, line 9.

Following: ";"

Insert: "AND"

2. Title, line 10.

Strike: "; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE"

3. Page 4, lines 9 and 10.

Strike: section 3 of the bill in its entirety

-END-

Committee Vote:

Yes 15, No 2.

591627SC.Hpf

HOUSE STANDING COMMITTEE REPORT

March 16, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that
Senate Bill 70 (third reading copy -- blue) be concurred in .

Signed: Russell C. Fagg
Russ Fagg, Chair

Carried by: Rep. Brooke

Committee Vote:
Yes 17, No 1.

591605SC.Hpf

HOUSE STANDING COMMITTEE REPORT

March 16, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that
Senate Bill 124 (third reading copy -- blue) be concurred in
and be placed on consent calendar .

Signed: Russ C. Fagg

Russ Fagg, Chair

(Carried by: Rep. Toole, if necessary)

Committee Vote:
Yes 15, No 0.

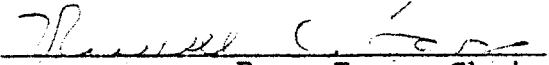
591606SC.Rpf

HOUSE STANDING COMMITTEE REPORT

March 16, 1993

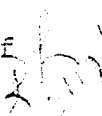
Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that
Senate Bill 238 (third reading copy -- blue) be concurred in .

Signed: 
Russ Fagg, Chair

Carried by: Rep. Vogel

Committee Vote:
Yes 15, No 2.

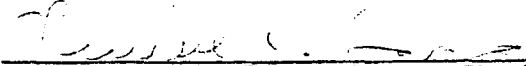
591609SC.Hpf 

HOUSE STANDING COMMITTEE REPORT

March 16, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that
Senate Bill 229 (third reading copy -- blue) be concurred in .

Signed: 
Russ Fagg, Chair

Carried by: Rep. Larson

Committee Vote:
Yes 15, No 8.

591611SC.Rpf

HOUSE OF REPRESENTATIVES

Judiciary

COMMITTEE

ROLL CALL VOTE

DATE 3-16-93 BILL NO. SB 251 NUMBER 18

MOTION: Motion to pass carries unanimously 18-0

| NAME | AYE | NO |
|------------------------------|-----|----|
| Rep. Russ Fagg, Chairman | ✓ | |
| Rep. Randy Vogel, Vice-Chair | ✓ | |
| Rep. Dave Brown, Vice-Chair | ✓ | |
| Rep. Jodi Bird | ✓ | |
| Rep. Ellen Bergman | ✓ | |
| Rep. Vivian Brooke | ✓ | |
| Rep. Bob Clark | ✓ | |
| Rep. Duane Grimes | ✓ | |
| Rep. Scott McCulloch | ✓ | |
| Rep. Jim Rice | ✓ | |
| Rep. Angela Russell | ✓ | |
| Rep. Tim Sayles | ✓ | |
| Rep. Liz Smith | ✓ | |
| Rep. Bill Tash | ✓ | |
| Rep. Howard Toole | ✓ | |
| Rep. Tim Whalen | ✓ | |
| Rep. Karyl Winslow | ✓ | |
| Rep. Diana Wyatt | ✓ | |
| | | |
| | | |
| | | |

HOUSE OF REPRESENTATIVES

Judiciary COMMITTEE

ROLL CALL VOTE

DATE 3-16-93 BILL NO. SB 124 NUMBER 18

MOTION: Motion to pass carries unanimously 18-0

| NAME | AYE | NO |
|------------------------------|-----|----|
| Rep. Russ Fagg, Chairman | ✓ | |
| Rep. Randy Vogel, Vice-Chair | ✓ | |
| Rep. Dave Brown, Vice-Chair | ✓ | |
| Rep. Jodi Bird | ✓ | |
| Rep. Ellen Bergman | ✓ | |
| Rep. Vivian Brooke | ✓ | |
| Rep. Bob Clark | ✓ | |
| Rep. Duane Grimes | ✓ | |
| Rep. Scott McCulloch | ✓ | |
| Rep. Jim Rice | ✓ | |
| Rep. Angela Russell | ✓ | |
| Rep. Tim Sayles | ✓ | |
| Rep. Liz Smith | ✓ | |
| Rep. Bill Tash | ✓ | |
| Rep. Howard Toole | ✓ | |
| Rep. Tim Whalen | ✓ | |
| Rep. Karyl Winslow | ✓ | |
| Rep. Diana Wyatt | ✓ | |
| | | |
| | | |
| | | |

HOUSE OF REPRESENTATIVES

Judiciary

COMMITTEE

ROLL CALL VOTE

DATE 3-16-93 BILL NO. SB 238 NUMBER 18

MOTION: Motion to pass carries unanimously
18-0

| NAME | AYE | NO |
|------------------------------|-----|----|
| Rep. Russ Fagg, Chairman | ✓ | |
| Rep. Randy Vogel, Vice-Chair | ✓ | |
| Rep. Dave Brown, Vice-Chair | ✓ | |
| Rep. Jodi Bird | ✓ | |
| Rep. Ellen Bergman | ✓ | |
| Rep. Vivian Brooke | ✓ | |
| Rep. Bob Clark | ✓ | |
| Rep. Duane Grimes | ✓ | |
| Rep. Scott McCulloch | ✓ | |
| Rep. Jim Rice | ✓ | |
| Rep. Angela Russell | ✓ | |
| Rep. Tim Sayles | ✓ | |
| Rep. Liz Smith | ✓ | |
| Rep. Bill Tash | ✓ | |
| Rep. Howard Toole | ✓ | |
| Rep. Tim Whalen | ✓ | |
| Rep. Karyl Winslow | ✓ | |
| Rep. Diana Wyatt | ✓ | |
| | | |
| | | |
| | | |

HOUSE OF REPRESENTATIVES

Judiciary

COMMITTEE

ROLL CALL VOTE

DATE 3-16-93 BILL NO. SB 229 NUMBER 18

MOTION: Motion to pass carries 18-0

| NAME | AYE | NO |
|------------------------------|-----|----|
| Rep. Russ Fagg, Chairman | ✓ | |
| Rep. Randy Vogel, Vice-Chair | ✓ | |
| Rep. Dave Brown, Vice-Chair | ✓ | |
| Rep. Jodi Bird | ✓ | |
| Rep. Ellen Bergman | ✓ | |
| Rep. Vivian Brooke | ✓ | |
| Rep. Bob Clark | ✓ | |
| Rep. Duane Grimes | ✓ | |
| Rep. Scott McCulloch | ✓ | |
| Rep. Jim Rice | ✓ | |
| Rep. Angela Russell | ✓ | |
| Rep. Tim Sayles | ✓ | |
| Rep. Liz Smith | ✓ | |
| Rep. Bill Tash | ✓ | |
| Rep. Howard Toole | ✓ | |
| Rep. Tim Whalen | ✓ | |
| Rep. Karyl Winslow | ✓ | |
| Rep. Diana Wyatt | ✓ | |
| | | |
| | | |
| | | |

HOUSE OF REPRESENTATIVES

Judiciary

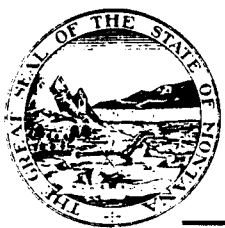
COMMITTEE

ROLL CALL VOTE

DATE 3-16-93 BILL NO. SB 70 NUMBER 18

MOTION: Motion to pass carries 17-1

| NAME | AYE | NO |
|------------------------------|-----|----|
| Rep. Russ Fagg, Chairman | ✓ | |
| Rep. Randy Vogel, Vice-Chair | ✓ | |
| Rep. Dave Brown, Vice-Chair | ✓ | |
| Rep. Jodi Bird | ✓ | |
| Rep. Ellen Bergman | ✓ | |
| Rep. Vivian Brooke | ✓ | |
| Rep. Bob Clark | ✓ | |
| Rep. Duane Grimes | ✓ | |
| Rep. Scott McCulloch | ✓ | |
| Rep. Jim Rice | ✓ | |
| Rep. Angela Russell | ✓ | |
| Rep. Tim Sayles | ✓ | |
| Rep. Liz Smith | ✓ | |
| Rep. Bill Tash | ✓ | |
| Rep. Howard Toole | ✓ | |
| Rep. Tim Whalen | | ✓ |
| Rep. Karyl Winslow | ✓ | |
| Rep. Diana Wyatt | ✓ | |
| | | |
| | | |
| | | |



MONTANA STATE SENATE

SENATOR JAMES H. "JIM" BURNETT
SENATE DISTRICT 42
HOME ADDRESS:
P.O. BOX 4460
LUTHER, MONTANA 59051
PHONE: (406) 446-2489

HELENA ADDRESS
CAPITOL STATION
HELENA, MONTANA 59620
PHONE: (406) 444-4800

EXHIBIT 1
DATE 3-16-93
SB 23

PRESENTATION IN SUPPORT SENATE BILL 23

I support Senate Bill 23 as an effort to focus attention on the Department of Family Services.

This agency has maneuvered themselves into positions of having power to take children without any evidence and without any appeal. We have discovered that today's family has no civil rights, as far as child abuse legislation and enforcement is concerned.

A whole ideology of "child advocacy" has developed, based not on facts, but assumptions. Nothing in the law guarantees your protection from a malicious accusation of child abuse or that your particular family life style is objectionable to someone who for reasons of their own, call DFS or law enforcement complaining your child is being abused.

"Power tends to corrupt and absolute power corrupts absolutely". The case worker has absolute power. Unfortunately, the department operates under the cloak of secrecy and enforced by the courts.

The department functions under both civil and criminal law. Their action under civil law requires the family to prove their innocence or "preponderance of the evidence". I believe that if a child is removed from the family, it must be under criminal law

page 2 - Senate Bill 23

which places the burden of proof on the Department "beyond a reasonable doubt."

Under criminal law, the accused shall have the right to face the accuser and have trial by jury which is being denied under civil law.

I offer an amendment to Senate Bill 23 that if criminal charges are not filed within twenty days of emergency placement, the child must be returned to the family and in all cases, an emergency placement of a child may not continue beyond sixty days.

I urge the acceptance of this amendment and passage of Senate Bill 23. It is essential that the family be placed on a level playing field with the Department of Family Services.

Amendments to Senate Bill No. 23
Third Reading Copy

Requested by Senator Burnett
For the House Judiciary Committee

Prepared by Eddy McClure
February 23, 1993

1. Title, line 14.

Following: "FACILILTY;"

Insert: "REQUIRING CRIMINAL CHARGES TO BE FILED AGAINST A PERSON
SUSPECTED OF SEXUAL ABUSE OR ENDANGERMENT PRIOR TO FILING A
PETITION FOR REMOVAL OF THE CHILD FROM THE HOME;"

2. Title, line 23.

Following: "41-3-301,"

Insert: "41-3-401,"

3. Page 8, line 12.

Following: "parents."

Insert: "Criminal charges must be filed against a person believed
by a county attorney, the attorney general, or an attorney
hired by the department to have sexually abused or
endangered a child. A person charged with sexual abuse or
endangerment is entitled to a jury trial.

(4) If criminal charges are not filed within 20 days of
emergency placement, the child must be returned to the home
unless clear and convincing evidence exists to support an
allegation that the child, if returned to the home, is in
imminent danger of being sexually abused or endangered by a
person in the home. If evidence of imminent danger exists, the
child may be removed from the home only for a period of time
sufficient to allow the development of the required criminal
complaint. In all cases, an emergency placement of a child may
not continue beyond 60 days without criminal charges being filed
against the person believed to have sexually abused or endangered
the child."

Renumber: subsequent subsection

4. Page 8, line 17.

Following: line 16

Insert: "Section 5. Section 41-3-401, MCA, is amended to read:

"41-3-401. Abuse, neglect, and dependency petitions. (1)
The After filing criminal charges alleging sexual abuse or
endangerment against a person, the county attorney, attorney
general, or an attorney hired by the county welfare department or
office of human services ~~shall be~~ is responsible for filing all
petitions alleging abuse, neglect, or dependency. The county
attorney or attorney general, or an attorney hired by the county
welfare department or office of human services with the written
consent of the county attorney or attorney general, may require
all state, county, and municipal agencies, including law

enforcement agencies, to conduct such investigations and furnish such reports as may be necessary. Investigations as to financial status may not be made prior to the adjudicatory hearing provided for in 41-3-404.

(2) Upon receipt of a petition, the court shall set a date for an adjudicatory hearing on the petition. ~~Such petitions shall~~ Petitions must be given preference by the court in setting hearing dates.

(3) A petition alleging abuse, neglect, or dependency is a civil action brought in the name of the state of Montana. The rules of civil procedure ~~shall~~ apply except as ~~herein~~ modified in this part. Proceedings under a petition are not a bar to criminal prosecution.

(4) The parents or parent, guardian, or other person or agency having legal custody of the youth named in the petition, if residing in the state, ~~shall~~ must be served personally with a copy of the petition and summons at least 5 days prior to the date set for hearing. If ~~such a~~ person or agency cannot be served personally, the person or agency may be served by publication in the manner provided by the Montana Rules of Civil Procedure for other types of proceedings.

(5) In the event personal service cannot be made upon the parents or parent, guardian, or other person or agency having legal custody, the court shall appoint an attorney to represent the unavailable party ~~where~~ when in the opinion of the court the interests of justice require.

(6) If a parent of the child is a minor, notice ~~shall~~ must be given to the minor parent's parents or guardian, and if there is no guardian the court shall appoint one.

(7) Any person interested in any cause under this chapter has the right to appear.

(8) Except ~~where~~ when the proceeding is instituted or commenced at the request of the department ~~of family services~~, a citation ~~shall~~ must be issued and served upon a representative of the department prior to the court hearing.

(9) The petition ~~shall~~ must:

(a) state the nature of the alleged abuse, neglect, or dependency;

(b) state the full name, age, and address of the youth and the name and address of ~~his~~ the youth's parents or guardian or the person having legal custody of the youth;

(c) state the names, addresses, and relationship to the youth of all persons who are necessary parties to the action.

(10) The petition may ask for the following relief:

(a) temporary investigative authority and protective services;

(b) temporary legal custody;

(c) termination of the parent-child legal relationship and permanent legal custody with the right to consent to adoption; or

(d) any combination of the above or such other relief as may be required for the best interest of the youth.

(11) The petition may be modified for different relief at any time within the discretion of the court.

(12) The court may at any time on its own motion or the

motion of any party appoint counsel for any indigent party.""

{Internal References to 41-3-401:

41-3-404x 41-3-607x (2)}

Renumber: subsequent sections

EXHIBIT #2
DATE 3-16-93
1 SR-23

To Whom It May Concern:

Recently my husband of thirteen years accepted a plea bargain and was sentenced to nine years imprisonment for crimes he did not commit. He choose to take a plea bargain for several reasons. The first and most important reason is as follows:

1. He is not guilty, but felt that to expose and drag his children through the horrendous and traumatic drama of a courtroom setting was a vile and damaging psychological prospect. It still continues to be.
2. The attorneys, at the time, presented a completely different version of deferred imposition and the probation, to say nothing of its residual effects on his or my personal and professional lives.

It has become abundantly apparent that any damage to the children that could and should have been avoided by accepting a plea bargain was eliminated by Child Protective Service workers dragging the children to court. This only serves to feed his (C.P.S. workers) and the children's power and manipulation trips, creating undue stress and anger that may never be resolved, even in intense psychiatric therapy.

He now wishes to clear his name, reputation and repair his own psychological distress and receive justice and vindication that has so far been denied him.

I, myself, have stood back and apart from this whole process due to my horror, anger and amazement of the situation, all the while believing the whole disaster would be rectified and cleared up before it progressed to this level. I have been unwilling to allow anyone to trap me into any statement. The reasons are relatively unimportant except for these two:

1. I have allowed other people to hear and believe what they wanted at any given moment, because it was easier than fighting.
2. I have become pregnant and felt if I shut my mouth and adopted a "hands off" policy, C.P.S. and everyone else would leave me alone. I would be free to raise my baby alone and in peace. However, this does not appear to be a reasonable assumption. Therefore, I want to be on record instead of allowing everyone to accuse or assume what I actually think, said, wrote or believe.

I continue to believe and fear that Child Protective Service will view this letter as a justifiable cause to remove my baby at birth. This action (letter) is undertaken with the greatest apprehension and trepidation of retaliation by C.P.S. in Red Lodge.

Persons interested in or has been affected by
The Department of Family Services
Compiled by Senator Jim Burnett

Brian & Marion Bersuch
305 Hilger
Lewistown, MT 59457
538-7832

Sue Peterson
219 S. 8th Street
Hamilton, MT 59840
538-2347

Cathy Peterson
500 South 6th
Hamilton, MT 59804
363-3551-day/363-3545-nite

Fred Lark
KXLO Radio
Lewistown, MT
366-2015 / 538-3441

Gina Goodyear
2028 Custer
Billings, MT 59102
656-7112

Norm Kolpin
2012 Forest Park
Billings, MT 59102
656-6244

Sarah Lipscomb
120 W Kent
Missoula, MT 59801
721-1499

Cindy Williams
900 Abbey #428
Helena, MT 59601
College Student/442-4334

Dr. Dean Anderson
103 Corral Trail
Lewistown, MT 59450
538-8248

Morris & Sharon Miller
2212 4 Ave. No.
Great Falls, MT 59401
761-0482

Frank B. Fitzgerald
3000 Hallowell Lane
Billings, MT 59101
259-5866

Dennis D. Garrick
306 Highland Ave.
Plentywood MT 59254
765-1545

Kay Barth
P.O. Box 186
Alberton, MT 59820
626-4451-day/722-4473-nite

R.W. Heineman P.C.
P.O. Box 313
Wibaux, MT 59353
795-2427

Nikki and Carl Steele
406 5th Avenue N
Lewistown, MT
538-2347

Bernice Seminole
Lame Deer, MT

Ed Miller
902 Lane II
Powell, WY 82435
(307)-754-3858

Kenneth E. Haugen
1831 Stoddard
Missoula, MT 59802

Vikey Vincent
104
Fort Harrison, MT 59636
443-2730

Charles Squires
Norma Squires
P.O. Box 350061
Grantsdale, MT 59835

Dr. Dean Anderson
Profession Bldg.
Box 739
Lewistown, MT
538-8248 / 538-2419

Jerry Henderson
P.O. Box 5722
Helena, MT 59601
443-2730

John R. Foster
Mental Health Counselor
Box 581
Lewistown, MT 59457
538-2476

Mr. & Mrs. Gerald Bartow
217 Ave E
Roundup, MT 59072
323-2533

Bud & Vonnie Rist
410 No. 33rd St
Billings, MT 59101
252-2071

Richard Raugh
208 Caroline Rd
Kalispell, MT 59901
756-6529

Kenneth & Valinda Sandou
838 N 5th W
Missoula, MT 59802

Richard Clark
- Box 3566
Missoula, MT 59806
728-1475

M.W. Belledeaux Sr.
15420 Thayer Road #3
Lolo, MT 59847
273-0196

Valorie Etter
1814 Hauser
Helena, MT 59601
443-6331

Rosetta Latham
Rt #1
Park City, MT 59063
628-2991

Betty Esplin
1703 Pinyon Dr.
Laurel, MT 59044
628-8096

Jerry Henderson
P.O. Box 5722
Helena, MT 59604
443-2730

C.R. Owens
4235 McGillen
Red Lodge, MT 59068.
446-1294

Pauline Adamson
124 S. Platt
Red Lodge, MT 59068
446-3933

Pascal Red Firm
P.O. Box 3228
Missoula, MT 59806

John & Eve Fisher
RR 1, Box 4
Joliet, MT

Sandra Foster
P.O. Box 745
Absarokee, MT
328-4804

Jerry O'Neil
202 Helena Flat Road
Kalispell, MT 59901
752-8903

Bob & Yvonne Morrissey
3208 Maser Dome Road
Silesia, MT 59041

Marcus Damian (formerly of Red
Lodge)
3030 Market St.
Sand Diego, CA 92101
(619)-236-0994

contacts re:DFS

January 27, 1992

Sen. Jim Burnett
Sen. Delwyn Gage
Sen. Gary Akelstad
The Legislature 1993
Helena, Montana

Dear Senators:

It is getting closer to the time that you will be passing some serious bills in regard to the Department of Family Services, social workers, department heads and anyone involved in the system.

