

MINUTES

MONTANA SENATE 54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN BRUCE D. CRIPPEN, on February 3, 1995, at 10:00 A.M.

ROLL CALL

Members Present:

Sen. Bruce D. Crippen, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Larry L. Baer (R)
Sen. Sharon Estrada (R)
Sen. Lorents Grosfield (R)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Mike Halligan (D)
Sen. Linda J. Nelson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Valencia Lane, Legislative Council
Judy Keintz, Committee Secretary

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

Committee Business Summary:

Hearing: HB 26, SJR 10, SB 278
Executive Action: SB 200, SB 132, HB 26

EXECUTIVE ACTION ON SB 200

Discussion: Valencia Lane commented all parties have agreed to the amendments.

Motion/Vote: SENATOR RIC HOLDEN MOVED TO AMEND SB 200. The motion CARRIED UNANIMOUSLY on oral vote.

Discussion: SENATOR LARRY BAER stated the amendment was lengthy and he was concerned about the contents. Amendment 4, following line 16 on page 2, insert, "finally the legislature intends that the limited exemptions for secured creditors and fiduciaries that are clarified and granted by this legislation extend not only to liability asserted by governmental entities but also extend to

claims by any third parties for clean up and for cost recovery or contribution." Are they exempting anyone who owns this property from any liability for the clean up? **SENATOR BAER** stated that this apparently only applies to third parties who might try to also bring in the bank again to assume some of the liability they might incur from purchasing this property at a sheriff's sale.

Frank Crowley stated the amendments being discussed are the ones which were discussed at the hearing the other day. They have reviewed them carefully with the Department of Health and Environmental Sciences. Ninety percent of the text in these amendments is simply a repositioning of the long list of items which were included in the initial bill. The Department preferred that they be located at the end of this section. The parties have agreed to the amendments.

Motion/Vote: **SENATOR RIC HOLDEN** MOVED SB 200 DO PASS AS AMENDED. The motion **CARRIED UNANIMOUSLY** on oral vote.

EXECUTIVE ACTION ON SB 132

Discussion: **Valencia Lane** commented that technical amendments prepared by Greg Petesch have been adopted. Also Department of Revenue's amendments and a contingent voidness provision have been adopted. These amendments have all been put together in one set. There was some concern that the contingent voidness provision might jeopardize the bill. **CHAIRMAN CRIPPEN** stated the portion of the act pertaining to the amendments by the Department of Revenue would be void. **Ms. Lane** stated that the joint rules state that a bill that reduces revenue and that contains a contingent voidness provision may not be transmitted to the governor unless there is an identified corresponding reduction and an appropriation contained in the general appropriations act.

SENATOR LORENTS GROSFIELD stated the whole concept of contingent voidness goes to revenue. There is no fiscal note on this bill. He questioned what the fiscal impact would be.

SENATOR AL BISHOP commented that **Mr. McGinnis**, Department of Revenue, gave the committee a figure of about \$150,000 to \$300,000. **Mr. McGinnis** stated that was correct.

SENATOR SUE BARTLETT commented that for the biennium we would be dealing with approximately \$300,000. **Mr. McGinnis** stated that by definition Section 32 allows people to take a deduction for gifts made to people during the time prior to their death. That will decrease the size of their taxable estate for inheritance tax purposes.

CHAIRMAN CRIPPEN stated this bill would have to go to the Rules Committee. The question is whether or not there is any process available to proceed with the bill in the case this does not get a corresponding reduction in revenue.

SENATOR GROSFIELD commented there is some confusion on the contingent voidness as to whether it is mandatory or optional. He suggested the bill be sent out to Rules with a contingent voidness.

Motion: **SENATOR RIC HOLDEN MOVED TO FURTHER AMEND SB 132.** The amendments are entitled 13203.agp dated February 2, 1995 prepared by Greg Petesch.

SENATOR BISHOP stated this is a shift in the policy of the state of Montana regarding estates. Throughout all the probate codes, the laws are designed to protect the surviving spouse and the descendants of a decedent. What is happening here is we are taking away the protection that that surviving spouse has by allowing this life insurance gimmick. The decedent can put his property into a life insurance policy and effectively do what he couldn't do under any other means. The statute is two years.

CHAIRMAN CRIPPEN stated that this portion of the probate laws, as was testified and agreed to yesterday, came about the same way as this bill. Life insurance is not in the probate. The only time life insurance is in the probate is when the estate is the beneficiary. Life insurance bypasses probate to provide liquidity to estates. In probate, if an individual would like to dispose of his or her estate to the detriment of a surviving spouse they can do that. From an insurance point of view, we are further clarifying the wishes of an insured to pass sums of money on to the person they desire to have that money. An example was the daughter of a first marriage and to make sure that that daughter had money for college.

SENATOR GROSFIELD stated that amendments 1-17 deal with insurance. The rest of the amendments deal with a murdered spouse or perhaps a divorced spouse. He is not clear if the amendments are technical corrections or if the changes are substantive.

Valencia Lane stated that her understanding of amendments 18-44 are that they deal with notice to an insurance company in a situation where there is a surviving spouse who was divorced or involved in the murder of the decedent. Her understanding is that under current law, if the surviving spouse was divorced or involved in the murder of the decedent, the designation of that spouse as beneficiary is void. These amendments do not change the substantive law on that issue, they simply provide for procedures for notice to the insurance company and the company's procedures that they must follow after notice.

Vote: The motion **CARRIED** on oral vote with **SENATORS BARTLETT, DOHERTY, NELSON and BISHOP** voting "NO".

Motion/Vote: **SENATOR RIC HOLDEN MOVED SB 132 DO PASS AS AMENDED.** The motion **CARRIED** on oral vote with **SENATORS BISHOP and DOHERTY**

voting "NO".

Motion/Vote: SENATOR RIC HOLDEN MOVED THE CHAIRMAN ON ORDER OF BUSINESS NO. 6 WILL REQUEST SB 132 BE REREFERRED TO THE COMMITTEE ON RULES. The motion CARRIED UNANIMOUSLY on oral vote.