We feel very important pieces of evidence need to be done, namely video tapes, doctor's reports, any and all interviews and evaluations done by doctors, social workers and counselors. All this information needs to be obtained in the presence of the parent the child is living with or an attorney representing the family before any TIA investigation or treatment agreement is started. These reports should all be given to the parent or attorney upon request. If in fact a foster home does not want the parents to know where a child is, they can obtain a court order stating so.

The social workers do feel they are God. They answer to no one. They steal your kids off the streets or school grounds without any kind of paperwork at all, and have to account to no one for their actions for at least 48 hours. In a mother's mind this is one of the most frightening situations you can put a family through. It has caused very serious problems, severe mental stress, borderline breakdowns, and in some cases even suicide. The public is protected from situations of illegal search and seizure, stopping a vehicle without probable cause, entering your home to search without a warrant, etc. Does confidentiality mean a way of getting around the legal or necessary paperwork?

Maybe if these problems are looked into and social workers made more accountable for their actions, the true purpose of the Department of Family Services, which is, getting the families back together, can be accomplished.

We hope and pray that you gentlemen will take into consideration all the information that has been presented to you from the families and parties that have been involved in these situations with social workers and do your very best to straighten these problems out.

Mrs. Gerald (Stub) Bartow

Mrs. Gerald (Stub) Bartow
217 4th Ave East
Roundup, MT 59072
Phone (406) 323-2533

Dear Editor:

"Do not withhold discipline from a child; if you punish him with the rod, he will not die."

Proverbs 23/13

Do you spank your child as a form of discipline? Have you ever slapped your child's hand to prevent them from touching something they are not supposed to?

According to law, you do not have the right to discipline your own child in this manner and may be convicted of "child abuse" if you do so. Absurd as it may seem, giving your child a good 'licken' for being naughty could result in a legal nightmare for your family.

As parents of two, we have been sending our children to daycare services for more than four years. Just recently in a local daycare our female child was seized by a lone male social worker and taken for investigation which included a physical examination and photographs taken of her privates.

This was done without our knowledge and we later became aware of the incident only because our second child began to cry on our way home from the daycare about how she was afraid that "they were going to take us away!"

Why had our two children been traumatized by interrogation and examination and been photographed by strangers? A red mark on our child's behind which was received by one swat from a flimsy four-inch long flat object used as a paddle.

Because of this we were accused of child abuse, threatened with imprisonment, the loss of our children, our privacy invaded, and our children traumatized. THE LAW SAYS WE CANNOT DISCIPLINE OUR CHILDREN. We are not ashamed of spanking our children and will continue to do so when their behavior warrants it.

Nikki & Carl Steel
Lewistown, Montana

(re-type of paper article: "Parents Beware" - Editorial)

EXHIBIT #6
DATE 3-16-93
XL SB-23

Exhibit #6
March 16, 1993
Senate Bill No. 23

Exhibit No. 6 is a taped interview with Carl and Nikki Steel at the KXLO station in Lewistown. The original is stored at the Historical Society at 225 North Roberts Street, Helena, MT 59620-1201. The phone number is 444-2694.

December 2, 1992

Senator James H. Burnett
P.O. Box 4460
Luther, Montana 59051

Senator Burnett:

I am writing to you in regard to the Montana Statute that governs child abuse, neglect and dependency.

I have been confronted with a false and unfounded allegation charging me with physical abuse against my wife and children. This allegation was made out of total malice. The Department of family services could not substantiate the allegation. However, my concern lies in the fact that there are numerous inequities involved in the investigative process as conducted by the Department of Family Services. This conduct is currently under legal advisement.

We are compelled to seek answers from our elected officials, especially those involved in the writing or the revamping of the statute as to why the Department of Family Services has been provided with the extraordinary power to invade the privacy of families with little regard to the Civil Rights Commitment.

I have been told by the Department of Family Services, that due to their policy, I am unable to receive information that is contained in their case file.

We have read and interpreted the contents of the Statute of concern and we would simply like to know why the Department of Family Services policy dictates over the Montana Statute. With so much emphasis placed on Civil Rights issues held within our present day standards, it is quite apparent that this undue power that our Montana legislators has provided the Department of Family Services is in its self a direct violation of the civil rights of any citizen, and could be and should be considered a violation on the part of the lawmakers involved in the making of this legislation.

We have conversed with many people that hold the same convictions that we do concerning this power. We are all of agreement that child and spouse abuse is a very serious problem in this country, and that they who inflict abuse should be dealt with in accordance with the penalties as perscribed by law. We also recognize the fact that although malacious allegations are made, the recipients of these allegations are expected to take and forget what some social worker has delivered to them, eventhough the charges are

OVER

indeed unfounded. We absolutely feel that it is time that someone with the self fortitude makes an honest and wholehearted effort to challenge the inequities contained in the Montana Statute that currently affords the Department of Family services the power that they now pocess. We do feel that the time is NOW!

As our elected official, we will certainly expect your reply to this correspondence concerning your attitude and what you may contemplate in this regard.

We are more than hopeful that the current statute can be challenged in our court system to reflect changes that will indeed provide our citizens with some civil rights..

It is absolutely unbelievable what the Department of Family Services are capable of doing to families because of their power and prestige.

Are we able to make an honest effort in regard to this issue?

I will patiently await your reply.

Respectively Yours,

Dennis D. Garrick

Dennis D. Garrick
306 Highland Ave.
Plentywood, Mt. 59254

January 25, 1993

Senator Jim Burnett
P. O. Box 20
State Capitol
Helena, MT. 59620

Dear Mr. Burnett:

This letter is written in support of your presentation on Senate Bill 41.

Our family has been a victim of DFS. Until it happens to them or someone they know, the public remains unaware of the power of this department and how it is destroying families. I believe it is time that some control is placed on this department and the people are given some rights. Whatever happened to "Innocent Until Proven Guilty"? In no way should parents stand accused and children be removed from the home, strictly on hearsay with no evidence and no investigation. It is now coming to light, not only in Montana but throughout the United States, just how much power agencies such as this have been wielding against innocent people, who have had no recourse. It is not unlike having the Gestapo appear at your door.

People employed by this agency are not above fabricating lies and then compounding them, with the victim never having access to where this information originated and without DFS ever having to supply proof. Instead of trying to keep the family intact and act in a supportive manner, they are known to pit child against parent, parent against child and parent against parent. They believe that they can rip families apart and then later bring them together and everything can be "better than it was before." Once this happens to a family, the scars are carried forever and the family is never the same again.

From our experience, I can verify that you are correct in the information that you are presenting. Safeguards must be placed to protect all members of a family. Families must have the opportunity to be protected from being wrongfully destroyed by the State as a result of mistakes, which from my observation, are tipping the scales on the opposite side of justice. You are right about an industry fostered by DFS referrals. Too many people are in the pockets of DFS. Also, I believe the system is corrupt in its placing of foster care. In our case, the "foster family" happened also to have one member employed by DFS--"double dipping", if you will. Parents and other family members should not be denied the right to see their children. Being removed from the home is traumatic enough without adding the burden of not being able to speak to those people who love and care for them the most. Any

OVER

questioning of the children, most emphatically, should have a third party present and a transcript of that meeting available. Wronged parents are being denied the right to defend themselves.

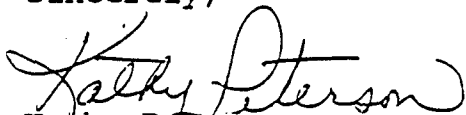
The system as it exists is an outrage! We appreciate the opportunity to speak out and see legislation enacted to correct this growing problem. If it can keep one family from being destroyed, it will be well worth the effort.

Included with this letter is some information that might be helpful in showing how psychology professionals are perpetuating these problems.

Any information on the progress of SB41 would be appreciated.

Thank you, Mr. Burnett, for addressing this most important matter.

Sincerely,

A handwritten signature in cursive script that reads "Kathy Peterson". The signature is written in dark ink and is positioned above the typed name.

Kathy Peterson
500 So. 6th St.
Hamilton, MT 59840

EXHIBIT 9
DATE 3-16-93
SB 23

Richard Rough, M.S.Sp.Ed.
208 Caroline Rd.
Kalispell, MT 59901
756-6529

February 3, 1993

Senate Judiciary Committee
State Capitol
Helena, MT 59620

Dear Senate Judiciary Committee:

The Department of Family Services, Youth Court Services and the various law enforcement agencies are currently using video-taping of alleged victims when they so desire. Most of these agencies already have the necessary video equipment within local communities in Montana. The mandatory use of video-taping would not incur a great amount of expense for the State to implement. It would actually save the State money.

In order to illustrate that video-taping is an effective cost saving measure and the preferred method to be used when investigating child abuse, I would like to relate my own family's personal and traumatic experience.

When the Department of Family Services took our daughter away from the home, one of the first things they did was to make a video tape of the initial interview with her. There was no conclusive evidence of abuse produced by that interview. In fact, according to the case note summary of that interview, the caseworker stated that what my daughter described as sexual abuse "would have been very very difficult if not impossible to achieve". Furthermore, the case notes go on to state, "irregardless who the offender turns out to be, it is very very important that (our daughter) believe that (I am) the offender." Then the social worker labeled the case as substantiated, erased the tape, and needlessly kept our daughter in foster care.

OVER

The video-recording of interviews of alleged child victims is a sound, well established method utilized by most protective service and law enforcement agencies across the country. It assures parents and those accused that the proper interviewing took place without intimidation and leading questions. In fact, it prevents the re-traumatization of interviewing the alleged child victims repeatedly. It is also a reliable record for the Court to use in future proceedings. It will assure the appropriate delivery of services to children who actually need them. It will prevent unnecessary placements. Therefore it will save money for the State and all concerned.

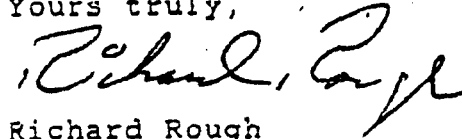
While my daughter was in the custody of the state they placed her in 17 placements. She was sexually assaulted several times and treated for venereal warts, syphilis and chlamydia. She was tested for aids twice and for pregnancy at least four times.

If the video-tape had been saved it might have prevented our daughter from being needlessly removed from our home; being sexually abused while in the custody of the State; and from being introduced to drugs and alcohol. It certainly would have been valuable for my defense and would have saved the State thousands of dollars in substitute care funds.

Most of the trauma experienced by our daughter and our family would have been prevented if the department had been concerned about the truth and its verification. It would have been of immense value if the video-tape of that first interview had been preserved and a copy provided to our legal counsel.

I appreciate your time and consideration in this matter. I strongly recommend that you do not eliminate the requirement of mandatory videotaping in Senate Bill 41.

Yours truly,


Richard Rough



WESTERN MONTANA CLINIC, P.C.

515 WEST FRONT STREET
MISSOULA, MONTANA
59802

TELEPHONE (406) 721-5600
TOLL FREE 1-800-525-5688
FAX (406) 721-3907

EXHIBIT 10
DATE 3-16-93
SB 23

NEUROSCIENCES DEPARTMENT
CONSULTATION
ELECTROMYOGRAPHY
ELECTROENCEPHALOGRAPHY
EVOKED POTENTIALS
NEUROPSYCHOLOGICAL EVALUATIONS
PSYCHIATRIC MEDICINE
PSYCHOTHERAPY

NEUROSCIENCES DEPARTMENT

CLINICAL PSYCHOLOGY

PAUL J. BACH, Ph.D.
ABMP, ABPDE, ABVN
THOMAS J. CLUCAS, Ph.D.
CINDY L. MILLER, Ph.D.

March 16, 1993

NEUROLOGY

STEPHEN F. JOHNSON, M.D.
FACP, FAAN
ETHAN B. RUSSO, M.D.
BOARD CERTIFIED IN
NEUROLOGY WITH SPECIAL
QUALIFICATION IN CHILD
NEUROLOGY

PSYCHIATRY

JOHN J. CANNELL, M.D.
TERRY L. LANES, M.D.

To the Honorable Men and Women of the Montana State Legislature:

RE: Senate Bill 23 (Aklestad); Senate Bill 271 (Jacobson)

Thirty years ago, Kinsey documented that 25% of American women have an unwanted sexual experience prior to puberty. Legitimate, well-controlled, epidemiologically sound studies in the last 10 years have documented the same, or even higher incidence of sexual abuse. It is a problem therapists deal with every day.

I am a board qualified psychiatrist working at the Western Montana Clinic in Missoula. I work with many children and adults who have been physically and sexually abused and I know very well the effects of childhood abuse. Furthermore, I frequently work with D.F.S. caseworkers and I generally find they do a good job with this difficult and frustrating issue.

However, in the last few years the incidence of frivolous and even fabricated allegations of child abuse has dramatically increased. Often these allegations arise during child custody battles, divorce proceedings, or out of jealousy. Respected authorities such as Richard Gardiner, MD, George Ganaway, MD, Elizabeth Loftus, PhD, and Ernest Hilgard, PhD, have become alarmed at the current atmosphere. I enclose a recent Wall Street Journal editorial likening the current era to the McCarthy period and the Salem witch burnings.

Seventeen people burned to death during a 10 year period in Salem. These people were convicted on the testimony of children. In the 1950s, people accused of being Communists by the McCarthyites were denied due process. They were guilty until proven innocent and anyone who questioned McCarthy's tactics was himself or herself deemed a Communist. Reputations, careers and lives are ruined when due

process is forgotten. Like the authorities mentioned above, I believe this issue is problematic, legally, morally, and politically. Prof. Richard Ofshe of the University of California, an expert on social injustices feels that we are in the "3rd great wave of American hysteria".

It is crucial that decision makers take advice from people who are well trained in the science of psychology, psychiatry, and the human mind. Today there are numerous poorly trained, politically fervent, and morally self righteous therapists who often mislead decision makers about their training and their expertise. It is only after 4 years of college, 4 years of medical school, and 4 years of psychiatry training that I became a board qualified psychiatrist. The study of the human psyche is difficult and knowledge is rudimentary. It is crucial that we base the little that we do know on established scientific data and not on political fads, no matter how attractive they currently appear.

I support Senate Bill 23. I would like to make the following points:

- 1) It is important that children be taken out of the home only when "grounds to believe" that abuse has occurred exist, not just "cause to suspect". This will improve the due process rights of the accused, at least to some extent.
- 2) "Grounds to believe" criteria should also be used for possible injury to the child. We have all said or done something to our children that we later regret. This does not necessarily mean that our children were injured.
- 3) I believe the Department of Family Services would welcome an oversight committee that was appointed by an outside agency such as the county commissioners. It is my understanding that a Foster Care Review Committee currently exists in statute. It might be a fiscally sound solution to enlarge their duties to include oversight of the Department of Family Services as well as foster care. It could assume many of the duties envisioned in Senate Bill 271 sponsored by Senator Jacobson.
- 4) The Department of Family Services and the therapists they refer to should video tape all sessions with children or adults making these accusations. It has been shown repeatedly in reputable literature that even innocent leading questions can implant false memories, especially in children.
- 5) I agree with the Wall Street Journal when it states, "a sex abuse industry" has been built up in part by the Mondale Amendment of 1984. I believe that it is important to limit immunity from prosecution for caseworkers, educators, and professional people who encourage unsubstantiated but often very damaging allegations of sexual abuse.

Besides the above mentioned Wall Street Journal editorial, I include some recent articles from the Los Angeles Times, New York Times, and other papers. If any

members of the legislature would be interested in a more detailed presentation of this issue, I would be glad to return to Helena, either this session or next.

We should not give license to "professionals" with ulterior motives such as the religious right or the radical left to embroil this country in another shameful era that we will all regret. "Those who forget history are doomed to repeat it."

Sincerely,

John J. Cannell, MD

Beware the Incest-Survivor Machine

By Carol Tavis

Originally appeared in The New York Times Book Review, January 3, 1993.

Copyright (c) 1992 by Carol Tavis, Ph.D. Reprinted with permission.

How often do you suffer from the following symptoms?

- You feel that you're bad, dirty or ashamed.
- You feel powerless, like a victim.
- You feel that there's something wrong with you deep down inside; that if people really knew you, they would leave.
- You feel unable to protect yourself in dangerous situations.
- You have no sense of your own interests, talents or goals.
- You have trouble feeling motivated.
- You feel you have to be perfect.

This checklist, from Ellen Bass and Laura Davis's book "The Courage to Heal," is supposed to identify the symptoms of incest. The trouble is that the same list could be used to identify oneself as someone who loves too much, someone who suffers from self-defeating personality disorder, or a mere human being in the late 20th century. The list is general enough to include everybody at least sometimes. Nobody doesn't fit it.

"The Courage to Heal" is the bible of the incest-recovery movement. It was published in 1988 and according to its publisher, HarperCollins, has sold more than 500,000 copies. It begat "The Courage to Heal Workbook," which begat the authors' "Allies in Healing," as well as Wendy Maltz and Beverly Holman's "Incest and Sexuality," Beverly Engel's

"Right to Innocence" and E. Sue Blume's "Secret Survivors." To read these handbooks is to learn that almost any problem you have may be an indicator of abuse. Ms. Blume offers a 34-item "incest survivors' after-effects checklist" of symptoms, which range from fear of being alone in the dark to multiple personality disorder — with phobias, arthritis, low self-esteem, wearing baggy clothes, the desire to change one's name and sexual difficulties in between. For Ms. Engel, the checklist includes feeling ugly and worthless, having a tendency to apologize inappropriately, feeling like a failure, jeopardizing chances of success, feeling helpless, having problems with sex or in relationships. ... Why, it's the all-purpose female checklist.