{Tape: 1; Side: B; Approx. Counter: 1.9}

HEARING ON HB 26

Opening Statement by Sponsor:

REPRESENTATIVE DIANA WYATT, House District 43, Great Falls, presented HB 26, at the request of the Joint Interim Subcommittee on Insurance Issues. Section 1 merely tries to allow any party to a dispute before the Montana Medical Legal Panel to obtain a brief explanation of the panel's decisions. Currently only the vote count is recorded. Section 2 requires court supervised nonbinding mediation when it is at the request of either of the parties involved. Section 3 extends the current guarantees of confidentiality for the deliberations. This was a consensus piece resulting from the interim study.

Proponents' Testimony:

Russell Hill, MTLA, stated they support the bill. He presented written testimony, EXHIBIT 1.

Opponents' Testimony: None.

Informational Testimony: None.

Questions From Committee Members and Responses:

None.

Closing by Sponsor:

REPRESENTATIVE WYATT offered no further remarks in closing.

HEARING ON SJR 10

Opening Statement by Sponsor:

SENATOR ETHEL HARDING, Senate District 37, Polson, presented SJR 10. She has been searching for help for 20 years to do something to limit frivolous appeals to a reasonable length of time or get some relief in length of time taken on appeal turnaround. This usually takes about two years for every appeal. This Resolution does not do anything about frivolous appeals. It simply requests Congress to divide the Ninth Circuit Court of Appeals so that Montana and our neighboring states would not have to compete with

California, Arizona and Nevada. She handed out a map of the Ninth Circuit Court as it now exists which shows that Montana is 12th in numerical standing from filing notice of appeal to the disposition. **EXHIBIT 2** Her bill states that "in 1990, it was estimated that the Ninth Circuit: covers nine states and two territories, totaling approximately 14 million square miles; serves a population of almost 44 million people, 15 million more than the next largest circuit court and about 20 million more than all other courts of appeals; has 28 judges, 12 more than the next largest circuit court and 16 more than the average circuit court; and has a caseload of more than 6,000 appeals, 2,000 larger than the next largest court of appeals and nearly one-sixth of the total appeals in all the 12 regional courts of appeals; and WHEREAS, projections are that at the current rate of growth, the Ninth Circuit's 1980 docket of cases will double before the year 2000;". She also handed out a fax from Senator Burns endorsing this resolution, **EXHIBIT 3**.

Proponents' Testimony:

Chris Tweeten, Chief Deputy Attorney General for the State of Montana, stated that his testimony was informational. The Montana Attorney General's Office argues more cases before the Ninth Court of Appeals than any law office in Montana. They have approximately 12 to 15 cases a year. Most of those cases are federal habeas corpus cases in which petitions are brought under 28 U.S.C. 2254, which is the federal habeas corpus statute. That statute allows a prisoner in state custody to bring a case in federal court arguing that his custody violates federal law. They also have a category of cases involving issues of Indian law which go before the Ninth Circuit. The most significant one would be the challenge brought by the Crow Tribe to Montana's coal severance tax as applied to coal owned by the Crow Tribe. They have miscellaneous civil cases which go to the Ninth Circuit. Most of these are declaratory judgment actions challenging the constitutionality of statutes enacted by this legislature. One example would be the drug paraphernalia statute adopted in the mid-1980s. There was a declaratory judgment action filed in federal district court in Missoula challenging the constitutionality of that law. Their office represented the state of Montana with respect to that matter and handled that case all the way through the Ninth Circuit Court of Appeals. Statistics provided to them by the Federal District Court Clerk's Office show that the median length of time between the filing of a notice of appeal in a case in the Ninth Circuit and the issuance of a decision varies from 14 to 15 months. That is the longer than the time from filing to decision in twelve of the other thirteen federal circuits. The resolution before you addresses two separate issues. One is the administrative structure of the court and a question of whether the court ought to be divided into two regional courts rather than the one large western United States court that currently exists. The other issue that is addressed in the resolution is whether there ought

to be a Montana judge on the court. Montana has not had a judge appointed to the Ninth Circuit Court of Appeals since 1961. Judge Browning was appointed by President Kennedy in 1961 and still serves on the Court of Appeals, but he has since moved to California. Montana, for a long time, was the only state in the country that did not have a resident circuit judge. Now that Judge Troy has gone on senior status, Hawaii has now joined us as a state in the Ninth Circuit that does not have a full time resident circuit judge. Having a Montanan appointed to the court would be a beneficial thing. It would allow us the opportunity to have the Ninth Circuit Court of Appeals sit in Montana from time to time as it does in other states that have circuit judges in residence. It would bring a Montana perspective to the decisions of court. They also believe that the evidence is fairly clear that regionalizing the Ninth Circuit would probably improve the turnaround time on appeals by removing cases originating out of California and Arizona from the docket. Much of the criminal caseload that clogs the docket in the Ninth Circuit involves cases which originate in Arizona and California and involve immigration and smuggling cases centering around the Mexican border. Regionalizing the courts of appeals is an idea that Congress ought to consider. Grouping states with like interests together would regionalize the appellate system with its own body of law that would be applicable to the states of similar interest. As an appellate court, the Ninth Circuit Court of Appeals has rulemaking authority. With respect to the handling of its cases, the Federal Rules of Appellate Procedure allow the Circuit Courts of Appeal to adopt local rules. The Ninth Circuit has adopted a specific local rule dealing with death penalty cases. They believe there are a number of provisions of that local rule which conflict with federal law and they are participating with six other states in a challenge to the legitimacy of the Ninth Circuit's death penalty rule. The Ninth Circuit has developed a reputation as a tough place to get a capital sentence affirmed. The rule that has been adopted by the Ninth Circuit certainly would contribute to that reputation. There is no guarantee, if the circuits were split, that the new circuit would not adopt the procedural rules created by the Ninth Circuit. Montana would have a greater voice with respect to the adoption of those rules in a smaller circuit than it has in the circuit we are in now. He directed the committee's attention to page 3 of the Resolution, line 17 and 18. They would like to suggest that the appointment of a Montana judge not be tied directly to the creation of a new court of appeals. That is an idea which has merit standing on its own whether a new court of appeals is created or not. There is a technical correction which needs to be made in that the resolution suggests that Congress would be the body to place this new judge on the Court of Appeals. Under the Constitution the appointing authority is with the President.