TO want to throw a small wrench into the abuse-survivor machine is like opposing censorship of pornography: nowadays, you feel you have to apologize for any support you might be providing to molesters, rapists, pedophiles and other misogynists. This need for throat-clearing is itself a problem, one that results from the terrible polarization that has emerged on the subject of the sexual abuse of children.

One side, primarily committed to protecting children, emphasizes the appalling prevalence of the abuse of children and the tendency of adults, in every generation, to deny or diminish the reality of this abuse. The other side, primarily committed to protecting adults, is concerned that in the contemporary hysteria too many innocent adults are being unjustly accused. The polarization among professionals is now so bad that researchers are quickly branded as being on one side or the other, and their work discounted by the opposition.

And both sides marshal horror stories as evidence. Read only one case of a child being treated for gonorrhea of the throat — the evidence that helped convict a man in Miami of child molestation — and you will feel a wave of nausea at what adults are capable of inflicting on children. Read only one false-accusation case, and you will feel misery and anger at what bureaucrats are capable of inflicting on parents. To further confuse the issue, the reality of the victimization of children is being obscured by a chorus of adults clamoring that they were victims too — if not as children, then as infants; if not in this life, then in a previous one. The evidence that abuse is more common than we knew is being trivialized by unvalidated claims made by pop-psychology writers that abuse is nearly universal, and that if you can't actually remember the abuse, that's all the more evidence that it happened to you.

Women abused as children are indeed more likely than others to be depressed and to have low self-esteem as adults, although there is no good evidence from longitudinal studies showing that such abuse invariably causes the entire litany of women's problems. Nor does it follow that all women who are depressed, are sexually conflicted or wear baggy clothes were abused as children. Yet many are being encouraged to rifle their memories for clues that they were.

Thus E. Sue Blume: If you doubt you were abused, minimize the abuse or think "Maybe it's my imagination," these are symptoms of "post-incest syndrome."

And Ellen Bass and Laura Davis: "If you are unable to remember any specific instances ... but still have a feeling that something abusive happened to you, it probably did. ... If you think you were abused and your life shows the symptoms, then you were."

And Wendy Maltz and Beverly Holman: "When survivors cannot remember their childhood or have very fuzzy memories, incest must always be considered a possibility."

And Beverly Engel: "If you have any suspicion at all, if you have any memory, no matter how vague, it probably really happened. It is far more likely that you are blocking the memories, denying it happened."

And if a woman suspects that she has been abducted by U.F.O.'s, that the F.B.I. is bugging her socks or that a satanic cult forced her to bear a child that was half human and half dog, must she (and we) likewise assume that "it probably really happened"?

The sexual-abuse-victim story crystallizes many of society's anxieties about the vulnerability of children, the changing roles of women and the norms of sexuality. It draws like a magnet those who wish to invoke a measure of sympathy in these unsympathetic times. It is no wonder that publishers and talk shows have a thriving business exploiting stories of abuse for commercial reasons, for these are stories that sell. The childhood abuse explanation of all one's current problems, true or exaggerated, with or without the incest variation, is now *de rigueur* for any aspiring celebrity autobiographer (Patti Davis, Frances Lear, Suzanne Somers, Roseanne Arnold, La Toya Jackson).

As individual works of confession and advice, abuse-survivor books are often reassuring and supportive. They encourage victims of childhood molestation to speak up, to understand that they are not alone and to

find help. The problem is not with the advice they offer to victims, but with their effort to *create* victims — to expand the market that can then be treated with therapy and self-help books. To do this, survival books all hew to a formula based on an uncritical acceptance of certain premises about the nature of memory and trauma. They offer simple answers at a time when research psychologists are posing hard questions.

To raise these questions does not mean that all "reawakened" memories are fraudulent or misguided. It does mean that we should be wary of believing every case of "me too!" that makes the news, and that we should be asking why these stories (and the advice books that play off them) are so popular now. We should also ask where these stories lead, with what consequences for individual well-being and social reform.

The great Swiss psychologist Jean Piaget once reported his earliest memory — nearly being kidnapped at the age of 2. Piaget remembered sitting in his baby carriage, watching his nurse defend him from the kidnapper. He remembered the scratches she had on her face. He remembered a police officer with a short cloak and a white baton who chased the kidnapper away. But none of it happened. When Piaget was 15, his former nurse wrote to his parents to confess that she had made up the entire story. Piaget wrote, "I therefore must have heard, as a child, the account of this story . . . and projected it into the past in the form of a visual memory, which was a memory of a memory, but false."

The harvest of incest-survivor books reflects the popular vision of mind and memory, in which the mind is a camera or tape recorder: all events that happen to us are recorded in memory, although trauma often causes them to be "repressed" until a significant event "unleashes" them and reveals at last what "actually" happened. This is a view of memory inspired partly by psychoanalysis and partly by contemporary metaphors of the mind, which historically have followed major inventions. Thus, during the Industrial Revolution, the brain was likened to a machine; after the invention of the telephone, to a switchboard; after the invention of movies, to a camera; after Univ. c, to a computer.

Today many psychotherapists assume that everything significant that happens to us is imprinted somewhere in there, or maybe filed away in a dusty drawer (a metaphor for those of us who came of age before computers). Yet this view is increasingly at odds with that held by most academic psychologists. Researchers who study memory and the brain are discovering the brain's capacity to construct and invent reality from the information it processes. Their studies support what poets and novelists have always known: that memory is not a fixed thing, with its own special place or file drawer in the brain. It is a *process* that is constantly being reinvented. A "memory" consists of fragments of the event, subsequent discussions and reading, other people's recollections and suggestions, and, perhaps most of all, present beliefs about the past.

Thus, in the laboratory, the eminent memory researcher Elizabeth Loftus and her associates at the University of Washington have been able to inject false memories into people's minds by the mechanism of suggestion ("Remember when you were lost in that shopping mall at the age of 5?"). Similarly, the Canadian psychologist Nicholas P. Spanos and his team at Carleton University in Ottawa have created false memories of previous events and even of previous lives (at least in volunteers who believe in reincarnation). These scientists are finding that in the formation of a memory, current beliefs about past events are more important than what actually happened. This is why an event that seemed trivial when we were children can be reinterpreted and given new emotional significance when we are adults — and vice versa.

The mind does not record every detail of an event, but only a few features; we fill in the rest based on what "must have been." For an event to make it into long-term storage, a person has to perceive it, encode it and *rehearse* it — tell about it — or it decays. (This seems to be the major mechanism behind childhood amnesia, the fact that children do not develop long-term memory until roughly the age of 3.) Otherwise, research finds, even emotional experiences we are sure we will never forget — the Kennedy assassination, the Challenger explosion — will fade from memory, and errors will creep into the account that remains.

THIS is not easy news to take. We all get very huffy about the accuracy of our memories, and no wonder; they are the table of contents of our lives. That is why the debate over the vision of memory held by academic researchers and the one held by many therapists and laypersons is so fraught with consequences, legal and psychological. Families are being torn apart by adults who, in therapy, said they remembered their parents abusing them, and now feel the need to confront, to sever relations entirely or to sue for damages. In 1989, the state of Washington passed legislation allowing people to sue their alleged molesters for damages within three years of the time they *remembered* the abuse, and to date at least a dozen other states have enacted similar laws. Is such legislation warranted? How many children who are abused repress the memory — and how many have trouble forgetting?

Two recent books, scholarly yet highly readable, beautifully illuminate these complexities. In "Hidden Memories: Voices and Visions From Within," Robert A. Baker, a retired professor of psychology who taught at the Massachusetts Institute of Technology, Stanford University and the University of Kentucky, reviews the research on the processes by which perfectly normal individuals can come to believe passionately that they were molested in the crib, abducted by U.F.O.'s or victimized by a satanic cult. And in "Trauma and Recovery," Judith Lewis Herman, a psychiatrist who teaches at the Harvard Medical School, weaves together clinical and empirical evidence in exploring the nuances of trauma in all its varieties.

You would get none of this information or nuance, however, if you picked up any of the popular abuse-survivor books, such as "The Courage to Heal." None of the authors are trained in research, which is not a comment on their ability to write or to do therapy, but which does seem to be one reason for their scientific illiteracy. The authors claim to be "experts" because (a) they were themselves molested, (b) they are social workers who treat incest victims in therapy, or (c) they wrote a book. Writing a book confers further expertise, because the authors then become "nationally recognized" lecturers who conduct workshops and train other psychotherapists. In what can only be called an incestuous arrangement, the authors of these books all rely on one another's work as supporting evidence for their own; they all endorse and recommend one another's books to their readers. If one of them comes up with a concocted statistic — such as "more than half of all women are survivors of childhood sexual trauma" — the numbers are traded like baseball cards, reprinted in every book and eventually enshrined as fact. Thus the cycle of misin-

*In these books
the rule is: if
you feel abused,
you were
abused.*

formation, faulty statistics and unvalidated assertions maintains itself.

Consider this, from "Secret Survivors":

"Incest is easily the greatest single underlying reason why women seek therapy or other treatment. At any given time more than three-quarters of my clients are women who were molested in childhood by someone they knew. Yet . . . many, if not most, incest survivors do not know that the abuse has even occurred! . . .

"It is my experience that fewer than half of the women who experienced this trauma later remember or identify it as abuse. Therefore it is not unlikely that more than half of all women are survivors of childhood sexual trauma."

IN spite of Ms. Blume's emphases and exclamation marks, not one of these assertions is supported by empirical evidence, and her own experience of her own clients does not constitute such evidence. Ms. Blume seems utterly unaware, for example, of the selection process that might bring incest survivors to her office.

To reach their inflated statistics, the survivor books rely on definitions that are as expandable as a hot-air balloon. In these books, the rule is: If you feel abused, you were abused. According to the authors of "The Courage to Heal," "Violation is determined by your experience as a child — your body, your feelings, your spirit. . . . Some abuse is not even physical." It doesn't matter if no sexual contact occurred; anything your parents did that you didn't like is a violation. Beverly Engel didn't like the way her mother would plant a "wet" kiss on her, look at her in ways that made her feel "queasy" and walk in on her in the bathroom. "It was not until very recently," she writes, "that I came to terms with my mother's behavior and saw it for what it really was — sexual abuse." This is a textbook example of the reconstructive nature of memory, showing how an adult belief can transform childhood experiences into "memories" of trauma.

What is wrong with a therapist's belief in the "epidemic" prevalence of incest? Aren't we just quibbling about numbers, when the problem itself is real? Not to researchers such as Nicholas Spanos, who are worrying about the rise in what they call

"pseudomemories" that are induced by some therapists and hypnotists — not only of incest, but also of past lives, multiple personalities and participation in satanic cults.

Mr. Spanos, who has conducted dozens of studies, has concluded that "suggestion-induced reports of perceptual and memory change" offered by hypnotized individuals should not be treated as actual descriptions of events. The "central component" in studies of hypnosis, he finds, is the willingness of hypnotized individuals "to bias their responses" as they believe the context demands.

Of course, all clients in therapy are influenced by the therapist's theoretical framework. This is why people in psychoanalysis have Freudian dreams, people in Jungian therapy have archetypal dreams, people in primal scream therapy remember being born and people in past-lives therapy remember being Julius Caesar (or whoever). Yet there is a sensitive line between any therapist's normal probing for evidence of certain psychological problems and literally creating them by the force of suggestion. Wendy Maltz and Beverly Holman, therapists in Eugene, Ore., make the process explicit in "Incest and Sexuality": "It may take considerable digging on the part of the therapist," they say, "to discover incest as the source of the symptoms being experienced by the client." When does "considerable digging" become undue persuasion? On this subtle matter, the books are silent.

One other simplistic theme promulgated by the abuse-survivor books affects the survivors themselves and the solutions we seek, as a society, to the problem of childhood abuse. Uniformly, these books persuade their readers to focus exclusively on past abuse as the reason for their present unhappiness. Forget fighting with Harold and the kids, having a bad job or no job, worrying about money. Healing is defined as your realization that you were a victim of sexual abuse and that it explains everything wrong in your life.

Beverly Engel even offers a list of stages in which the victim proceeds from darkness into light. In the first stage, she, like "many victims of childhood sexual abuse," has no conscious memory of having been abused, so she denies her symptoms. In the next stage, visiting a therapist or reading one of these

books, she begins to suspect she was abused. In the third stage, she still doesn't know that she is a victim because she doesn't realize that what happened to her was abuse. In the fourth stage, she knows she was sexually abused but fails to connect her "symptoms" with the abuse. In the last stage of healing, she knows she was abused and connects the dots to her present unhappiness.

You can see this process at work in Betsy Petersen's "Dancing With Daddy: A Childhood Lost and a Life Regained" (1991). According to Ms. Petersen, the incest (which she never actually remembers) explained her nightmares, eating disorders, compulsive cleanliness, shame about sexuality, anxieties, drive for self-improvement, colon problems, back pain, insecurity about money, difficulties in wishing for something for herself, impatience with the obnoxious behavior of her sons, and even why she cooked a hot breakfast for her dogs every morning. It explained, as if no other woman had this problem, her vulnerability to fad diets. It explained, as if no other new parent had this problem, her awkwardness with her firstborn son. It explained, as if no other modern adult had this problem, her malaise of alienation and loneliness.

For Ms. Petersen, all current events are processed through the lens of incest. "Before I knew my father had molested me," she says, "the feelings cycled endlessly and attached themselves to the world outside my skin: If only my children weren't so demanding, I would think, I wouldn't feel so crazy." Exactly! One day her son, whining to be taken out for fast food, screamed and cursed her, and threw his shoe. She writes: "And suddenly I was so mad. My stomach hurt." Was she angry about this behavior? Oh, no; she was angry at her father.

Betsy Petersen seems to have completely shut out "the world outside my skin," and ultimately that is the problem and the appeal of the survivor narrative. It places responsibility for the common problems in women's lives on a single clear villain, someone safely in the woman's past. The victim doesn't have to do anything except understand the origins of her problems. Her partner doesn't have to change, as long as he is sympathetic to her early trauma. And she gets a love bath from her friends and supporters. Who could resist? In

this respect, the sexual-survivor narrative, like other popular theories based on female psyche and biology, locates the origins of women's victimization, powerlessness and unhappiness inside the woman. It's in her; it's up to her to fix herself.

In 1978, Louise Armstrong wrote one of the first incest-survivor books, "Kiss Daddy Goodnight." To Ms. Armstrong and other feminist writers, incest and other forms of child abuse were not the aberrations of a few sick men, but the results of a system that endows men with the sense of entitlement to own and abuse women and children. Today the survivor movement has shifted from an emphasis on social change to one on psychological solace. Reflecting in a revised edition of her book on how public conversation about incest changed in the decade since its publication, Ms. Armstrong mused: "Where is everybody? I sometimes ask, meaning the survivors. The voices of no-nonsense, unsentimental, unromantic reason. Oh (the answer comes back), they're in therapy. Nothing wrong with that. We all need help and support." But, she continued, "exclusively personal solutions do nothing to defy the ongoing tacit permission for abuse."

Contemporary incest-survivor books encourage women to incorporate the language of victimhood and survival into the sole organizing narrative of their identity. It becomes their major story, and its moral rarely goes farther than "Join a group and talk about your feelings." Such stories soothe women temporarily while allowing everyone else to go free. That is why these stories are so popular. If the victim can fix herself, nothing has to change. □

Carol Tavris, a social psychologist, is the author of "The Mismeasure of Woman."

FACT or fiction

After years of supressing traumatic memories, can the mind suddenly retrieve them?

By MEA ANDREWS
of the Missoulian

Who can miss the headlines? Roseanne Barr Arnold accuses her parents of sexual molestation and is featured on the cover of People magazine. A former Miss America from Colorado goes public, telling her story of abuse to the entire country. An adult woman, playing with her children, has flashbacks of her father murdering a family friend more than 20 years earlier.

Talk shows are filled with guests, famous and unknown, who remember haunting, terrible indignities from their pasts. The majority recount tales of horror never forgotten.

But some remember incidents from childhood after years of therapy. Details surface from the darkest recesses of the brain, where they were buried — repressed — for decades.

Is this possible?

The extent to which memory can be totally repressed is one of the new debates inside the professional circles of counseling, forensics and victim assistance. The possibility that some memories are fabricated, either by the storyteller or by therapy gone awry, has been dubbed "false memory syndrome" and is cropping up in professional literature as well as the lay press.

A national foundation set up to question some of these stories will be a year old next month and already has more than 1,500 members.

Missoula psychiatrist John J. Cannell is intrigued.

Based on professional experience and emerging information about memory and the mind, he is skeptical that every single story of repressed memory is true.

"I have patients who have been abused," says the doctor. "They've suffered terrible things. Horrible things."

"But," he says, "they've never forgotten it. In fact — like post-traumatic stress syndrome that we see in veterans of the Vietnam War — they re-live the events, over and over. They can't escape them."

Cannell, who has collected stacks of articles and papers on false memory, is particularly skeptical of vivid, detailed memories from the earliest years of life. There's no medical evidence that authentic memory from infancy is possible, he said, because the part of the brain capable of such retention isn't functioning until age 4 or 5.

And memory from later years is suspect, too. Anyone who works with crime witnesses knows how inexact a human's recollections can be.

"Memory is not a video machine," he said. "The more you think about something, the more you remember it. And yet, it may bear no resemblance to the truth."

Missoula psychologist Paul Moomaw, past president of Montana's association of mental-health professionals, also is intrigued. But he's skeptical about false memory syndrome.

"There's no doubt from the research that it is possible to create a false memory," Moomaw said. "Given the right circumstances, you can get a false confession from people (accused of crimes). And the therapy office does create the right kind of situation because it is sheltered, buffered from other input."

But the amplified debate about false memory syndrome is "a tempest in a teapot," he said.

"We don't want to return to where we were 20 or 30 years ago," when nobody believed victims;

perpetrators were not even questioned; and therapists discounted stories of abuse as sexual fantasies, not reality.

"I've worked with enough sexual offenders to know how good they can be, how very convincing they can be. They often ... go on the attack, blaming the system and members of their family."

"Some of them are just creeps," he said. "They are skilled at portraying themselves as the victims."

Many clients enter therapy because "there's a sense that something bad happened years ago," said Jim Parker, regional director for outpatient services at the Western Montana Regional Mental Health Center in Missoula.

"It is not uncommon, in certain circumstances, to have memories that are broken off, forgotten, repressed to a point where the person doesn't remember them." In therapy, many of the memories come back.

The concept of false memories is more than an academic discussion for some families. Tom and Gwen Peterson — whose names have been changed for this article — raised four children in a rural Montana community. One son is now accusing them of sexual and emotional abuse; the other siblings discount his story, they say.

"Most kids can think of things that a parent did to them when they were young that hurt," Gwen told the Missoulian. "They remember that parents favored one sibling or that someone picked on them."

"But the things he accused us of are just untrue, terrible, awful. I wouldn't want to have anything to do with someone who did those things."

The Petersons have joined the Philadelphia-based False Memory Syndrome Foundation. So have a handful of other Montana families who also believe they've been falsely accused. The foundation has more than 1,500 members from all 50 states.

These accusations — which sometimes arrive in a letter alleging the abuse, sent by a daughter or son at the urging of a therapist — have devastating effects on families.

"You can't talk to people about it," said another Montana woman who believes one of her daughters has created false memories of abuse.

"We drift on. We stay silent because too many people judge you guilty. We feel like we're in some kind of a witch hunt. No court of law would convict someone of any other crime on the unproven testimony of one single person."

Are a few bad professionals taking the list of symptoms of abuse and coaching clients to believe that they were abused as children?

Cannell and some other professionals believe it can, and does, happen. People who experience relationship problems, sleeplessness, eating disorders and other symptoms may be convinced there's repressed sexual abuse in their past; clients who deny it are told they are "in denial."

"There seems to be a personality type that is more susceptible," Cannell said. "Some people are hypnotizable; they have very suggestible personality types. They tend to be cultists, impulsive, and tend not to be very skeptical."

"Good therapists go with the client. We don't plant ideas," said Moomaw. "We don't convince clients of anything. To grab at a set of symptoms and jump to conclusions about a person's experience is just wrong."

There are questionable practitioners in almost any line of work, said Nadine Wisniewski,

a faculty member in the University of Montana's psychology department. Well-trained therapists do not tell a client what's wrong; they help the client discover for themselves.

Wisniewski has followed the false-memory discussion and talks about it with students in some classes.

She, too, is very skeptical and wary. "I haven't read anything yet that shows me solid evidence of this syndrome," she said. "I want to see the research. It does make me that much more careful about the work I do; it should make us more careful about the words we choose as therapists."

"It takes an incredible amount of courage to talk about some of these memories," she said. "I've worked with enough survivors to know that they are working very hard NOT to believe it."

"This must be extremely rare," Parker said.

"We see about 1,000 clients a year (at the Mental Health Center). But we've never seen anybody who reported or developed false memory syndrome."

"Who would want to make up something like this?," asks Barbara Lokitz, a Ph.D. counselor who works with adult victims of abuse and incest at Women's Place in Missoula. "My experience is that most people resist facing these memories. They don't want to remember them."

Lokitz wonders whether the false-memory discussion is a backlash of some sort. Adult victims of incest and abuse are mostly women; the accused are mostly men. Suddenly, these adults are speaking out; they gain power from the stories of others.

Society's shifts of power often create tensions, disbeliefs, accusations, backlashes.

"Memory only lets go with what it can handle at a particular time," says Lokitz, who sees many victims struggling with deep and ugly pain from their pasts.

"What does it say about the world we live in that child sexual abuse defines the life experience of so many women? ... I'm afraid that so much energy is being placed on the possibility of a small percentage of the population (that may manufacture memories). It's lopsided. Let's look at the widespread incidence of child sexual abuse."

Memories — real and made up — have important legal consequences. New laws allow victims to file child-abuse and incest lawsuits years after the abuse allegedly happened. And now, lawsuits are emerging elsewhere in the country, filed by clients who allege their therapists planted false memories.

But the people who own these memories provide the best reasons for continuing research, Cannell argues.

"People want an explanation for their misery," he said. "But there is no healing if someone relies on something that is false to explain their problems. The pain is still there. People won't get well unless you search for the real causes of their pain."

"Life is hard enough. Why make it harder?"

FOR MORE INFORMATION:

• THE FALSE MEMORY SYNDROME FOUNDATION HAS A TOLL-FREE NUMBER, 1-800-568-8882. OR, WRITE: FMS FOUNDATION, 3508 MARKET ST., SUITE 128, PHILADELPHIA, PA 19104.

• DR. JOHN J. CANNELL IS SCHEDULED TO GIVE A FREE PUBLIC LECTURE ABOUT FALSE MEMORY SYNDROME ON MARCH 11, FROM NOON TO 1 P.M., AT THE UNIVERSITY OF MONTANA'S CHEMISTRY-PHARMACY BUILDING, ROOM 109. IT IS PART OF A CLINICAL-MEDICINE LECTURE SERIES.

EXHIBIT 316-33
DATE 2/23/93
SB

Psychiatry's Challenge: Defining an Appropriate Therapeutic Role When Child Abuse Is Suspected

By Harold I. Lief, M.D.

EXHIBIT 13
DATE 3-16-93
SB 23

Imagine that you are consulted by parents whose adult daughter has just accused her father of incestuous relations a decade or more after the alleged sexual abuse occurred. Who to believe—the parents or the adult child?

On the one hand, sex abuse is a frequent and frightful experience with potentially disastrous consequences for adult adaptation. On the other hand, a false allegation of incest will rip apart a family, inflicting a blow from which few families can fully recover. What a dilemma for the psychiatrist!

What if you believe that the therapist treating the adult "victim" has unduly influenced the patient by a style of interviewing in which suggestion, perhaps even hypnosis, has been used to elicit memories of abuse? How reliable are such memories?

Among the problems generated by the proliferation of new "therapists" in America is the question of how to address the often solicited and mistakenly elicited revelation of child sexual abuse with the concomitant destruction of the nuclear family and, at the same time, avoid undermining the enormous need for psychiatrists and other mental health professionals to recognize legitimate symptoms and maladaptive behavioral consequences of child sexual abuse.

There has been a recent increase in the number of "therapists" who encourage people to "remember" events that apparently never happened and to accuse parents falsely, often decades after the alleged events took place. These therapists, who seem to invent new names constantly and who now call themselves "traumatists," are guided by the book titled *The Courage to Heal*. This book states on page 21, "If you are unable to remember any specific instances (of childhood sexual abuse) but still have a feeling that something happened to you, it probably did." In seeking to expose such abuses, misguided therapists in many cases help invent them.

The dilemma for psychiatrists, of course, is that we are just at the dawn of realizing the enormous effect that physical and sexual abuse has on children. These effects need to be dealt with. When abuse of any kind is discovered, the personality and character distortions of the patient have to be worked through in psychotherapy, so that he or she can grow. Fixing it in reality is hardly the solution; neither is denial of it with subsequent self-blame once it is revealed.

The real process is one of growth through good psychotherapy. The slow

but gradual recovery from that abuse in a bona fide treatment is a long-recognized, well-established form of therapeutic work. Debatable, however, is whether the incest itself should be at the core of treatment for every incest victim.

Stories about mistaken "victims" are frightening. A quote from a letter received by the author gives you some idea of how this works.

"Cases described fit to the dot what happened to my daughter. . . . She was brainwashed for three years by a Boston social worker, who calls herself a traumatist, and her accomplices. Finally my daughter caved in about July 1989, refuses to talk to me, and comes up with allegations and lies. As a result we ended up in messy divorce proceedings, which ate up already a substantial part of our life savings. The family is completely split up. I understand that the social worker still continues accepting the fees from my daughter."

Another excellent example describes a fairly typical sequence of events: "A man. . . whose 25-year-old daughter went to a codependency group. . . [the father who called me had been an alcoholic 10 years ago] and one of the members of the group took her to a feminist group meeting. . . . In this group meeting, they all underwent group hypnosis after the therapist had said, 'Let's all get hypnotized and see how many of us were sexually abused.' The young woman came out of this experience feeling that she was sexually abused, sought out a 'sex abuse therapist' who 'confirmed' that she had been sexually abused between the ages of 3 and 4."

These are only two of a large and growing number of examples that force us to reexamine the cavalier way in which we may be aiding and abetting the discovery of childhood sexual abuse.

Notwithstanding the charlatans, there is a great deal of child abuse and sexual abuse going on. Legitimate studies by the National Institute of Mental Health and the Centers for Disease Control, for example, show that the percentage of women and men who have been physically or sexually abused as children is very high—in some studies, 25 percent or more claim to be victims. It's impossible to turn one's back on that. It is important that we, as psychiatrists, not abet patients in turning the blame on themselves, but instead help them achieve a full recognition of the terrible consequences of the abuse, while at the same time help them accept the responsibilities of adult life—a task that requires considerable psychotherapeutic skill.

The careful dissection that well-trained psychiatric therapists use to discover the total background of the patient is no longer viable, because there are financial rewards for making the connection between sex abuse and adult psychopathology—perhaps three or four years of treatment.

Can we afford this kind of reckless damage to families? Can we afford to allow ignorant, untrained, or partially trained people to masquerade as therapists abusing a significant medical treatment, namely psychotherapy? Our identity is being damaged rapidly through this and other new therapeutic fantasies or fads that attract hundreds of indiscriminating therapists.

The issue of real versus false allegations of child sexual abuse, which haunted Freud, still haunts us today but for different reasons. We need to research the frequency of false accusations, the motives for making them, the role of the therapists in generating them, and the relationship between repressed memories and the process by which they are recalled.

Paul Fink, M.D., collaborated in writing this article. Dr. Lief is professor emeritus of psychiatry at the University of Pennsylvania School of Medicine and psychiatrist emeritus at the Pennsylvania Hospital. Dr. Fink, a former APA president, is chair of the department of psychiatry at Albert Einstein Medical Center and medical director at the Belmont Center for Comprehensive Treatment in Philadelphia.

Psychiatric News / August 21, 1992

Reprinted with permission of
American Journal of Psychiatry
1400 K. Street, N.W.
Washington, DC 20005



Modern Witch Hunt—Child Abuse Charges

By RICHARD A. GARDNER

Janet Reno, Bill Clinton's nominee for attorney general, has made her name largely in cases involving the defense of children. She may well continue this focus if she is confirmed in her new job. For all those in the new administration, though, a task awaits. It is the modification of the Child Abuse Prevention and Treatment Act.

The 1974 act—sometimes known as the Mondale Act, after one of its sponsors—was implemented to fight a genuine problem. Up to that year, child abuse was rarely reported and frequently covered up. It was Congress's intent to rectify this deplorable situation by providing incentives for states to set up programs for child abuse research, identification, prosecution and treatment. Federal funding was made available to match state spending, and this served as an incentive for states to create such programs.

The law, however, has had results that its authors did not intend. In America today, child sex-abuse accusations are burgeoning. In many cases, it is probable that the charges are valid. But when the charges arise from vicious child custody disputes, where the vengeance element and the opportunity for exclusion of a hated spouse is operative, or in venues such as day-care centers, where the potential pedophile has little opportunity for contact with the child alone, the prevalence of child abuse is in reality quite low.

The Child Abuse Establishment

Nevertheless, the number of charges in these areas escalate. The primary reason: The Mondale Act has strengthened the "child abuse establishment"—a network of social workers, psychiatrists, psychologists and law enforcement officials—that through its very existence frequently validates an individual's charges. In other words, this establishment, unintentionally or intentionally, encourages charges of child abuse whether they are reasonable or not.

Some examples from cases in which I have personally evaluated the accused as well as other parties:

On March 5, Raymond and Shirley Souza (both 61) of Lowell, Mass., will be sent to prison, possibly for the rest of their lives. They are accused of having performed a series of perverted sexual acts on three of their grandchildren. The accusations began when one of the Souzas' daughters had a dream in which she envisioned her parents and her brother sexually abusing her when she was a child. In the dream her mother had a penis. She concluded that the dream indicated that she had actually been sexually abused as a child by her parents and that the Souza grandchildren had probably been abused

as well. She suggested that her siblings question the grandchildren. Thus began the wave of hysteria that ultimately resulted in the Souzas being found guilty of these alleged crimes. (Dorothy Rabinowitz writes about this on the Leisure & Arts page of this paper today.)

On the basis of my examinations of the Souzas, I was convinced that there wasn't a scintilla of evidence that they committed these crimes or even exhibited pedophilic tendencies. Furthermore, I carefully reviewed many of the documents in this case, especially videotapes of the interviews with the grandchildren conducted by the prosecutor's overzealous examiners. I found the interviews to be coercive, with the use of many leading questions and the selective ignoring of

penalties (usually fines and/or prison sentences) for failure to report. In effect, this provision has made it a criminal offense for such people not to report suspected abuse. As a result, these professionals are put on the defensive—if they don't report, they might be deemed criminals. The result has been overreporting of even the most absurd and impossible accusations.

During the few years following the Mondale Act's passage, all 50 states and the District of Columbia passed legislation providing for the establishment and funding of the appropriate programs.

The basic problem is that the system is biased. State and federal money is available for the treatment of children who are found to have been abused, but no funds have been specifically allocated for the

The child abuse establishment—social workers, psychologists, law enforcement officials—encourages charges of child abuse whether they are reasonable or not.

comments by the children that would have led any unbiased examiner to question whether these allegations had any merit whatsoever.

Another example: Kelly Michaels, a New Jersey nursery school teacher, was sentenced to 47 years for allegedly sexually abusing 20 children under her care. After examining the alleged victims, the accusing parents, and Ms. Michaels, I was convinced that she did not engage in the variety of abominable acts attributed to her. Yet the parents' hysteria was fueled by overzealous "validators" and law enforcement officials, leading to Ms. Michaels's conviction.

Part of the problem is that since 1974, the Mondale Act has been expanded several times, progressively increasing the federal funds allocated to the states. Certain provisions of the original law and its successors worked to encourage people to bring child abuse charges that were frivolous, and sometimes malicious, fabrications.

To qualify for federal money, states had to pass legislation that provided immunity from prosecution for all those reporting child abuse. With the advantage of the screen of immunity, many people in legitimate cases gained the confidence to come forward. However, the same immunity protected people making frivolous and even fabricated accusations.

To get federal funds, states were also required to pass laws requiring specific people (such as health-care professionals, law-enforcement officials, teachers and school administrators) to report suspected child abuse to the appropriate child protection agency. Such mandated reporting, of necessity, had to be backed up by

protection and treatment of those who have been falsely accused. Nor has money been available for another special and growing group—children who have suffered psychiatric disturbances because they have been used as vehicles for the promulgation of a false accusation. Evaluators who conclude there has been abuse set in motion events that bring their offices both state and federal funds. If they conclude there was no abuse, their facilities receive no funding for further evaluation of treatment.

The "child abuse establishment" also furthers itself. Mental health facilities, child protection services, and investigatory agencies (including police, detectives and prosecutors) all depend on each other. It behooves them to work together, because the greater the number of referrals, the greater the justification for the requisite funding. The current system generates an endless stream of referrals for investigators and "validators." All this predictably fuels sex-abuse hysteria, hysteria in which an accused individual's constitutional due-process protections are commonly ignored.

Here are some changes at the federal level that could help:

- Drop the federal immunity clause. Immunity from prosecution is generally available only to specific groups essential to the functioning of the legal system—e.g., judges and prosecutors. It is incompatible with the basic philosophy of our legal system. Such immunity encourages frivolous and fabricated accusations. I would go further and recommend that states that include the immunity provision should not be entitled to federal funding.
- Drop the clause mandating the re-

porting of child abuse. In practice, it has resulted in the reporting of the most frivolous and absurd accusations by two- and three-year-olds, vengeful former spouses, hysterical mothers of nursery school children, and severely disturbed women against their elderly fathers. Highly skilled examiners, professionals who are extremely knowledgeable about sex abuse, examiners who know quite well that the accusation is false, are required by law to report the abuse to individuals who they often know to be overzealous, inexperienced and even incompetent. Yet they face criminal charges if they do not report these accusations.

- End federal funding to states in which suspected individuals are deprived of due-process protections. Prosecutors typically use their own experts to evaluate the children but are allowed to prevent defense experts from evaluating them. The accused, then, is deprived of a fair trial, a right guaranteed to him by the U.S. Constitution.

- Provide funding for programs to assist those who are falsely accused, as well as children who have been victimized by being used as vehicles for a false accusation. Such programs could be combined with existing child abuse and child neglect programs.

- Require investigatory agencies at all levels to routinely notify and invite for voluntary interviews every individual accused of child abuse or neglect. (These suspects, of course, must first be informed of their legal rights.) The failure to routinely extend such invitations should deprive the agency of funding.

- Require legal representation for children who may be victims of entrapment in false accusations.

The New Hysteria

These recommendations sound strong. But from my perspective, the U.S. appears to be witnessing its third great wave of hysteria. The first, the Salem Witch Trials, in 1692, lasted only a few months. Nineteen people were hanged before it became apparent that the accusations were suspect. In the 1950s, at the time of the McCarthy hearings, hysteria over the communist threat resulted in the destruction of many careers. Our current hysteria, which began in the early 1980s, is by far the worst with regard to the number of lives that have been destroyed and families that have disintegrated. There is no question that most efforts at rectification will prove futile unless the Mondale Act modifications described here are implemented.

Dr. Gardner, a clinical professor of child psychiatry at Columbia University, is an expert on the sexual abuse of children.

Defending parents from ugly charges

Philadelphia Inquirer

SUNDAY
September 20, 1992

By LUCIA HERNDON

Defending parents from ugly charges

A group of young people met recently in a pleasant family room in a suburban house. How ironic, I thought. Meeting in a family room to hear tales of families torn apart.

The group was made up of people whose siblings have accused their parents of incest — a crime that the parents hotly deny. The group members had gathered to find ways to support one another and their parents in the face of these ugly accusations.

Their stories were disturbingly similar — and nearly always involved women. A sister undergoes therapy for depression or some other emotional disorder. She announces that she remembers instances of childhood incest. She then wants her parents to confess to the abuse and she wants other family members to admit that they were aware of the situation. If that doesn't happen, she may very well cut off contact with her entire family.

Devastating to parents, yes. But equally devastating to those siblings who question the allegations.

They are the peers, the ones left to sort through the situation from ground level. Initially, the stories sound authentic because they are recounted with such sincerity. But one woman said that when she questioned her sister, she discovered that the sister's accusations failed to hang together. The sister told of being abused as a 2-year-old, but gave the location of the abuse as a house the family moved to years later.

A high school student said her older sister's revelation initially made her fearful of her father. "I couldn't believe it was true," she said. "But my sister seemed so sure it happened. After she told me, I didn't want to see my father. It took me a while to realize that it wasn't true."

LUCIA HERNDON from L.I.
My sister nearly wrecked my relationship with my parents."

Others told of their sisters' trying to convince them that they, too, had been incest victims but were in a stage of deep denial.