Opponents' Testimony:

Sherman V. Lohn commented that he is a federal court

practitioner. The federal bar is a very small proportion of the lawyers. He is a member of Senior Advisory Board to the Court of Appeals. The Ninth Circuit is the largest circuit. It has 28 authorized judge positions. Last year there were 8,092 filings in the court. They decided 500 more cases than were filed in that year. No other circuit accomplished that. There are many problems with the proposal to split the court of appeals. The federal courts do not deal with state law. The same law is applied in California as in other places. Hawaii will not agree in any way to join in supporting a split of the circuits. The problems with the Resolution is that it will create more administrative problems than it will ever correct. On a quantity basis, the workload in the circuit would be extremely small. The aggregate number of cases which would be in the circuit would be 1600 cases. Of all the 11 circuits, that would be by far the lowest caseload of any circuit. The federal court problem is the number of cases in California. The solution is simply. Split California by making two separate districts. Eight judges are from Idaho, Washington, Oregon and Alaska. The northern tier has more judges than they should have in proportion to filings and cases. New administrators and construction will cost \$100 million. The federal court is struggling with mandated matters without money. The court of appeals does not control its caseload. The cases now in federal court deal with disability, ERISA, civil rights, etc. The crime bill alone will increase the load in the federal courts by 25%. He presented the reports of the Ninth Court of Appeals in 1989. **EXHIBITS 4, 4A and 4B.** The representative from the attorney general's office stated that it takes 12 to 14 months to conclude a case. Generally, it takes 10 months for the lawyers to get the case ready for argument. Diversity litigation involves 20% of the load in the Ninth Court of Appeals. The proposal is to eliminate that entirely. The Montana Bar Association appointed a special panel to study this situation. They voted 9-3 not to split the court. A more recent vote at the Federal Judicial Conference was a vote in which the judges voted 10-1 not to split the circuit. The lawyers voted 7-1 not to split the circuit. In 1989 the Ninth Circuit Court of Appeals report concluded that the creation of additional regional circuits would create more problems for the federal courts than will be solved. The federal courts are federal, not local, and not parochial. Their responsibility is to enforce the nation's law. This bill would defeat that purpose. Any local benefits that might be derived are outweighed by the economic and institutional cost of the fragmentation. Very little has happened since the 1989 proposal. The principal difference is that in 1990 a federal court committee further suggested that there were other alternatives to reduce the load. The recommendation was made not to consider the bill. This body would go on record adopting a resolution that is going to cost the federal government in excess of \$100 million.

Russell Hill, Montana Trial Lawyers Association, commented that MTLA certainly endorses the need to appoint a Montana judge to

the Ninth Circuit. The amendments suggested by **Mr. Tweeten** are good amendments. MTLA also endorses the language on line 13 urging Congress to turn its thoughtful attention to this Resolution. MTLA's problem is in the Resolved Clauses, line 19 and 20, which refer to this relief and this legislation. It is unclear from the Resolution what that refers to. If it is referring to the top of the page on the previous proposed split, MTLA would suggest that it may not be in Montana's interest to be put into a smaller circuit that includes Guam, Hawaii, etc. There also seems to be a little inconsistency with urging Congress to turn its thoughtful consideration and then urging that they act immediately.

Informational Testimony: None.

Questions From Committee Members and Responses:

SENATOR STEVE DOHERTY asked **Mr. Tweeten** if he could provide the committee with a list of all current sitting active justices, when they were appointed and by which president. **Mr. Tweeten** distributed a copy of the first pages of the Federal Report which had the information. **EXHIBIT 5 SENATOR DOHERTY** commented that it would be very good to find out who is sitting on the court at this point. **SENATOR DOHERTY** further commented that he was aware of three cases in the last year in Montana where civil judgments won by Montana business in excess of a million dollars against a large out-of-state corporation were reversed summarily within weeks of the hearing by the Ninth Circuit Court of Appeals. He asked the sponsor if splitting the circuit would result in getting different interpretation of the laws.

SENATOR HARDING stated that was not her goal. The information she passed out is that the delay has been on the criminal cases because there are so many criminal cases in California and Arizona.

SENATOR DOHERTY asked **Mr. Lohn** what the Ninth Circuit was doing to expedite the dissolution of criminal cases that come before it. Is the log jam going to be broken at any time soon? **Mr. Lohn** answered that depended entirely on Congress. There are requests for additional judges in nearly every circuit. The problem is because there are allegations of a violation of some amendment. As long as Congress keeps passing laws like the crime bill, there will be more and more problems with the court. The answer is to get more judges.

SENATOR DOHERTY questioned the expenses involved. **SENATOR HARDING** stated she did not know where the information regarding expenses came from and she had no idea of the expenses involved.

Closing by Sponsor:

SENATOR HARDING commented that there are problems that even as

recently as 1960 the structure of the courts of appeals was adequate to the tasks assigned to them. This is no longer true today. To deny that serious problems exist in the federal intermediate appellate courts and that they are unlikely to become worst is to ignore the enormous increase in the number and complexity of cases that these courts must now decide. For Congress, the federal judiciary, and the legal profession to fail to act to meet these problems would be a serious failure of public responsibility. Doesn't Montana deserve to have a little higher turn around on appeals than we now see? There comes a time to quit studying and do something for the benefit of Montana. For 20 years she has been looking for a final disposition of a certain case that she has lived with since January 21, 1974. This case will be resolved in the not too distant future. Chief Justice Turnage reminded her in his address to the legislature that justice delayed is justice denied.

HEARING ON SB 278

Opening Statement by Sponsor:

SENATOR VIVIAN BROOKE, Senate District 33, Missoula, presented SB 278. Domestic violence is as old as civilization. It has only been recognized as a serious crime within the last few years. Family violence is the most widespread form of violence. It accounts for nearly half of acts of violent crime although thousands of incidents go unreported because the victim does not seek medical protection or police protection. It cost millions of dollars in health care expenses. It takes many forms and affects the entire family. Family violence affects persons of different races, ages, and socioeconomic groups. Data indicates that family violence occurs in both rural and urban areas. It results in numerous social ills. Most significantly, it threatens the stability of the family and teaches family members, especially children, that violence is acceptable.

Proponents' Testimony:

Judy Wang, Assistant City Attorney, Chair Missoula Family Violence Council, stated SB 278 has two major sections. The first section discusses victims protections. It moves orders, currently called Temporary Restraining Orders, from a subsection currently located in a marriage and divorce statute to their own section. It is their position that victim's protections shouldn't be in divorce statutes. The other major part of the proposal addresses the crime of violence within the family which is called domestic abuse. Their approach to that crime is to take everyone who deals with that crime more seriously and treat it like a crime in the way other crimes are treated in the state of Montana. This bill was drafted by a committee of people including a prosecutor, a legislator, victim advocates, family law attorneys and children's advocates. Some of the ideas which

became SB 278 began when a number of people had an opportunity to attend a national conference on domestic violence legislation. The first problem is the crime of violence within the family called domestic abuse. The problem with that name is that it doesn't sound like a crime. The proposal requests that they call orders of protection just that. The next section of the proposal suggests minimum penalties. Judge Harkin deals with only third offense offenders. He sees third offenders who have never had a significant fine or jail sentence and are puzzled by his get tough attitude on domestic violence because they didn't know they were committing an offense at all. Their proposal is that a first offense offender will be sentenced to at least 24 hours in jail and at least a \$100 fine. A second offense offender will be sentenced to three days in jail and a \$300 fine. They did not add language which stated the sentence could not be suspended. It is the committee's intent that the minimum penalties would be the standard. Given certain circumstances the minimum penalty could be suspended. They also suggested penalties for Orders of Protection currently called Temporary Restraining Orders. Currently restraining orders are not taken seriously by many offenders. Their proposal calls for a third offense Order of Protection violation to be a felony. Another section of the bill addresses victims who need protection who we currently aren't protecting. In the state of Montana, a woman who is raped by a stranger cannot get an order of protection. The only way she can get any protection from her offender is if criminal charges are filed and if the county attorney requests that a order be made upon the offender either as a part of sentencing or a condition of bail that the offender stay away from her and if the judge makes that order. If she does not wish to go ahead with the prosecution, there is absolutely no protection available for her in the state of Montana. A person who is raped and is very fearful of their offender is entitled to a order of protection from a judge to have them protected from further violence. Another section of the law which they are addressing is counseling. Currently they do require counseling upon conviction for an offender in our domestic abuse law. We don't require any assessment of the offender's problems before the counseling begins. They are requesting that the Notice of Rights be amended to reflect the other changes in the law and they are also asking health care workers who suspect that domestic violence has occurred with a patient also give a similar notice of rights. Orders of Protection aren't in their own section. Stalking victims, who may not even know their offender, must go to a divorce statute to get a restraining order. SB 278 allows local governments the discretionary authority to create misdemeanor probation offices. They are also asking that judges have the discretionary authority to place a foot restriction which would make it more fair and clear for both the victim and offender to know the rules. SB 278 states clearly that a restraining order or a relief protection is enforceable throughout the state. It states that there is one method to get a restraining order and all persons should follow that same. The method is to file a petition, a sworn affidavit, that you have been a victim of crime

have it reviewed by a magistrate. **Ms. Wang** presented the written testimony of Judge Doug Harkin, Dawson Deputy County Attorney Fred Unmack, Pam Anderson, Linda Hansen, Karin Nesse, Andrea Mauer, Theresa Troutman, James Neumayer, and Gail Hammer, **EXHIBIT 6**.

Janet Cahill, Montana Coalition Against Domestic Violence, announced their support of SB 278. In 1994 programs in Montana provided more than 20,000 days of emergency shelter to women and children. More than 6,000 women sought services from programs and more than 3,000 children came with them for those services.

Sharon Hoff, Executive Director Montana Catholic Conference, stated that domestic violence counselors teach that violence is a learned behavior and in many cases men who become abusive and the women who are abused grew up in homes where violence occurred. In such a situation a child can grow up believing that violence is acceptable behavior. Boys learn this is a way to be powerful. Abuse counselors say that a child raised in a home with physical abuse is a thousand times more likely to use violence in his own family. At the same item, 25% of men who grew up in abusive homes chose not to use violence. In the United States there is an estimated 3 to 4 million women who are battered each year by their husbands or partners. In 37% of obstetric patients of every race, class, educational background, report being physically abused while being pregnant. More than 50% of the women murdered in the United States are killed by their partner or their ex-partner. Men abuse women to convince themselves that they have a right to do so. One of the reasons women stay in violent situations is that they are at the most dangerous point when they attempt to leave their abusers. Research indicates that women who leave offenders have a 75% greater risk of being killed by the offender than those who stay.

Mark Muir, Police Officer for the City of Missoula, announced their support of SB 278. Family violence is something he frequently encounters. It is reported as the major cause of injury to women. Many communities are crying out for tougher enforcement and sentencing with the purpose to reduce injury and death. Arrests alone are not the answer to this crime. He presented his written testimony, **EXHIBIT 7**.

Kate Cholewa, Montana Women's Lobby, presented her written testimony in support of SB 278, **EXHIBIT 8**.

Gene Keiser, Director of Montana Board of Crime Control, announced their support of SB 278.

Jim Oberhofer, Montana Chiefs of Police Association, stated he has had 25 years in law enforcement witnessing domestic abuse and he, as well as all the other chiefs around the state of Montana, urged support of SB 278.

Martha A. Bethel, City Judge for the City of Hamilton, presented

her written testimony in support of SB 278, **EXHIBIT 9.**

Mary Grady stated she is a survivor. A few years ago she did not know how to protect herself or her children. She asked the committee to think of responsibility and accountability as they read through the bill as well as what motivation is there for a change in behavior of offenders. Abusers often create financial, medical and emotional crises in the lives of their victims.