"For a while you ask yourself, 'Did this happen to me and I forgot it?'" said one woman. "But I realize now that my sister basically has written a play and has assigned us roles. I'm supposed to be the repressed victim. My parents are the bad guys."

The question these family members ask is not whether the incest occurred — they, finally, do not believe that it did. But they do wonder how these "memories" suddenly materialized. Some think the answer lies in over-eager therapists who plant the notion of abuse that an emotionally unstable patient then believes actually happened.

"We're not denying that incest and sexual abuse does occur," said Patricia Freyd, executive director of the False Memory Syndrome Foundation, a Philadelphia-based organization of parents whose children have accused them of sexual abuse.

"But we question charges that surface in a particular situation; one where adults have spent their entire lives with no memory of these incidents. When they get into therapy, these memories suddenly appear. We ask the therapists to use extreme caution, especially if they are using hypnosis to tap these so-called memories, and we ask that every attempt be made to verify the charges."

Patricia Dice, a family therapist who attended the recent meeting, said she has dealt with many cases of childhood sexual abuse. But in those cases, the victims never forget the episodes. The memory does not fade

away, only to return decades later.

Since its inception in March, the False Memory Syndrome Foundation has been contacted by 1,200 family members across the country who have been accused of incest. Its mission is to help every member of the family.

"Parents are understandably upset," said Freyd. "But the siblings also suffer."

One result frequently is alienation, and not only of the accuser. Family members have missed graduations, weddings and other gatherings because of the rift caused by the accusation — especially if the siblings are divided about which people they believe. One woman said that her sister accused their father not only of years of incest but also of the ritualistic killing of the family dog in the bathroom.

"It is very clear to me that none of these things happened," said the woman. "But what is true is that my sister believes it happened and has pulled away from the family because none of us believes it. I was close to my sister, but now I rarely see her."

Freyd said that incidents such as this are why her organization is "hard at work to put some restraints on this. The memories tend to get more and more bizarre. They move on from sexual abuse into satanic rituals.... It's not that bizarre things don't happen, but the pattern of these memories ought to make therapists stop and say, 'Wait a minute.'"

Efforts to reason often fail. "I tried to talk to my daughter about her accusations" of father-daughter incest, said one woman. The daughter's therapist nixed the conversation. The mother continued: "I asked her to let me talk to her therapist, but she refused to give me the name. There is no way we can get to the

bottom of this."

One sibling blamed unscrupulous therapists for nurturing this type of accusation.

"They pick on upper-middle-class women," she said. "Those are the women who have the money for therapy. You won't find poor people making these kinds of charges. And you won't find therapists going to the ghetto to look for patients. There's no money there."

"Research has shown how easy it is to influence memory," Freyd said. "I think that most of the therapists involved are sincere, caring people who are concerned about their patients. But there is a tragic lack of understanding about the nature of memory."

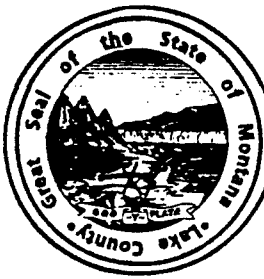
There was a lot of heartache expressed at this meeting. Yet these participants seemed to feel the need to try to maintain a relationship with their sisters. It was hard for me to believe that they could continue the effort, especially when they often were rebuffed.

"They can maintain a lifeline to their sister," Patricia Dice said. "They can keep the lines of communication open. A place should remain for that missing family member should they want to return. Often a sibling can ensure that that space is available."

"Even though it's upsetting for me, I try to keep in touch with her," said one woman. "I would like my sister back."

For More Information

Contact the False Memory Syndrome Foundation at 1-800-568-8882.



Lake County Courthouse

EXHIBIT #16
DATE 3-16-93
SB 368

(406) 883-8211

LAKE COUNTY

108 4th Ave. E.

Polson, Montana 59860

TESTIMONY BY LAKE COUNTY COMMISSIONER MIKE HUTCHIN BEFORE
THE HOUSE JUDICIARY COMMITTEE, MARCH 16, 1993 ON S.B. 368

MEMBERS OF THE COMMITTEE,

FOR THE RECORD MY NAME IS MIKE HUTCHIN, CHAIRMAN OF THE LAKE COUNTY BOARD OF COMMISSIONERS. UNFORTUNATELY, WE RETURN TO HELENA AGAIN TO OPPOSE THIS LEGISLATION. WE WOULD FIRST LIKE TO ASK YOU TO THINK ABOUT THIS. IMAGINE YOURSELF BEING A LEGISLATOR LIVING IN LAKE COUNTY KNOWING YOUR AREA AND ITS CONSTITUENCY AND IT'S OWN PROBLEMS. WOULD YOU FIND IT REASONABLE OR ETHICAL THAT A LEGISLATOR FROM CASCADE COUNTY SOME 200 MILES AWAY SPONSORS THIS LEGISLATION NOT KNOWING THE AREA AND ITS SPECIAL ISSUES. LAKE COUNTY DOES NOT FIND THAT REASONABLE OR ETHICAL. WE HAVE REP. MERCER, REP. DAVIS, REP. BRANDEWIE AND SENATORS HARDING AND WELDON, WHO ALL DO WELL REPRESENTING THE ISSUES OF OUR COUNTY. IF THEY FELT THIS WAS REASONABLE LEGISLATION, THEY WOULD DEFINITELY SPONSOR IT.

TWO YEARS AGO THIS ISSUE WAS IN THE LEGISLATURE AS A FULL RETROCESSION ISSUE. IT WAS DEFEATED AND THE SPONSOR OF THIS LEGISLATION WAS LOUD AND CLEAR IN SAYING IN THE NEXT TWO YEARS YOU GUYS GO HOME AND WORK THIS OUT.

AT THE END OF THE 1991 SESSION, WE RETURNED HOME AND ON MAY 13, 1991 MET WITH CHAIRMAN PABLO AND SEVERAL MEMBERS OF THE TRIBAL COUNCIL ALONG WITH THEIR LEGAL COUNSEL, LAKE COUNTY ATTORNEY AND LAKE COUNTY SHERIFF. WE PUT ON THE TABLE 14 IDEAS FOR DISCUSSION TOWARD A LOCAL AGREEMENT ALONG WITH ASKING FOR ANY OTHERS THE TRIBE WOULD PROPOSE. WE ENJOYED A CORDIAL MEETING WITH MEANINGFUL DIALOGUE AND LEFT WITH THE UNDERSTANDING THEY WOULD GET BACK TO US. THEY DID NOT. ON JULY 8, WE SENT A REMINDER LETTER, NO RESPONSE WAS RECEIVED. AGAIN, ON AUGUST 8 WE ASKED TO DISCUSS THE IDEA OF A COOPERATIVE AGREEMENT. NOT UNTIL OCT. 15, FIVE MONTHS LATER, DID WE RECEIVE A LETTER FROM THE TRIBE WHICH WAS RATHER SCATHING AND CONFRONTATIONAL.

WE AGAIN RESPONDED WITHIN SIX DAYS, (NOT WITHIN FIVE MONTHS) AND ASKED TO MEET AT THEIR CONVENIENCE AND GET ON WITH THE DISCUSSIONS. WE AGAIN HEARD NOTHING FROM THE TRIBE. LAKE COUNTY ATTORNEY NISTLER IN CONJUNCTION WITH THE COMMISSIONERS BROUGHT SOME ISSUES TO THEN ATTORNEY GENERAL MARC RACICOT'S ATTENTION IN A LETTER AND ASKED FOR HIS ASSISTANCE IN ARRANGING FURTHER DIALOGUE WITH THE TRIBES. HE MOST GRACIOUSLY ORCHESTRATED A MEETING WITH ALL INTERESTED PARTIES WHICH WAS HELD APRIL 13, 1992

Page 2

IN HELENA. ONCE AGAIN, A CORDIAL MEETING WAS HELD WITH MEANINGFUL DIALOGUE. AT THE CONCLUSION OF THE MEETING, THE TRIBE INDICATED THAT THEY WOULD BE IN TOUCH WITH ATTORNEY GENERAL RACICOT ON THE ISSUE.

TO OUR KNOWLEDGE, ATTORNEY GENERAL RACICOT NEVER RECEIVED THAT SUBSEQUENT CONTACT AND NO CORRESPONDENCE HAS OCCURRED SINCE APRIL 13 ON THE MATTER OF A COOPERATIVE AGREEMENT.

THE SEQUENCE OF EVENTS JUST DESCRIBED ARE DOCUMENTED IN THIS PACKET OF INFORMATION. WE DID OUR PART IN TRYING TO GET WITH THE TRIBE AND THEY SIMPLY REFUSED TO COME TO THE TABLE.


UNDER P.L. 280 WE HAVE THE BEST OF ALL WORLDS AND COULD DEVELOP A COOPERATIVE AGREEMENT THAT WILL WORK.

THE COMPLEXITY OF THIS ISSUE IS REVEALED IN THE BINDER OF INFORMATION YOU RECEIVED FROM FORMER SENATOR DICK PINSONEAULT WHICH IS ONLY THE TIP OF THE ICEBERG, ON THE QUESTIONS INVOLVED WITH ANY PART OF RETROCESSION. AT A RECENT PUBLIC MEETING THAT WE HELD IN THE COMMISSIONERS OFFICE ATTENDED BY TRIBAL MEMBER'S AND NON-MEMBERS, ONE OVERWHELMING CONCERN WAS THE LACK OF UNDERSTANDING OF HOW THE DETAILS WILL WORK. THOSE DETAILS CAN'T EVEN BE ANSWERED BY THE ATTORNEYS. WE IN LAKE COUNTY LIVE IN A VERY INTEGRATED SOCIETY WHICH BY ITSELF MAKES THE ISSUE VERY DIFFICULT BECAUSE IT IS RARE THAT FAMILIES DO NOT HAVE RACIAL INTERTIES THROUGH MARRIAGE, BUSINESSES, SOCIAL CLUBS, ETC.

WE DO BELIEVE THE PAST TWO YEARS HAVE AFFORDED US A COOLING OFF PERIOD AND A PROGRESSION TOWARD MORE TRUST AND UNDERSTANDING IN OTHER AREAS THAT WILL ALLOW US TO COME TOGETHER AND STRIKE UP AN AGREEMENT THAT WILL HAVE AN EVOLUTION INTO AN EXCELLENT WORKING LAW ENFORCEMENT IN LAKE COUNTY AND THE FLATHEAD RESERVATION.

WE ASK YOU TO OPPOSE THIS BILL AND SEND US HOME TO SIT AT THE TABLE AND NEGOTIATE TO SOME LEVEL OF COOPERATION UNDER P.L. 280.

RESPECTFULLY,

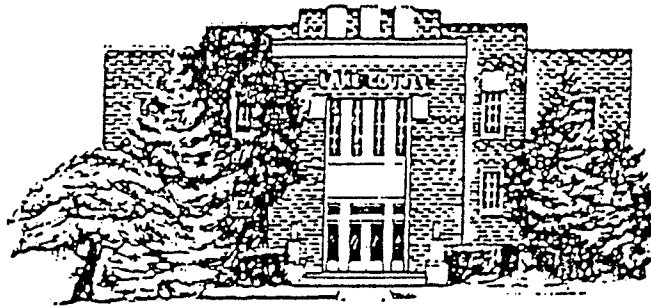


MIKE HUTCHIN, CHAIR
LAKE COUNTY COMMISSIONERS

ML
COUNTY COMMISSIONERS
DON PETERSON
District One
RAY HARBIN
District Two
GERALD L. NEWGARD
District Three

TREASURER
PATRICIA J. COOK

CLERK AND RECORDER
SURVEYOR
LORIN JACOBSON



ASSESSOR
LENORE A. ROAT

SHERIFF AND CORONER
JOE GELDRICH

CLERK OF COURT
KATHERINE E. PEDERSEN

SUPERINTENDENT OF SCHOOLS
GLENNADENE FERRELL

COUNTY ATTORNEY
LARRY J. NISTLER

JUSTICE OF THE PEACE
CHUCK WHITSON

LAKE COUNTY

PHONE 406/883-6211 • 106 FOURTH AVENUE EAST • POLSON, MONTANA 59860

Jan. 3, 1991

EXHIBIT #16
DATE 3-16-93
SB-368

Michael T. Pablo, Chairman
Confederated Salish & Kootenai Tribes
P. O. Box 278
Pablo, MT 59855

Dear Mickey:

This is to follow-up on our telephone conversation indicating that we are unable to keep our appointment with you on January 8 due to conflicting schedules of fellow commissioners. We would all like to be present when we meet with you and the Councilmen.


May we suggest an agenda be followed when we get together and propose the following items that we could base our discussion:

1. How do you perceive we could have a more cooperative arrangement between Lake County and the Tribes.
2. Issues of mutual concern specifically addressing environmental resource management, etc.

Reservations are confirmed for a noon luncheon on Tuesday, January 15th at the Pondera Restaurant here in Polson. If for some reason this is not convenient, please advise.

Thank you, Mickey and looking forward to meeting with you and your fellow Councilmen.

Sincerely,


Gerald L. Newgard
Lake County Commissioner

jd

cc: Jerry Sorensen
Paddy Trusler

MAY 13, 92

Sheriff A Geldrich
Commissioner
Co. Atty. met at Council Hd Qtrs.

PROPOSED COOPERATIVE LAW ENFORCEMENT AGREEMENT
WITH CONFEDERATED SALISH AND KOOTENAI TRIBES,
AND LAKE COUNTY

1. Tribal Police Officers that are P.O.S.T. certified would be appointed as Lake County Deputies.

Lake County Officers that are P.O.S.T. certified would be appointed as Confederated Salish & Kootenai Tribal Officers.

2. Lake County Coroner would appoint two (2) Tribal Officers, that qualify, as Deputy Lake County Coroners to handle any death of enrolled member.

3. Confederated Salish & Kootenai Tribes' insurance carrier would agree to insure all Tribal Officers acting as Deputy Sheriffs and Deputy Coroners.

4. Lake County Officers would be the primary investigative authority investigating crimes on fee land.

Tribal Police would be the primary investigative authority investigating crimes on tribal land or land held in trust, and fee land owned by enrolled members.

5. The Tribal Prosecutor and the Lake County Attorney would prepare guidelines for the prosecution of felony cases when the suspect is an enrolled member of any federally recognized tribe.

The Tribal Prosecutor and the Lake County Attorney would review each such alleged felony case pursuant to these guidelines to determine whether it should be filed in State for Tribal Court.

6. All felony complaints in Lake County would be prosecuted through the Lake County Attorney's Office. Felony suspects would be housed in the Lake County Jail.

7. Misdemeanor complaints against an enrolled member of any federally recognized tribe, would be handled by the Tribal Court Systems. Suspects would be housed in the Tribal Jail.

EXHIBIT #16
DATE 3-16-93
11 SB-368

8. Misdemeanor complaints against non-members would continue to be handled by the Lake County court system. All suspects would continue to be housed in the Lake County Jail

9. Delinquent youths who are enrolled tribal members would be transferred to the Tribal Youth Court. Delinquent youths who are not enrolled Tribal Members would be transferred to the State Youth Court.

10. Tribal Court would have a public defender representing defendants, and have an attorney prosecuting in criminal cases. Traffic conviction information would be sent to the State Department of Justice.

11. There would be a weekly exchange of all court dispositions between Tribal Courts and State Courts, and all courts would make their criminal court records available to the press.

12. A list of all Tribal members would be provided to the Lake County Sheriff or proof of enrollment would be supplied prior to the release of a suspect to the tribes.

13. Prior to initiating this agreement, the prosecutors, public defenders and judges from Tribal and State courts would meet to discuss a format for initiating and transferring cases in each court system.

14. Prior to initiating this agreement, Tribal and State judges would review their sentencing guidelines to assure that Tribal ordinances and State laws concerning minimum and maximum sentences are observed and that sentences are not unduly disparate between each court.

COUNTY COMMISSIONERS

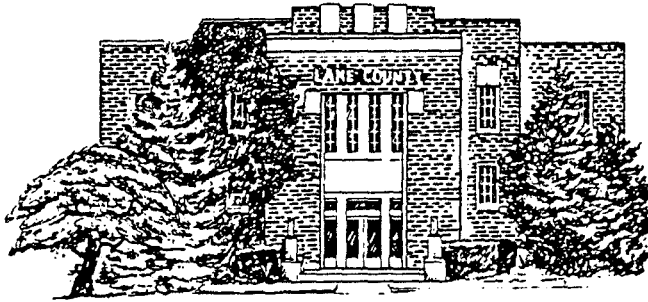
MIKE W. HUTCHIN
District One

RAY HARBIN
District Two

GERALD L. NEWGARD
District Three

TREASURER
PATRICIA J. COOK

CLERK AND RECORDER
SURVEYOR
RUTH E. HODGES



ASSESSOR
LENORE A. ROAT

SHERIFF AND CORONER
JOE GELDRICH

CLERK OF COURT
KATHERINE E. PEDERSEN

SUPERINTENDENT OF SCHOOLS
JOYCE DECKER WEGNER

COUNTY ATTORNEY
LARRY J. NISTLER

JUSTICE OF THE PEACE
CHUCK WHITSON

LAKE COUNTY

PHONE 406/883-6211 • 106 FOURTH AVENUE EAST • POLSON, MONTANA 59860

July 8, 1991

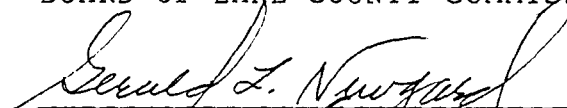
Michael T. Pablo, Chairman
Confederated Salish & Kootenai Tribes
P. O. Box 278
Pablo, MT 59855


Dear Mickey:

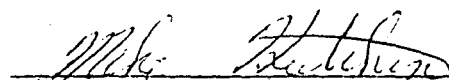
It has been quite some time since we had our meeting in your office where we attempted to put some ideas forward for discussion on alternatives to retrocession.

In fact, it will be two months come Saturday. Something of this magnitude certainly can consume much time and energy. We just felt we would take this opportunity to remind you of our continued interest to discuss possible options with you and look forward to hearing from you on this matter.