John Connor, Montana County Attorneys Association, stated the Association generally supports concepts to strengthen laws involving domestic violence. It is universally agreed that we do need to strengthen the laws with respect to domestic violence. He has learned that prosecutors need to respond more swiftly and with more sensitivity to issues involving domestic violence. Immediate, sensitive, and informed response is the best way to deal with these problems.

Beth Baker, Department of Justice, announced their support of SB 278. In 1993 the rate for domestic violence offenses has risen steadily since the offense was first classified. There were nearly 2300 reported cases of domestic abuse in this state. Many of them go unreported. SB 278 represents a significant effort to heighten public awareness that domestic abuse is not at all domestic. It is a crime of violence and it must be treated seriously. The bill strengthens the options available to victims. One of its most important features is the separation of the Orders of Protection from marital dissolution statutes. This bill will keep the restraining order provisions in the family law code for appropriate cases, but it will now give independent protection to victims regardless of their marital relationship. Many violent behaviors are learned at home.

Kelly Slattery-Robinson, YWCA Domestic Violence Assistance Center in Missoula, stated their support of SB 278. She particularly likes the strengthening of the TRO violations and the additional of probation for offenders.

Klaus Sitte, Missoula Family Violence Council, stated he has represented victims and survivors of abuse for more than 21 years. Family violence is cross cultural, cross-economic, cross-racial, and affects many families. The revision of Montana's present TRO and the laws related to it are needed. SB 278 makes it clear that neither marriage or relationship provide haven for the abuse. Peace officers should have every available option they can to protect themselves, the victims, and the innocent bystanders.

Patrina Sims presented her written testimony, **EXHIBIT 10.**

Jan Healy presented her written testimony, **EXHIBIT 11.** Every 34 seconds in the United States a person dies of a heart attack. Millions of dollars and man hours are spent combating that disease. Every 15 seconds in the United States, a woman is

beaten and there is not enough space available in the shelters nor money available to help them escape their battering relationships. The National Crime Survey states there are 21,000 hospitalizations a year related to domestic abuse -- 99,000 bed days, 28,700 emergency department visits, 39,000 physician office visits, 175,000 days of disability, \$44 million in direct medical costs. SB 278 will help by having health care workers provide the Notice of Rights to each victim of abuse.

Amy Pfeifer, Women's Law Section of the State Bar of Montana, stated they have been involved in drafting and supporting family violence and stalking legislation for ten years. The protections in the code have outgrown their placement in the marriage and divorce code. They urge support of SB 278.

Anita Coryell, YMCA Domestic Violence Assistance Center, stated she has worked with child victims of domestic violence for three years. Seventy-five percent of all reported injuries to women and children as a result of domestic violence occur after the woman has left the relationship. They support SB 278 as amended because it has provision which will keep children safer.

Judy Williams presented her written testimony, **EXHIBIT 12.**

Diane Tripp, Vice Chairman Missoula Family Violence Council and also a Victim's Advocate for the YWCA Battered Women's Shelter urged the committee's support of SB 278. She submitted additional handouts, **EXHIBITS 13, 14, 15, & 16.**

Opponents' Testimony: None.

Informational Testimony: None

Questions From Committee Members and Responses:

SENATOR LORENTS GROSFIELD asked **Ms. Wang** which health care workers the bill referenced. **Ms. Wang** stated the term health care workers was defined as previously defined in the code. It was cited in the statute. The Missoula Family Violence Council will draft a form which would be available for any health care worker to make copies.

SENATOR MIKE HALLIGAN questioned the availability of forms for TROs. **Ms. Wang** stated that most local governments go through forms quickly and with this lead time notice they could start ordering less of the old forms. **SENATOR HALLIGAN** stated this was a mandate to local governments. **Ms. Wang** stated that this statute requires that the attorney general's office develop sample forms and she is sure it will be developed in time for the legislation to go into effect.

Closing by Sponsor:

SENATOR BROOKE commented that they have worked on amendments relating to firearms and the seizure of firearms. She asks the

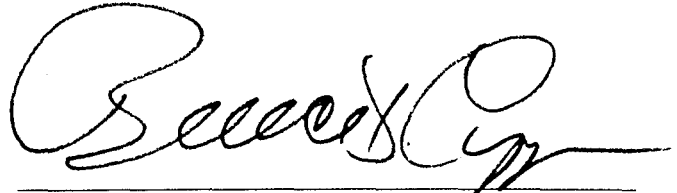
legislature to do their part. We need a lot more training, education, and awareness of the problem in our society. SB 278 will provide a big step in that direction.

EXECUTIVE ACTION ON HB 26

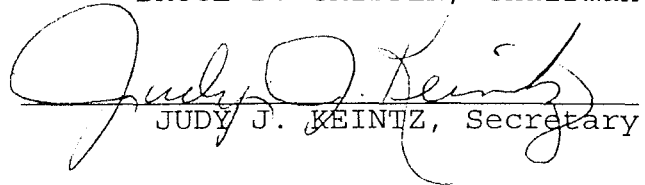
Motion/Vote: SENATOR LINDA NELSON MOVED HB 26 BE CONCURRED IN. The motion CARRIED UNANIMOUSLY on oral vote. SENATOR REINY JABS will carry the bill on the Senate floor.

ADJOURNMENT

Adjournment: The meeting adjourned at 12:00 p.m.

A large, stylized handwritten signature in black ink, appearing to read "Bruce D. Crippen".

BRUCE D. CRIPPEN, Chairman

A large, stylized handwritten signature in black ink, appearing to read "Judy J. Keintz".

JUDY J. KEINTZ, Secretary

BC/jjk

DATE _____

2/3/95

SEN:1995
wp.rollcall.man

SENATE STANDING COMMITTEE REPORT

Page 1 of 5
February 3, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration SB 200 (first reading copy -- white), respectfully report that SB 200 be amended as follows and as so amended do pass.