BOARD OF LAKE COUNTY COMMISSIONERS


Gerald L. Newgard, Chairman


Ray Harbin, Member


Mike W. Hutchin, Member

jd

COUNTY COMMISSIONERS

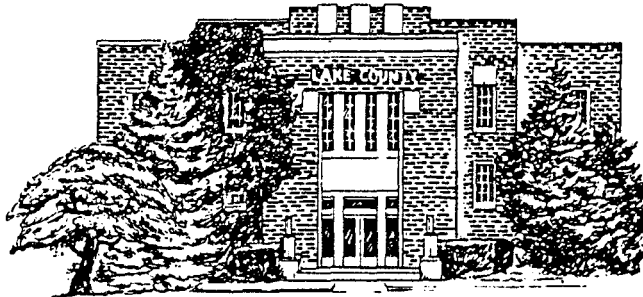
MIKE W. HUTCHIN
District One

RAY HARBIN
District Two

GERALD L. NEWGARD
District Three

TREASURER
PATRICIA J. COOK

CLERK AND RECORDER
SURVEYOR
RUTH E. HODGES



ASSESSOR
LENORE A. ROAT

SHERIFF AND CORONER
JOE GELDRICH

CLERK OF COURT
KATHERINE E. PEDERSEN

SUPERINTENDENT OF SCHOOLS
JOYCE DECKER WEGNER

COUNTY ATTORNEY
LARRY J. NISTLER

JUSTICE OF THE PEACE
CHUCK WHITSON

LAKE COUNTY

PHONE 406/883-6211 • 106 FOURTH AVENUE EAST • POLSON, MONTANA 59860

August 8, 1991

EXHIBIT #16
DATE 3-16-93
SB-368


Michael T. Pablo, Chairman
Confederated Salish & Kootenai Tribes
P. O. Box 278
Pablo, MT 59855

Dear Mickey:


It has been quite some time since we had our meeting in your office where we attempted to put some ideas forward for discussion on alternatives to retrocession.

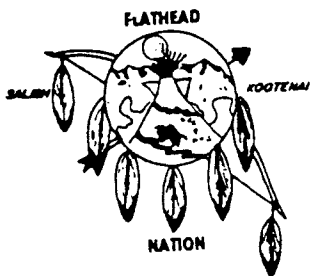
In fact, it will be three months come Saturday. Something of this magnitude certainly can consume much time and energy. We just felt we would take this opportunity to remind you of our continued interest to discuss possible options with you and look forward to hearing from you on this matter.

BOARD OF LAKE COUNTY COMMISSIONERS


Gerald L. Newgard, Chairman


Ray Harbin, Member


Mike W. Hutchin, Member



THE CONFEDERATED SALISH AND KOOTENAI TRIBES
OF THE FLATHEAD NATION

P. O. Box 278
Pablo, Montana 59855
(406) 675-2700
Fax (406) 675-2806

RECEIVED

OCT 15 1991

BOARD OF LAKE COUNTY
COMMISSIONERS



TRIBAL COUNCIL MEMBERS:

Michael T. "Mickey" Pablo - Chairman
Laurence Kenmille - Vice Chairman
Elmer "Sonny" Morigeau, Jr. - Secretary
Joe Dog Felsman - Treasurer
Louis Adams
Lloyd Irvine
Patrick Lefthand
Henry "Hank" Baylor
Antoine "Tony" Incashola
John "Chris" Lozeau

Joseph E. Dupuis - Executive Secretary
Vern L. Clairmont - Executive Treasurer
Bernice Hewankorn - Sergeant-at-Arms

October 10, 1991

Lake County Commissioners
Lake County Courthouse
Polson, Montana 59860

Re: Your "Proposed Cooperative Law Enforcement Agreement with
Confederated Salish and Kootenai Tribes, Lake County and State
of Montana"

Gentlemen:

This letter is in response to the above-referenced proposal put forth by Lake County officials. This proposal was presented by Lake County officials, accompanied by a representative from the Attorney General's office, to a few members of the Tribal Council.

After careful study of the proposal, we conclude that the proposal is seriously flawed. The Tribes question whether the proposal was offered to elicit a serious response or, instead, submitted primarily for theatrics and publicity. The fact that its contents were immediately used in a press release suggests the latter.

If the proposal was earnestly advanced, it reveals some pervasive misunderstandings, misinformation, and faulty assumptions about the status of tribal and federal Indian law and the structure and processes of the tribal justice system. There is also a glaring, overriding omission: it does not contain a cross-deputization proposal between the Tribes and Lake County.

In many respects the proposal is not one for cooperation but, instead, promotes curtailment of the exercise of existing Tribal jurisdiction. For example, the proposal to limit the tribal police's investigative authority to crimes committed on Indian trust land would constitute a serious restriction on tribal law enforcement jurisdiction. Tribal police presently have the authority to make arrests anywhere within the exterior boundaries of the Flathead Indian Reservation. This proposed trust lands limitation is repugnant to the Tribes and illustrates Lake County's continued deep-seated resistance to tribal law enforcement jurisdiction over our own people.

Lake County Commissioners

Page Two

October 10, 1991

CAMBIT #16
DATE 3-16-93
SB-368

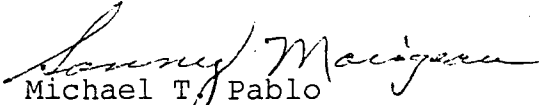
Aspects of the proposal illustrate a lack of familiarity with the tribal justice system in that it proposes to require justice procedures that are already in place (many of them for a decade or more).

The proposal is unclear on the extent to which it represents the position of the state of Montana (although the title suggests it is presented as a State/County proposal). We would certainly envision any cooperative law enforcement proposal with the state of Montana to be more comprehensive than the one submitted.

In conclusion, our overall reaction to the proposal is one of disappointment and conjecture. It is difficult to believe that a proposal as flawed and deficient as this would warrant all of the publicity Lake County sought.

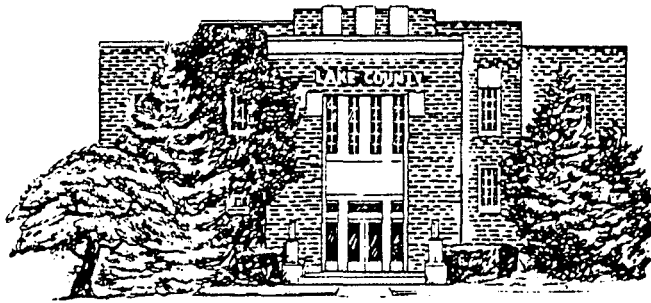
The Tribes wish to discuss *realistic* possibilities for cooperation such as: cross-deputization, transfers and referrals of juvenile and adult offenders, commitments and referrals of incapacitated persons, utilization of tribal coroners, and the appropriate choice of law to be applied in certain classes of cases. If this is your intention, we stand ready to meet with you to prepare an agenda for future conversations.

Sincerely,


Michael T. Pablo
Chairman of the Tribal Council

cc: Attorney General Marc Racicot
Sheriff Joe Geldrich
County Attorney Larry Nistler

COUNTY COMMISSIONERS
MIKE W. HUTCHIN
District One
RAY HARBIN
District Two
GERALD L. NEWGARD
District Three
TREASURER
PATRICIA J. COOK
CLERK AND RECORDER
SURVEYOR
RUTH E. HODGES



ASSESSOR
LENORE A. ROAT
SHERIFF AND CORONER
JOE GELDRICH
CLERK OF COURT
KATHERINE E. PEDERSEN
SUPERINTENDENT OF SCHOOLS
JOYCE DECKER WEGNER
COUNTY ATTORNEY
LARRY J. NISTLER
JUSTICE OF THE PEACE
CHUCK WHITSON

LAKE COUNTY

PHONE 406/883-6211 • 106 FOURTH AVENUE EAST • POLSON, MONTANA 59860

October 21, 1991

Michael T. Pablo, Chairman
Confederated Salish & Kootenai Tribes
P. O. Box 278
Pablo, MT 59855

Dear Mickey:

Thank you for your letter of October 10. Lake County is, contrary to intimation, very serious about engaging in meaningful dialogue involving the items we previously enumerated as well as those presented in your letter. It appears you misunderstood the purpose of the 12 point proposal we provided you. In the meeting we had with you, we asked that these and any other issues relevant be discussed in depth, and asked when you would like to meet to consider them.

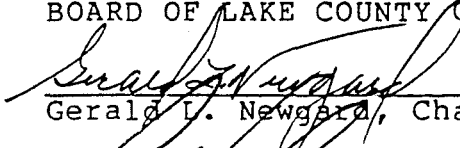
We feel there is plenty of room for discussion and education in this extremely complicated area of law.

We believe, as we are sure you do, that the ultimate well being of all of the people who reside on and travel through the county and reservation is most important as we aspire to reach some consensus. We are willing to meet at your convenience.


In the interest of creating a relatively small working group, we would suggest we have three elected county officials, the sheriff and legal counsel, and hope you consider a composition similar to this as Tribal representation to the group.

We look forward to further communications on this matter.

BOARD OF LAKE COUNTY COMMISSIONERS


Gerald L. Newgard, Chairman


Ray Harbin, Member


Mike W. Hutchin, Member

LAKE COUNTY ATTORNEY'S OFFICE

LAKE COUNTY COURTHOUSE
106 FOURTH AVENUE EAST
POLSON, MONTANA 59860-2183
(406) 883-6211

Larry J. Nistler, County Attorney
Mitchell A. Young, Deputy
Kathleen O'Rourke-Mullins, Deputy

EXHIBIT #16
DATE 3-16-93
SB-368 Administrative Assistant
Susan Hm
Marty Corse

December 27, 1991

Marc Racicot
Attorney General
Justice Building
215 North Sanders
Helena, Montana 59620

Re: PL 280 On the Flathead Reservation

Dear Marc:

As you recall, your office assisted in arranging a meeting with the Flathead Tribal Council in May of this year. The response from the Council has been discouraging at best. The enclosed copies of correspondence between Lake County and the Tribe are self-explanatory.

Unfortunately, the Tribal Council has taken the matter one step further and begun de facto retrocession. Tribal Court prosecutor Najel Bird has acknowledged that the Council has instructed her office to retain prosecution on what would be classified as felonies in the State courts. I am unable to determine when this policy was placed into effect. However, no felony criminal cases initiated by tribal officers against tribal defendants have been referred to my office for prosecution since June of this year. This includes adult felons and juvenile delinquents.

I have voiced my concern about the lack of protection afforded to felony crime victims to Ms. Bird and to Tribal Council Chairman Mickey Pablo. I have received no response from them.

Due to the Tribe's lack of referrals, I am unaware of the total number of felony cases they have assumed and prosecuted as misdemeanors, or the number of serious juvenile offenders they have retained. I have learned that the felony drug sale case files developed through the joint Mission Valley Drug Task Force will only be prosecuted as misdemeanors. I was also contacted in October by a Flathead tribal woman who had been viciously raped. The details she related indicated that felony charges of Aggravated Burglary, Sexual Intercourse Without Consent and Felony Assault should have been filed. She advised me that the former tribal prosecutor assured her that felony charges would be brought. Instead, the Defendant, a Blackfeet member, was convicted on

Page 2
Marc Racicot
Re: PL 280
December 27, 1991

misdemeanor trespass and assault charges. Other recent cases I have learned of include an Aggravated Burglary and Aggravated Assault in which a lead pipe was used and an Incest case. Both cases were apparently prosecuted as misdemeanors.

I would appreciate your suggestions and assistance in arranging further dialogue with the Tribal Council. If this is not possible, I would appreciate your advice on the use of an investigative subpoena policy to require the tribal prosecutor and tribal officers to provide information to Lake County on felony offenses.

Sincerely,

LARRY J. NISTLER
Lake County Attorney

LJN/sh

cc: Lake County Board of Commissioners

ATTORNEY GENERAL
STATE OF MONTANA



Marc Racicot
Attorney General

Justice Building
Helena, Montana 59620

March 24, 1992

Ray Harbin, Commissioner
Mike Hutchin, Commissioner
Gerald L. Newgard, Commissioner
Lake County Commissioners
Lake County Courthouse
Polson MT 59860

Re: Cooperative Law Enforcement Agreement on the Flathead Indian
Reservation

Dear Commissioners:

During the past year there has been some discussion regarding an agreement between the Confederated Salish and Kootenai Tribes of the Flathead Reservation and the governments of the counties in which the Reservation lies regarding law enforcement on the Reservation. This discussion comes in light of the legislation proposed during the last regular legislative session which would authorize Montana to retrocede criminal jurisdiction on the Flathead Reservation to the United States. This office is interested in furthering dialogue on this subject because effective law enforcement is of central concern to this office and generally any attempt to work cooperatively at this endeavor heightens its success and benefits the community as a whole.

It is my understanding that the Tribal Council of the Confederated Salish and Kootenai Tribes and the County Commissioners of Lake County have indicated that they would be willing to engage in discussions regarding a law enforcement agreement. Therefore, in an effort to further these discussions and to set some parameters for such discussions, I would like to invite the members of the Tribal Council and the County Commissioners of Missoula, Sanders, Flathead and Lake Counties, along with legal counsel to the Tribal Council, the Tribal Chief of Police, and the county attorneys and the sheriffs of Missoula, Sanders, Flathead and Lake counties to meet with me in April for initial discussions regarding a law enforcement agreement.

Lake County Commissioners

Page 2

March 24, 1992

FILE # 16
DATE 3-16-93
SB-368

The purpose of this meeting would be to determine the areas to be included and the best manner in which to proceed in negotiating such an agreement. I propose that we meet in Conference Room C209, Side 2, in the Cogswell Building, Helena, Montana, from 1:00-4:00 p.m. on Monday, April 13, 1992. I set this date without prior consultation with any participants; therefore, please let me know as soon as possible if you are able to attend or to send a representative to this meeting. If the date selected is not workable for a majority of those interested I will attempt to find another date.

I look forward to beginning discussions in this very important area and would welcome input from all as to those areas of concern which you feel should be on the agenda of this first meeting.

Thank you for considering attendance at this important meeting.

Sincerely,

Marc Racicot

MARC RACICOT
Attorney General

Testimony Presented to the
House Judiciary Committee
on Senate Bill 368 by Joseph Mc Donald
March 16, 1993

Thank you for conducting this hearing. Concurrent jurisdiction has been a problem for our Indian People on the Flathead Indian Reservation almost since the day of its enactment. My Uncle, the late Walter McDonald, was greatly responsible for the Tribe supporting State legislation enacting legal authorizations provided in U.S. Public Law 280.

He told me that at the time, in early 1963, it was the only way that the tribes could maintain law and order. The Tribes resources at that time were very limited. Rental on Kerr Dam was only \$175,000 per year, and stumpage on the timber was less than ten dollars(\$10) per thousand board feet. Total Tribal income per year was less than \$250,000 per year. The Federal Government was doing very little to provide law enforcement.

Since the time our Tribe and State entered into concurrent jurisdiction a great deal of positive change has taken place on the reservation. Annual Tribal Income is now near \$20 million, and the total expenditure for the tribal governmental programs is \$70 million. The number of Tribal employees has grown to twelve hundred. Last year My Uncle passed away. He told me before he died, that he thought it was now time to retrocede from concurrent jurisdiction. He felt that way because of the development of the Tribe and its ability to care for itself.

The Tribe has developed an outstanding Law Enforcement Department. The police officers are well trained and the equipment is always up to standards. Our Tribal court is one of the best in Indian Country. The Judges and Court personnel are well educated and trained for their positions. Our Chief Judge is a recent graduate of the University of Montana School of Law. One of our Associate Judges is a retired BIA Superintendent. Our Tribal Court has also recently developed a Civil Appellate Court. One of the Appellate Judges is an attorney for the Native American Rights Fund and travels to Pablo for Appellate hearings.

As you know , I am the President of Salish Kootenai College. The College was established by our Tribe because our Indian people were having only limited success in the State University System. They are now having a great deal of success in their own college.

The Indian people are not having success with concurrent jurisdiction. They need to be able to do their own policing, hold their own court, and render their own decisions and penalties for crimes committed. Similar to Higher Education success in Law Enforcement will come only when our Tribe can take care of its own.

Presently there is a great deal of antagonism between the county law enforcement and the Indian People. The antagonism is somewhat noticeable in the City and Justice Courts on the reservation. Many of you received a letter from the clerk of Lake County Justice court. It was so full of racial prejudice, and this is the court where misdemeanor crimes are tried.

This antagonism is so unnecessary. Much of it will end if you will let the Tribe handle its own misdemeanor crimes and those felonies that the Tribe, the Governor, and the Attorney General agree upon.

Lets put an end to Indian People feeling victimized by a police system and court system that they feel they can't change.

Lets put an end to the excessive county expense of enforcing misdemeanor crimes committed by Indians.

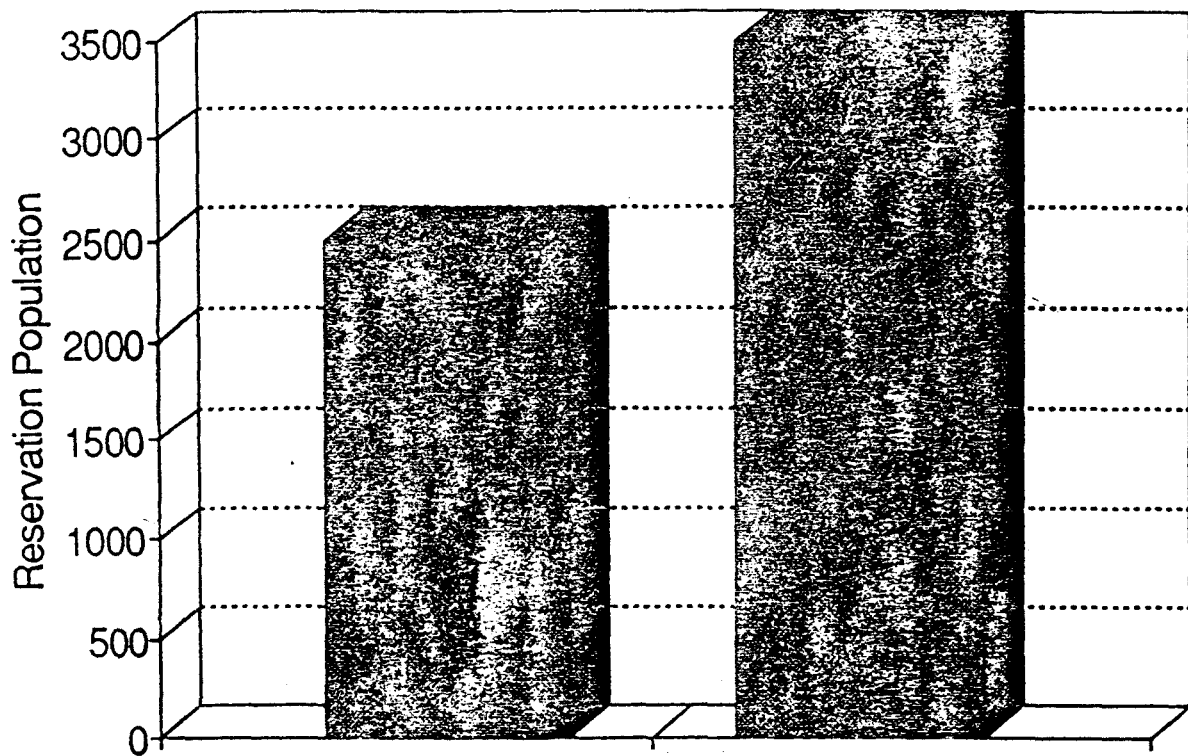
Lets put an end to the counties having to pay for prisoners care and court costs for misdemeanor crimes committed by Indians.

Lets relieve the Taxpayers of this cost.

Lets pass Senate Bill 368, and have the tribe take care of its own misdemeanor crimes.

EXHIBIT # 17
DATE 3-16-93
SB-368

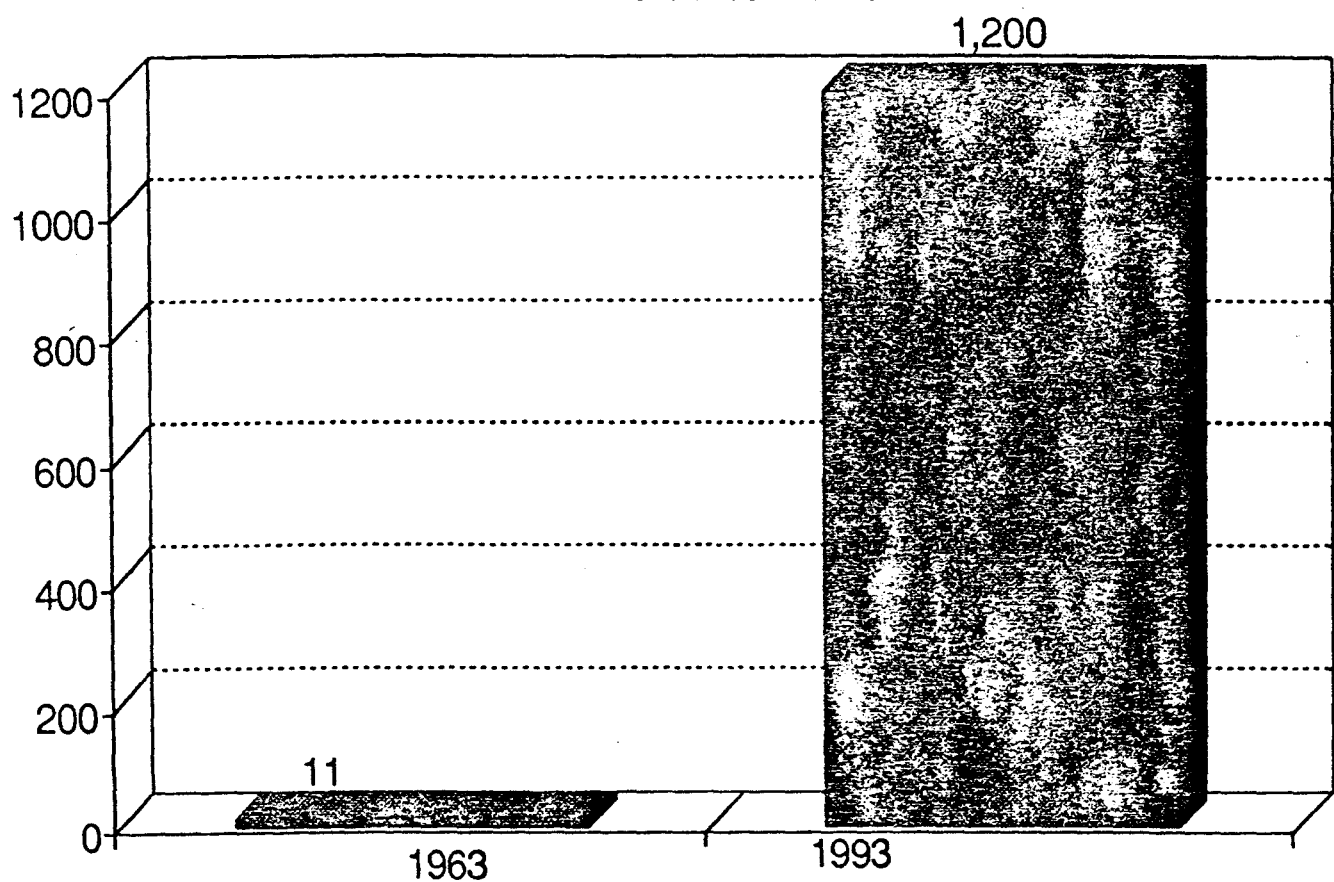
Salish Kootenai Population Growth 1963 to 1993



30 year Population Growth

Salish Kootenai Employee Growth

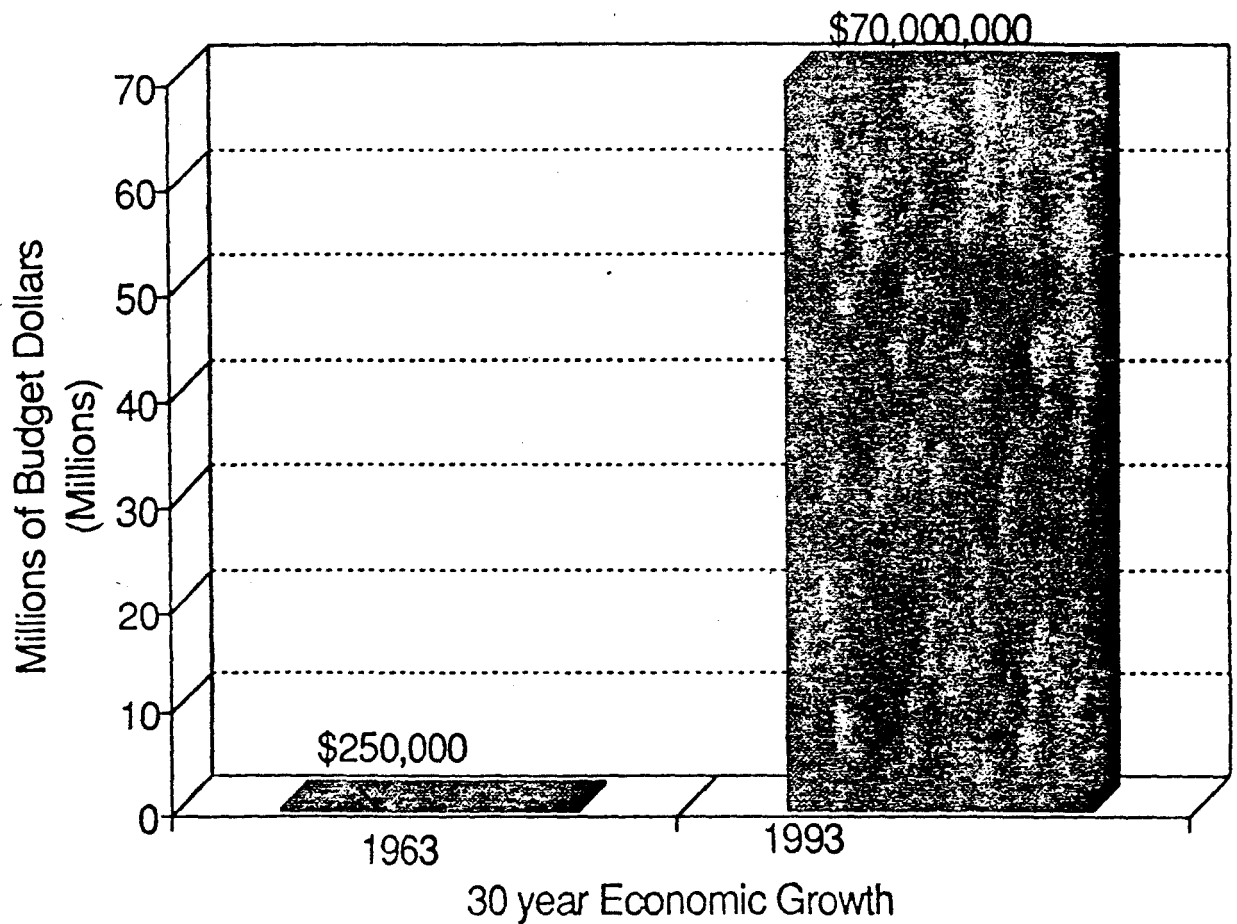
1963 to 1993



30 year Employee Growth

EXHIBIT #17
DATE 3-16-93
A SB-368

Salish Kootenai Economic Growth 1963 to 1993



MISSOULA
COUNTYBOARD OF COUNTY COMMISSIONERS
200 W BROADWAY ST
MISSOULA MT 59802-4292BCC-93-159
March 15, 1993

(406) 721-5700

Representative Russell Fagg, Chairman
House Judiciary Committee
State Capitol
Helena MT 59620

EXHIBIT #18
DATE 3-16-93
SB 368

Re: SB 368 - Partial Retrocession

Dear Representative Fagg:

We are writing to express our support for SB 368, which would authorize the Salish-Kootenai Tribes to partially retrocede from Public Law 280 jurisdiction.

The southern portion of the Flathead Reservation lies within Missoula County. Therefore, this bill directly affects Missoula County. While Missoula County did not oppose the full retrocession bill that was considered by the Legislature last time, we did have some concerns with the bill. Missoula County Attorney Robert "Dusty" Deschamps (and other counties) have expressed reservations about returning federal jurisdiction for major crimes committed by Indians on the Reservation. This concern was discussed between the Tribes, affected counties, and the State last year.

The Tribes have, this time, opted to exclude major crimes from the scope of their bill and are requesting, instead, that Indian misdemeanor crimes be transferred to Tribal Court. We feel that by modifying their request in this way, the Tribes have directly taken this over-riding concern into account. Furthermore, as the bill is written, the Tribes can only reassume exclusive jurisdiction over civil areas and lesser felonies if the Governor agrees. This concession is extremely reasonable and allows for flexibility in the negotiations and implementation.

Tribal officials have met with county law enforcement officials about the bill. There is a mutual understanding and willingness to work together in implementing the transition in a way that we believe will benefit all county residents. We view the bill as a vehicle to improve cooperative law enforcement and, at the same time, reduce financial burdens on the county government.

The Salish-Kootenai law enforcement, judicial, and substance abuse programs are professional and respected and are better suited to serve tribal needs. The Tribes have dedicated substantial resources to these programs, further demonstrating their commitment.

For these reasons, we support the Tribes in their efforts to reassume the responsibility and the costs associated with partial retrocession. We stand ready and willing to work with the Tribes, the Governor, and the Attorney General on this matter. Thank you.

Sincerely,

BOARD OF COUNTY COMMISSIONERS

Ann Mary Dussault, Chair
Barbara Evans, Commissioner

SB 368
TESTIMONY

While I find the concept of retrocession agreeable from a philosophical point of view, I must oppose this bill from a pragmatic prospective. The implementation of this bill, should it pass, will be extremely costly, between the litigation and the social division it would create on the reservation.

If the problem is that Tribal members are not fairly treated under the current judicial system, how would exchanging that inequity for one to be imposed on the non-member majority be an improvement? Under the current system members and nonmembers may vote into or out of office any judge, sheriff, city council member or county commissioner they want. However, under the proposed bill nonmembers, whether Indian or white have, no voice in selecting tribal judges or council members; yet, if you are the victim in a crime committed by a member you are subject to the tribal court's decisions.

The system of law in the existing court system has been developing since the Magna Charta. How do the Tribal courts and their rules compare? Can I go into that court and expect to follow the same procedures and rules of evidence that I now know?

I also wonder about their request to have culturally relevant punishments, when I hear about a predatory juvenile sex offender that continues to roam the streets of Ronan looking for his next victim. This youth has never been punished beyond a one year probation, nor has he ever been treated. In fact none of the state facilities for youth offenders will accept him, as he has not gone through their judicial system, only the Tribal system. If this is what culturally relevant means, then I think my second grade daughter should stop attending her Culture class in school.

I hope my questions show that this bill is not one that should be passed in haste, but rather that retrocesion on an open reservation such as the Flathead Indian Reservation may only be implemented a bit at a time, if at all.

Submitted by Mark E. Nelson, 212 1st Avenue SE, Ronan, MT 59864

I oppose this bill.

Mark E. Nelson

PROPOSED COOPERATIVE LAW ENFORCEMENT AGREEMENT
WITH CONFEDERATED SALISH AND KOOTENAI TRIBES,
AND LAKE COUNTY

1. Tribal Police Officers that are P.O.S.T. certified would be appointed as Lake County Deputies.

Lake County Officers that are P.O.S.T. certified would be appointed as Confederated Salish & Kootenai Tribal Officers.

2. Lake County Coroner would appoint two (2) Tribal Officers, that qualify, as Deputy Lake County Coroners to handle any death of enrolled member.

3. Confederated Salish & Kootenai Tribes' insurance carrier would agree to insure all Tribal Officers acting as Deputy Sheriffs and Deputy Coroners.

4. Lake County Officers would be the primary investigative authority investigating crimes on fee land.

Tribal Police would be the primary investigative authority investigating crimes on tribal land or land held in trust, and fee land owned by enrolled members.

5. The Tribal Prosecutor and the Lake County Attorney would prepare guidelines for the prosecution of felony cases when the suspect is an enrolled member of any federally recognized tribe.

The Tribal Prosecutor and the Lake County Attorney would review each such alleged felony case pursuant to these guidelines to determine whether it should be filed in State for Tribal Court.

6. All felony complaints in Lake County would be prosecuted through the Lake County Attorney's Office. Felony suspects would be housed in the Lake County Jail.

7. Misdemeanor complaints against an enrolled member of any federally recognized tribe, would be handled by the Tribal Court Systems. Suspects would be housed in the Tribal Jail.

8. Misdemeanor complaints against non-members would continue to be handled by the Lake County court system. All suspects would continue to be housed in the Lake County Jail .

9. Delinquent youths who are enrolled tribal members would be transferred to the Tribal Youth Court. Delinquent youths who are not enrolled Tribal Members would be transferred to the State Youth Court.

10. Tribal Court would have a public defender representing defendants, and have an attorney prosecuting in criminal cases. Traffic conviction information would be sent to the State Department of Justice.

11. There would be a weekly exchange of all court dispositions between Tribal Courts and State Courts, and all courts would make their criminal court records available to the press.

12. A list of all Tribal members would be provided to the Lake County Sheriff or proof of enrollment would be supplied prior to the release of a suspect to the tribes.

13. Prior to initiating this agreement, the prosecutors, public defenders and judges from Tribal and State courts would meet to discuss a format for initiating and transferring cases in each court system.

14. Prior to initiating this agreement, Tribal and State judges would review their sentencing guidelines to assure that Tribal ordinances and State laws concerning minimum and maximum sentences are observed and that sentences are not unduly disparate between each court.

EXHIBIT #21
DATE 3-16-93
SB-368

Exhibit #21
March 16, 1993
Senate Bill No. 368

Exhibit No. 21 is a petition with signatures in opposition to Senate Bill 368. The original is stored at the Historical Society at 225 North Roberts Street, Helena, MT 59620-2101. The phone number is 444-2694.

EXHIBIT

22

DATE

3-16-93

SB

4, 5, 242

March 9, 1993

House Judiciary Committee
Montana Legislature
Helena, Montana 59601

Dear Committee Members:

This letter is in support of Senate Bills 4, 5, and 242.

We must return the power of this great state of Montana to the people as a whole, not just to a specific class of people. Confidence in government, as well as the legal system, has deteriorated to an all time low.

This is the time for the House Judicial Committee, and the House, to demonstrate to the people of our State, that our Justice system is of the people, for the people, by the people, and not just a select few.

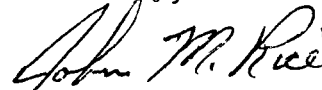
All too often, our seniors on fixed income, and our poor, are deprived of Justice through the courts, simply because they cannot afford an attorney, and are unable to speak for themselves.

The power to remove Judges, who have become incompetent, or have otherwise rendered themselves unworthy of public trust, should lie with the people, and not within the circle of their profession.

It is the right of every citizen to complain of a Judge's actions, without fear of retaliation. It is also the right of every citizen, to have access to complaints that have been filed with the State, against certain Judges.

Now is the time for change, now is the time for leaders with foresight and wisdom, to demonstrate that every citizen has access to our legal system. Therefore, every citizen, regardless of race, sex, religious belief, or education, will be made to feel that they are a part of the system in our State.

Sincerely,



John M. Rice

EXHIBIT #23
DATE 3-16-93
SB 4,5,242

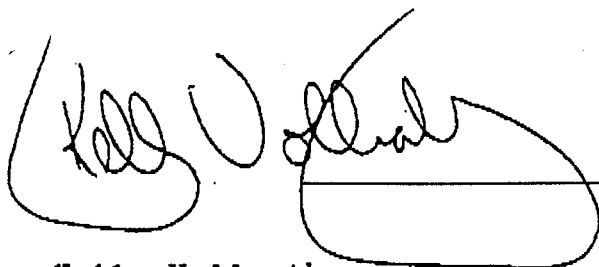
March 16, 1993
2909 3rd Ave. No.
Great Falls, MT. 59401

Mr. Russell Fagg, Chair
House Judiciary Committee
Fax # 444-4105

Dear Mr. Fagg:

Please accept and distribute to the members of the House Judiciary Committee the following fax that I received this morning from Senator Max Baucus, supporting the passage of Senate Bill 37 with no exemptions. Thank you.

Sincerely,

A handwritten signature in cursive script, appearing to read "Kelly Vollrath", is written over a horizontal line. The signature is enclosed within a large, hand-drawn oval.

Kelly Vollrath

MAX BAUCUS
MONTANA

EXHIBIT# 27
DATE 3-16-93
SB 4,5,242
WASHINGTON, DC 20510-2602
MONTANA TOLL FREE NUMBER 1-800-333-4106

United States Senate

WASHINGTON, DC 20510-2602

March 16, 1993

Mr. Kelly Vollrath
2909 Third Avenue North
Great Falls, Montana 59401

Dear Kelly:

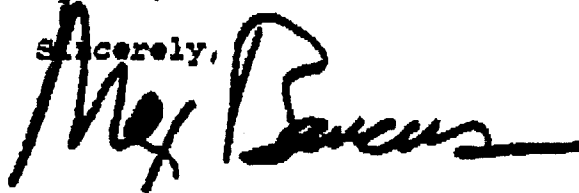
Thank you for getting in touch with my office concerning the anti-stalking legislation that is currently before the Montana State Legislature. I appreciate your bringing this matter to my attention.

I share your deep concern for people who have been victims of stalking in our state, and across the country. I also agree that we need to have strong legislation in place that makes stalking a punishable crime. Such legislation will not only help deter stalking in our state, but it will also protect people from unwelcome harassment or from being the victim of a senseless violent crime. Therefore, like you, I support this anti-stalking legislation that is currently being debated in the Montana State House of Representatives Judiciary Committee -- without any exemptions or amendments. I firmly believe that adding exemptions will only weaken the effectiveness of this important bill.