Signed 
Senator Bruce Crippen, Chair

That such amendments read:

1. Title, line 6.

Following: "INTERESTS;"

Insert: "EXTENDING A LIMITED EXEMPTION TO FIDUCIARIES; DEFINING "FORECLOSURE" AND "FIDUCIARY"; CLARIFYING THE STATUTE OF LIMITATIONS FOR COST RECOVERY TO CONFORM TO THE FEDERAL COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT;"

2. Statement of intent, page 2, line 11.

Following: "a"

Strike: "similar"

Following: "liability"

Insert: ", comparable to the one being proposed for action by congress under CERCLA,"

Following: "fiduciaries"

Insert: "and that it is necessary to add language concerning fiduciaries to Title 75, chapter 10, part 7"

3. Statement of intent, page 2, line 15.

Following: "consistent with"

Strike: "and parallel to"

4. Statement of intent, page 2, line 16.

Following: line 16

Insert: "Finally, the legislature intends that the limited exemptions for secured creditors and fiduciaries that are clarified and granted by this legislation extend not only to liability asserted by governmental entities but also extend to claims by any third parties for cleanup or for cost recovery or contribution."

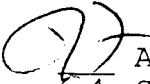
5. Page 3, line 6.

Following: "administrator,"

Insert: "personal representative, custodian, conservator,"

Following: "guardian,"

Insert: "or"


Amd. Coord.
SA Sec. of Senate

291244SC.SRF

6. Page 3, lines 6 and 7.

Strike: "conservator," on line 6 through "person" on line 7

Insert: "acting or"

7. Page 3, line 7.

Following: "property"

Strike: "in a fiduciary capacity."

Insert: "for the exclusive benefit of another person. The term does not include:

(a) a person who has previously owned or operated the property in a nonfiduciary capacity; or

(b) a person acting as fiduciary with respect to a trust or other fiduciary estate that has no objectively reasonable or substantial purpose apart from avoidance of or limitation of liability under this part."

8. Page 5, lines 12 through 19.

Strike: subsections (18) and (19) in their entirety

9. Page 7, line 30.

Strike: "(7)"

Insert: "(5)"

10. Page 8, line 13 through page 10, line 5.

Strike: subsections (2) and (3) in their entirety

Renumber: subsequent subsections

11. Page 10, lines 20 and 25.

Page 12, line 21.

Strike: "(4), and (5)"

Insert: "(2), and (3)"

12. Page 11, line 15.

Strike: "(5)"

Insert: "(3)"

13. Page 11, line 21.

Page 12, line 5.

Strike: "(7)(c)(ii)"

Insert: "(5)(c)(ii)"

14. Page 12, lines 3 and 6.

Strike: "(8)(a)(i)"

Insert: "(6)(a)(i)"

15. Page 12, line 4.

Strike: "(8)(a)(iii)"

Insert: "(6)(a)(iii)"

16. Page 12, line 5.

Strike: "(7)(c)(i)"

Insert: "(5)(c)(i)"

17. Page 12, lines 15 and 21.

Strike: "(7)(b)"

Insert: "(5)(b)"

18. Page 12, lines 15 and 21.

Strike: "(7)(c)"

Insert: "(5)(c)"

19. Page 12, lines 15, 17, and 22.

Strike: "(8)"

Insert: "(6)"

20. Page 12, line 25.

Insert: "(7) The liability of a fiduciary under the provisions of this part for a release or a threatened release of a hazardous or deleterious substance from a facility held in a fiduciary capacity may not exceed the assets held in the fiduciary capacity that are available to indemnify the fiduciary unless the fiduciary is liable under this part independent of the person's ownership or actions taken in a fiduciary capacity.

(8) A person who holds indicia of ownership in a facility primarily to protect a security interest is not liable under subsections (1)(a) and (1)(b) for having participated in the management of a facility within the meaning of 75-10-701(10)(b) because of any one or any combination of the following:

(a) holding an interest in real or personal property when the interest is being held as security for payment or performance of an obligation, including but not limited to a mortgage, deed of trust, lien, security interest, assignment, pledge, or other right or encumbrance against real or personal property that is furnished by the owner to ensure repayment of a financial obligation;

(b) requiring or conducting financial or environmental assessments of a facility or a portion of a facility, making financing conditional upon environmental compliance, or providing environmental information or reports;

(c) monitoring the operations conducted at a facility or providing access to a facility to the department or its agents or to remedial action contractors;

(d) having the mere capacity or unexercised right to influence a facility's management of hazardous or deleterious substances;

(e) giving advice, information, guidance, or direction concerning the administrative and financial aspects, as opposed to day-to-day operational aspects, of a borrower's operations;

(f) providing general information concerning federal, state, or local laws governing the transportation, storage, treatment, and disposal of hazardous or deleterious substances and concerning the hiring of remedial action contractors;

(g) engaging in financial workouts, restructuring, or refinancing of a borrower's obligations;

(h) collecting rent, maintaining utility services, securing a facility from unauthorized entry, or undertaking other activities to protect or preserve the value of the security interest in a facility;

(i) extending or denying credit to a person owning or in lawful possession of a facility;

(j) in an emergency, requiring or undertaking activities to prevent exposure of persons to hazardous or deleterious substances or to contain a release;

(k) requiring or conducting remedial action in response to a release or threatened release if that prior notice is given to the department and the department approves of the remedial action; or

(l) taking title to a facility by foreclosure, provided that the holder of indicia of ownership, from the time the holder acquires title, undertakes to sell, re-lease property held pursuant to a lease financing transaction (whether by a new lease financing transaction or substitution of the lessee), or otherwise divest itself of the property in a reasonably expeditious manner, using whatever commercially reasonable means are relevant or appropriate with respect to the facility and taking all facts and circumstances into consideration and provided that the holder does not:

(i) outbid or refuse a bid for fair consideration for the property or outbid or refuse a bid that would effectively compensate the holder for the amount secured by the facility;

(ii) worsen the contamination at the facility;

(iii) incur liability under subsection (1)(c) or (1)(d) by arranging for disposal of or transporting hazardous or deleterious substances; or

(iv) engage in conduct described in subsection (9)(a) or (9)(b).

(9) The protection from liability provided in subsections (7) and (8) is not available to a fiduciary or to a person holding indicia of ownership primarily to protect a security interest if the fiduciary or person through affirmative conduct:

(a) causes or contributes to a release of hazardous or deleterious substances from the facility;

(b) allows others to cause or contribute to a release of

hazardous or deleterious substances; or

(c) in the case of a person holding indicia of ownership primarily to protect a security interest, participates in the management of a facility by:

(i) exercising decisionmaking control over environmental compliance; or

(ii) exercising control at a level comparable to that of a manager of the enterprise with responsibility for day-to-day decisionmaking either with respect to environmental compliance or substantially all of the operational, but not financial or administrative, aspects of the facility."

21. Page 13, line 12.

Strike: "75-10-715(7)(c)"

Insert: "75-10-715(5)(c)"

22. Page 13, line 26.

Strike: "75-10-715(5)"

Insert: "75-10-715(3)"

23. Page 14, line 5.

Following: "initial action"

Strike: "for recovery of remedial action costs"

Insert: "brought under 75-10-715(4) or a contribution action for costs incurred under this part."

24. Page 14, line 6.

Following: "the"

Strike: "remedial action"

Insert: "final permanent remedy"


-END-

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
February 3, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration HB 26 (third reading copy -- blue), respectfully report that HB 26 be concurred in.

Signed: 

Senator Bruce Crispin, Chair


SN

Amd. Coord.
Sec. of Senate

SEN. TABS
Senator Carrying Bill

291241SC.SRF

Gregory S. Munro
President
Michael E. Wheat
President-Elect
Gene R. Jarussi
Vice President
John M. Morrison
Secretary-Treasurer
William A. Rossbach
Governor
Paul M. Warren
Governor

Montana Trial Lawyers ASSOCIATION

Russell B. Hill, Executive Director
#1 N. Last Chance Gulch
Helena, Montana 59601
Tel: (406) 443-3124
Fax: (406) 443-7850

February 3, 1995

Directors:

Wade Dahood
Director Emeritus
Monte D. Beck
Elizabeth A. Best
Michael D. Cok
Mark S. Connell
Michael W. Cotter
Patricia O. Cotter
Karl J. Englund
Robert S. Fain, Jr.
Victor R. Halverson, Jr.
Gene R. Jarussi
Peter M. Meloy
John M. Morrison
Gregory S. Munro
David R. Paoli
Michael E. Wheat

Sen. Bruce Crippen, Chair
Senate Judiciary Committee
Room 325, State Capitol
Helena, MT 59620

RE: HB 26

Mr. Chair, Members of the Committee:

Thank you for this opportunity to express MTLA's support for House Bill 26, revising the Montana Medical Legal Panel Act.

Background. MTLA recommended these changes, among others, to the Joint Interim Subcommittee on Insurance Issues chaired by Sen. Del Gage. In addition, the Montana Medical-Legal Panel and the Montana Medical Association both testified before the subcommittee in support of these proposals. At its August 26, 1994, hearing on these proposals, the subcommittee voted 6-2 to recommend that they be enacted into law.

In the House, the Montana Medical Association and Montana Medical-Legal Panel again joined MTLA in supporting these changes. The House Judiciary Committee amended the bill to provide that (1) nonbinding mediation is mandatory only when requested by one of the parties, and (2) the panel must inform each party of their rights to nonbinding mediation. MTLA believes that the amendments clarify the intent of the bill and help prevent an unintended consequence: nonbinding mediation which no party wants and which, therefore, would probably be futile.

The House Judiciary Committee voted 16-3 in favor of the amended bill. On second reading, the full House voted 83-13 in favor of the amended bill.

Montana Medical-Legal Panel. Montanans injured by medical negligence must submit their complaints to the Montana Medical-Legal Panel before resorting to court. The

Panel evaluates complaints to determine (1) whether there is "substantial evidence" of medical negligence and (2) whether there is "reasonable medical probability" that any medical negligence injured the claimant.

Significantly, *the Panel does not say "YES" to a claimant, only "NO" or "MAYBE."* Consequently, even when Montana claimants successfully demonstrate the merits of their claim before the Panel, and even when Montana providers could avoid long, difficult, even counterproductive litigation, their liability insurance companies often have little or no incentive to negotiate a reasonable settlement of the claim.

House Bill 26. House Bill 26 reinforces the original intent of the Montana Medical-Legal Panel Act by encouraging all parties to settle legitimate medical-negligence claimsf without litigation:

- Section 1 allows any party to a dispute before the panel to obtain a brief explanation for the panel's decision. Currently, the panel's findings often consist of nothing more than a vote count, giving little objective guidance to the parties and increasing the likelihood of litigation.

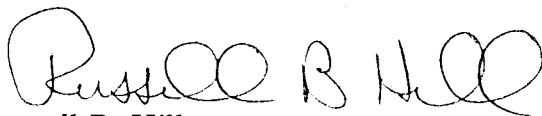
- Section 2 requires court-supervised, *non-binding* mediation when requested by any party after (1) the Panel finds substantial evidence of medical negligence and (2) the Panel finds reasonable medical probability that the claimant's injury resulted from that negligence. No party is bound by the recommendations of the mediator, but all parties must nevertheless negotiate in good faith.

- Section 3 merely extends the current guarantees of confidentiality for Panel deliberations and decisions to cover instances when the Panel explains its decision.

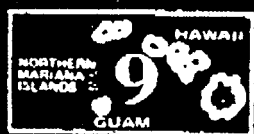
MTLA believes that the Montana Medical-Legal Panel and the Montana Medical Association continue to support the improvements contained in House Bill 26, and MTLA encourages this Committee to carefully consider their comments as well.

If I can provide additional information or assistance to the Committee, please allow me to do so. Thank you again for this opportunity to express MTLA's support for House Bill 26.

Respectfully,

A handwritten signature in cursive script, appearing to read "Russell B. Hill".