Again, thank you for contacting me about this matter and I hope you will not hesitate to let me know if I can be of further assistance.

With best personal regards, I am

Sincerely,



MSB/dwf

BILLINGS
(406) 557-2780

BOZEMAN
(406) 556-8104

BUTTE
(406) 753-2700

GREAT FALLS
(406) 761-1576

HELENA
(406) 448-3480

KALISPELL
(406) 756-1150

MISOULA
(406) 328-3121

P.2/2

00 HSN-STONE NES W000:11 06, 91 20W

EXHIBIT #25
DATE 3-16-93
SB^s 4, 5, 242

Exhibit #25

March 16, 1993

Senate Bills No. 4, 5, and 242

Exhibit #25 is a position paper on legal reform prepared by HALT, an organization of Americans for Legal Reform, as testimony in support of SB 4, SB 5, and SB 242. The original is stored at the Historical Society at 225 North Roberts Street, Helena, MT 59620-1201. The phone number is 444-2694.

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Judiciary

COMMITTEE

BILL NO.

SB 23

DATE

March 10, 1993

SPONSOR(S)

H. Klestad

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

| NAME AND ADDRESS | REPRESENTING | SUPPORT | OPPOSE |
|---------------------------|--|-------------------------------------|--------|
| <i>John Rice</i> | | <input checked="" type="checkbox"/> | |
| <i>Phyllis A. Gardner</i> | | <input checked="" type="checkbox"/> | |
| <i>Sara Lipscomb</i> | <i>Self</i> | <input checked="" type="checkbox"/> | |
| <i>Jim Burnett</i> | <i>SD 42</i> | <input checked="" type="checkbox"/> | |
| <i>Dasil Roper</i> | <i>self</i> | <input checked="" type="checkbox"/> | |
| <i>Jenny O'Neil</i> | <i>Vocal of Montana</i> | <input checked="" type="checkbox"/> | |
| <i>Walt Dupea</i> | <i>Self</i> ^{<i>Boz</i>} <i>Bigfork</i> | <input checked="" type="checkbox"/> | |
| <i>John Cannell</i> | <i>self</i> | <input checked="" type="checkbox"/> | |
| <i>Mary McCue</i> | <i>mt Clinical Mental Health Counselor ass'n</i> | <input checked="" type="checkbox"/> | |
| <i>Arwood D. Stickney</i> | | <input checked="" type="checkbox"/> | |
| <i>Tom Hues</i> | <i>Self</i> | <input checked="" type="checkbox"/> | |
| <i>Bill Carter</i> | <i>Self</i> | <input checked="" type="checkbox"/> | |
| | | | |
| | | | |

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Judiciary COMMITTEE BILL NO. SB 368
DATE March 16, 1993 SPONSOR(S) J. Doherty
PLEASE PRINT PLEASE PRINT PLEASE PRINT

| NAME AND ADDRESS | REPRESENTING | SUPPORT | OPPOSE |
|----------------------------|------------------------------------|---------|--------|
| <u>Annabelle White</u> | | ✓ | |
| <u>Tracy D. Price</u> | | ✓ | |
| <u>MARVIN STOPS</u> | | ✓ | |
| <u>Mike A. Finley</u> | | ✓ | |
| <u>Rob Sand</u> | | ✓ | |
| <u>Richard Sawney</u> | <u>Chippewa-Cree Tribe</u> | ✓ | |
| <u>Jena Savage</u> | <u>CS+KT</u> | ✓ | |
| <u>ROSEMARY CAUE</u> | <u>CS+KT</u> | ✓ | |
| <u>MARY STASSO</u> | <u>Salish & Kootenai tribe</u> | ✓ | |
| <u>Rep Jay Stovall</u> | | X | |
| <u>Arwood D. Stickney</u> | | | ✓ |
| <u>Shirleen Glenn</u> | <u>Crow Tribe</u> | ✓ | |
| <u>Ellen Ann Hays Shaw</u> | <u>Crow Tribe</u> | ✓ | |
| <u>David W. Smith</u> | <u>CS & KT</u> | ✓ | |

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Judiciary COMMITTEE BILL NO. SB 368
DATE March 16, 1993 SPONSOR(S) J. Doherty
PLEASE PRINT PLEASE PRINT PLEASE PRINT

| NAME AND ADDRESS | REPRESENTING | SUPPORT | OPPOSE |
|-------------------------------|--|---------|--------|
| <u>Susan White Laila</u> | | ✓ | |
| <u>Michael M. C. C. C. C.</u> | | ✓ | |
| <u>Alfred A. Lyle</u> | | ✓ | |
| <u>M. J. J. J. J.</u> | | ✓ | |
| <u>MARK E. NELSON</u> | <u>City of Kona Resident representing myself</u> | | ✓ |
| <u>Brenda Desmond</u> | <u>myself</u> | ✓ | |
| <u>Patricia J. J. J.</u> | <u>AS & K+</u> | ✓ | |
| <u>Clara R. Buss Tail</u> | <u>Crow Tribe of Indians</u> | ✓ | |
| <u>Bill Carter</u> | <u>Lake County Land Council</u> | | ✓ |
| <u>Tom Allison</u> | <u>Self</u> | ✓ | ✓ |
| <u>Philip Yellow Robe</u> | | | |
| <u>Frank Dooly</u> | <u>Crow Tribe</u> | ✓ | |
| <u>Raymond Big Day</u> | <u>Crow tribe</u> | ✓ | |
| <u>Ellen Swamy</u> | <u>self</u> | ✓ | |

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Judiciary COMMITTEE BILL NO. AB 368
DATE March 16, 1993 SPONSOR (S) S. J. Doherty
PLEASE PRINT PLEASE PRINT PLEASE PRINT

| NAME AND ADDRESS | REPRESENTING | SUPPORT | OPPOSE |
|----------------------|---------------|---------|--------|
| Bob Horvath | A.D. #9 | ✓ | |
| Joe Kilduff | Lake Co. S.O. | | ✓ |
| Pat Smith | CSKT | ✓ | |
| Majel Bird | CSKT | ✓ | |
| Jayne A. Murray | CSKT | ✓ | |
| Joe McDonald | CSKT | ✓ | |
| Clarence Hunter Skaw | CS+KT | ✓ | |
| Wm. P. Smith | | | |
| Janice Bear Crane | | ✓ | |
| Chrysine Whitlock | | ✓ | |
| Hanki Buchanan | | ✓ | |
| Arthur Allen Jr. | | ✓ | |
| Cybil S. Not Afraid | | ✓ | |
| ETON L. Beckhane | | ✓ | |

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

Both 3121A

DATE 3-16-93

HOUSE

~~SENATE~~

COMMITTEE ON JUDICIARY

HB 368

BILLS BEING HEARD TODAY: _____

| Name | Representing | Bill No. | Check One | |
|------------------|-------------------------|----------|-----------|--------|
| | | | Support | Oppose |
| Gina Johnson | | SB 368 | | ✓ |
| Dominic Jones | | S. 11 | | ✓ |
| John Smith | | SB 368 | | ✓ |
| Joe McKenny | Fun Factory Great Falls | H.B. 191 | X | |
| CECIL L. HOPPE | | SB 368 | | X |
| Paddy Tausler | LAKE CO. | SB 368 | | X |
| Mike Hutchins | LAKE COUNTY | SB 368 | | X |
| GEORGE OCITENSKI | CONF. SALISH-KOOTENAI | SB 368 | X | |
| M. L. A. Young | Inter. Co. Athl. | SB 368 | | X |
| Dave Stipe | Lake Co. Comm | SB 368 | | ✓ |
| Deanne Sandholm | A. H. | SB 368 | ✓ | |
| ARTHUR G. BARBER | | SB 368 | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Judiciary
DATE *March 16, 1993*

COMMITTEE

BILL NO.

SB 368

SPONSOR(S)

J. Doherty

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

| NAME AND ADDRESS | REPRESENTING | SUPPORT | OPPOSE |
|----------------------------|-----------------------|----------|--------|
| <i>Anna Swan</i> | <i>Flathead - SKC</i> | <i>✓</i> | |
| <i>Anita Joseph</i> | <i>Kootenai</i> | <i>✓</i> | |
| <i>Trilla M. OLSEN</i> | <i>CROW NATION</i> | <i>✓</i> | |
| <i>Cedric R. Bull-Talk</i> | <i>Crow Nation</i> | <i>✓</i> | |
| <i>Art Big Crane</i> | <i>FLATHEAD</i> | <i>✓</i> | |
| <i>Naomi Billedeaux</i> | <i>Flathead - SKC</i> | <i>✓</i> | |
| <i>LISA LITTLE BOY</i> | <i>Flathead - SKC</i> | <i>✓</i> | |
| <i>Ed Brigham</i> | <i>Pend Oreille</i> | <i>X</i> | |
| <i>Steve Big Crane</i> | <i>Pend Oreille</i> | <i>✓</i> | |
| <i>Linda Gryczan</i> | <i>self</i> | <i>X</i> | |
| <i>Bryan D. Spellman</i> | <i>self</i> | <i>X</i> | |
| <i>Katie Tapeau</i> | <i>Flathead - SKC</i> | <i>X</i> | |
| <i>Sarah Holt</i> | <i>Flathead - SKC</i> | <i>X</i> | |
| | | | |

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Judiciary COMMITTEE SB 368 BILL NO.
DATE March 16, 1993 SPONSOR(S) J. Doherty
PLEASE PRINT PLEASE PRINT PLEASE PRINT

| NAME AND ADDRESS | REPRESENTING | SUPPORT | OPPOSE |
|-------------------------|--------------|---------|--------|
| Katherine Big Hail | | ✓ | |
| Barbara Big Hail | | ✓ | |
| Alee G. Stewart | | ✓ | |
| Daniel Bravo | | ✓ | |
| Sandra (Other) Medicine | | ✓ | |
| Theresa Gunn Skow's | | ✓ | |
| Quanita Stands Morning | | ✓ | |
| Charlene Laverdum | | ✓ | |
| Lateanna Big Lake | | ✓ | |
| Julie Plain | | ✓ | |
| Carmay Plummer | | ✓ | |
| Barbara Plummer | | ✓ | |
| Alice Thompson | | ✓ | |
| | | | |

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Judiciary COMMITTEE BILL NO. SB 368
DATE March 16, 1993 SPONSOR(S) J. Doherty
PLEASE PRINT PLEASE PRINT PLEASE PRINT

| NAME AND ADDRESS | REPRESENTING | SUPPORT | OPPOSE |
|-------------------|--------------|---------|--------|
| Elizabeth Stewart | Yea | ✓ | |
| Nesken Stewart | | ✓ | |
| Alain Small | | ✓ | |
| Jeanette Adams | | ✓ | |
| Imogene Adams | | ✓ | |
| Pauline Small | | ✓ | |
| Joy Malt | | ✓ | |
| Annadell White | | ✓ | |
| Jane J. Small | | ✓ | |
| Isaac Lane Sr. | | ✓ | |
| May A. Lane | | ✓ | |
| William SeBurge | | ✓ | |
| Pete Lane | | ✓ | |
| Quinn O'Neil | | ✓ | |

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Judiciary COMMITTEE SB 368 BILL NO.
DATE 3-16-93 SPONSOR(S) Doherty

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

| NAME AND ADDRESS | REPRESENTING | SUPPORT | OPPOSE |
|----------------------|--------------|---------|--------|
| MARIN STOPS | SELF | ✓ | |
| Addee Redzik Eckhart | Crow Tribe | ✓ | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Judiciary COMMITTEE BILL NO. SB 368
DATE 3-16-23 SPONSOR(S) Doherty

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

| NAME AND ADDRESS | REPRESENTING | SUPPORT | OPPOSE |
|---|--------------|---------|--------|
| Willis Plain Father Crow Agency, MT. | Crow Tribe | ✓ | |
| Dennis Plain Father Rosemanikally Plainfather Crow Agency, MT | Crow Tribe | ✓ | |
| Alice Burrows, Crow Agency, MT | Crow Tribe | ✓ | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

DATE 3-16-93 SPONSOR(S) S Doherty

COMMITTEE Judiciary

BILL NO. SB 368

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

| NAME AND ADDRESS | REPRESENTING | SUPPORT | OPPOSE |
|--|--------------------------------------|-------------------------------------|--------------------------|
| George M Schiller | Self | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Ellen Chance | | <input type="checkbox"/> | <input type="checkbox"/> |
| Y. Jorgensen | | <input type="checkbox"/> | <input type="checkbox"/> |
| John Rice | | <input type="checkbox"/> | <input type="checkbox"/> |
| Eric Brien, Crow Agency, MT | | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Paul D. Matts, Crow Agency, MT | | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| JASON Adams | salish & confederated Kootenai tribe | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| FRANK SHERIDAN | Salish & Kootenai Tribe | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| NEIL J. DODGE | SELF | <input type="checkbox"/> | <input type="checkbox"/> |
| Rhylene L. White | | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Roberta Stewart | | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Kashel Howe | SELF | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| BARRY K. HOWE Crow Agency, MT 59022 | SELF | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Phyllis A. DANIELA | | <input type="checkbox"/> | <input type="checkbox"/> |

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Indicary COMMITTEE BILL NO. B 368
DATE 3-16-93 SPONSOR(S) L. Doherty

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

| NAME AND ADDRESS | REPRESENTING | SUPPORT | OPPOSE |
|------------------------|--------------------|---------|--------|
| Joyce Good Luck | Member-Crow | X | |
| ELIAGENE LANCE | Member-Crow tribe | X | |
| Graey Phillips | member-C S & KT | X | |
| Roxanna Flint | member-C S & KT | X | |
| ISAAC SHANE | member Crow Tribe | | |
| Mary A Shane | " " " | X | |
| Alic-Mrs Forge | " " " | X | |
| Pam Stone | " " " | X | |
| David Bravo | Crow-member | X | |
| Sandra Other Medicine | Crow-member | X | |
| Theresa Gun Shows | Crow-member | X | |
| Granite Stauds Morning | Crow-member | X | |
| Katonna Big Lake | Crow Tribal member | X | |
| Charlene M. Laverdure | Crow Tribal Member | X | |

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Judiciary COMMITTEE BILL NO. SB4
DATE 3-16-93 SPONSOR(S) J. Burnett

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

| NAME AND ADDRESS | REPRESENTING | SUPPORT | OPPOSE |
|-------------------------------|--------------|---------|--------|
| Walt Dupea Box 608 Bigfork | Self | ✓ | |
| Rbb. S. Turner | | ✓ | |
| Arwood D. Stickney | | ✓ | |
| Tom Ainsop | Self | X | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Judiciary COMMITTEE BILL NO. SB 4
DATE March 16, 1993 SPONSOR(S) J. Burnett
PLEASE PRINT PLEASE PRINT PLEASE PRINT

| NAME AND ADDRESS | REPRESENTING | SUPPORT | OPPOSE |
|--------------------------|------------------------------------|-------------------------------------|-------------------------------------|
| <u>Ran Jaskeff</u> | <u>self</u> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| <u>Russell Jaskeff</u> | <u>self</u> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| <u>Kimberly Jaskeff</u> | <u>self</u> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| <u>PATRICK CHENOVICK</u> | <u>SUPREME COURT</u> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| <u>John Rice</u> | | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| <u>Phyllis Hardison</u> | | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| <u>Jim Burnett</u> | <u>SD 42</u> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| <u>Ellen Chance</u> | | <input type="checkbox"/> | <input type="checkbox"/> |
| <u>L. Jorgenson</u> | | <input type="checkbox"/> | <input type="checkbox"/> |
| <u>James Johnson</u> | <u>self</u> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| <u>Pascal Profier</u> | <u>" Paralegal</u> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| <u>Geary O'Neil</u> | <u>self</u> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| <u>Shirley Soderberg</u> | <u>Mt. Big Sky Paralegal Assn.</u> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| <u>Bill Coker</u> | | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Judiciary COMMITTEE BILL NO. S. 5
DATE March 16 93 SPONSOR(S) J. Burnett
PLEASE PRINT PLEASE PRINT PLEASE PRINT

| NAME AND ADDRESS | REPRESENTING | SUPPORT | OPPOSE |
|--|--------------|-------------------------------------|--------------------------|
| <u>Bill Little</u> <u>Missoula Mont</u> | | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| <u>Robt L Turner</u> | | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| <u>Arwood D. Stickney</u> | | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Judiciary COMMITTEE BILL NO. 85
DATE March 16, 1993 SPONSOR(S) J. Burnett
PLEASE PRINT PLEASE PRINT PLEASE PRINT

| NAME AND ADDRESS | REPRESENTING | SUPPORT | OPPOSE |
|--------------------------|------------------------------------|-------------------------------------|-------------------------------------|
| <u>Ken Jacoby</u> | <u>Self</u> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| <u>Russell Jacoby</u> | <u>Self</u> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| <u>Kimberly Jacoby</u> | <u>Self</u> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| <u>PATRICK CHENOVICK</u> | <u>SUPREME COURT</u> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| <u>John Rice</u> | | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| <u>Phyllis a Mendez</u> | | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| <u>Jim Burnett</u> | <u>SD 42</u> | <input type="checkbox"/> | <input type="checkbox"/> |
| <u>Ellen Chambers</u> | | <input type="checkbox"/> | <input type="checkbox"/> |
| <u>L. Jorgensen</u> | | <input type="checkbox"/> | <input type="checkbox"/> |
| <u>Daniel Redden</u> | <u>Self - paralegal</u> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| <u>Gregory J. Reed</u> | <u>Self</u> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| <u>Ticky Soderberg</u> | <u>Mt. Big Sky Paralegal Assn.</u> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| <u>John</u> | | <input type="checkbox"/> | <input type="checkbox"/> |
| <u>Tom Ansel</u> | <u>Self</u> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> |

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Judiciary COMMITTEE BILL NO. SB 242
DATE March 16, 1993 SPONSOR(S) J. Burnett
PLEASE PRINT PLEASE PRINT PLEASE PRINT

| NAME AND ADDRESS | REPRESENTING | SUPPORT | OPPOSE |
|--|---------------------------------|---------|--------|
| PATRICK CHEVOKK | SUPREME COURT | | ✓ |
| John Rice | | ✓ | |
| Phyllis A. dandrea | | ✓ | |
| Ellen Chavira | | | |
| J. Jorgensen | | | |
| David Redfern | Self - Para Legal | ✓ | |
| James D'Neil | Self | ✓ | |
| Dick Soderberg Walt Dupes PO Box 608 Bigfork | Mt. Big Sky Paralegal Assoc. | | X |
| Bill Carter | | ✓ | |
| Arwood D. Stickney | | ✓ | |
| Robb L. Furum | | ✓ | |
| Tom A. Hef | Self | ✓ | |
| | | | |

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.