Russell B. Hill
Executive Director



Alaska
 Arizona
 California:
 Northern
 Eastern
 Central
 Southern
 Hawaii
 Idaho

Montana
 Nevada
 Oregon
 Washington:
 Eastern
 Western
 Guam
 Northern Mariana Islands

Districts of the Ninth Circuit

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 2

DATE 2/3/95

BY 5 JR 10

EXHIBIT 2
DATE 2-3-95
SJR 10

U.S. COURT OF APPEALS - JUDICIAL WORKLOAD PROFILE

NINTH CIRCUIT

TWELVE MONTH PERIOD ENDED SEPTEMBER 30

H CIRCUIT			TWELVE MONTH PERIOD ENDED SEPTEMBER 30						
			1993	1992	1991	1990	1989	1988	
A P P E A L S	Total		8,514	8,013	7,257	6,729	6,326	6,466	
	Prisoner		1,699	1,601	1,451	1,216	1,112	1,048	
	All Other Civil		3,864	3,581	3,244	3,209	3,174	3,800	
	Criminal		2,141	2,125	1,915	1,836	1,623	1,269	
	Administrative		810	706	647	468	417	349	
	Percent Change in Total Filings Current Year		Over Last Year...	6.3					
			Over Earlier Years...	17.3	26.5	34.6	31.7		
T E R M I N A T E D A P P E A L S	Total		8,966	8,036	6,791	5,397	5,626	5,904	
	Consolidations & Cross Appeals		602	512	476	384	240	228	
	Procedural		3,700	3,463	2,587	2,038	2,487	2,980	
	O N T H E M E R I T S	Total	4,664	4,061	3,728	2,975	2,899	2,696	
		Prisoner	965	798	643	454	478	326	
		Other Civil	1,553	1,592	1,652	1,453	1,481	1,483	
		Criminal	1,655	1,361	1,215	849	775	658	
		Administrative	491	310	218	219	165	229	
		Percent by Active Judges	85.2	84.3	84.2	86.0	85.9	79.6	
	PENDING APPEALS			7,597	8,344	8,341	8,033	7,044	6,342
A C T I O N S P E R A C T I V E J U D G E	Terminations on the Merits		447	381	356	289	329	263	
	Procedural Terminations		129	123	119	106	128	173	
	W R I T T E N D E C I S I O N S	Total	147	123	116	95	97	83	
		Signed	23	24	26	26	33	29	
		Unsigned	112	91	83	64	52	43	
		Without Comment	12	8	7	5	12	11	

Includes only judges active during the entire 12 month period.

U.S. COURT OF APPEALS - JUDICIAL WORKLOAD PROFILE

NINTH CIRCUIT

TWELVE MONTH PERIOD ENDED SEPTEMBER 30

1993
NUMERICAL
STANDING

	1993	1992	1991	1990	1989	1988
Number of Judgeships/ Number of Panels	28/9.3	28/9.3	28/9.3	28/9.3	28/9.3	28/9.3
Number of Sitting Senior Judges	10	9	11	11	11	11
Number of Vacant Judgeship Months	10.3	0.5	9.0	12.0	21.4	27.6

IONS

L

A P P E A L S	Total		912	859	778	721	678	693	4
	Prisoner		182	172	155	130	119	112	9
	All Other Civil		414	383	349	344	340	408	4
	Criminal		229	228	205	197	174	136	3
	Administrative		87	76	69	50	45	37	2
T E R M I N A T E D	Total		961	861	728	578	603	633	3
	Consolidations & Cross Appeals		65	55	52	41	26	25	6
	Procedural		396	371	277	218	266	319	3
	O N T H E M E R I T S	Total	500	435	399	319	311	289	4
		Prisoner	103	86	69	49	51	35	7
		Other Civil	167	170	177	156	159	158	8
		Criminal	177	146	130	91	83	71	2
		Administrative	53	33	23	23	18	25	1
PENDING APPEALS			814	894	894	861	755	680	3
MEDIAN TIME	Median Time From Filing Notice of Appeal To Disposition		14.6	15.2	15.6	15.7	15.8	14.7	12
O T H E R W O R K L O A D P E R J U D G E S H I P	Applications for Interlocutory Appeals		2	2	2	2	2	2	1
	Pro Se Mandamus Petitions		6	6	7	5	7	5	5
	Petitions for Rehearing		54	52	43	28	25	25	4

* See Page e.

FOR THE NATIONAL CIRCUIT PROFILE OPEN THE FOLD OUT AT THE END OF THIS SECTION

CONRAD BURNS
MONTANA

United States Senate
WASHINGTON, DC 20510-2803

COMMITTEES:
APPROPRIATIONS
COMMERCE, SCIENCE, AND
TRANSPORTATION
SMALL BUSINESS
SPECIAL COMMITTEE ON AGING

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 3

DATE 2/3/95

REF. NO. SSR 10

February 3, 1995

The Honorable Ethel Harding
Montana State Senate
State Capitol
Helena, MT 59620

Dear Senator Harding:

Thank you for the opportunity to lend my support to your call for reforming the Ninth Circuit Court of Appeals.

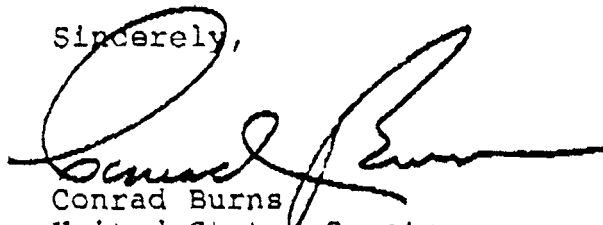
In 1989, I along with several of my colleagues from the West, introduced legislation to divide the ninth judicial circuit of the United States in to two circuits. Although the legislation was not enacted, it brought into clear focus the problems that the overloaded docket of the ninth circuit has created.

Now, a new mindset exists in Washington and as problems with the ninth circuit remain, I think it is the appropriate time to revisit this issue. Therefore, I will be working very hard over the next few months with my western states colleagues to prepare legislation and devise a strategy that will truly reform the federal judicial system for our citizens.

I appreciate your efforts to see this legislation through and I look forward to working with you for the benefit of our fellow Montanans.

With Best Wishes,

Sincerely,


Conrad Burns
United States Senator

CRB/mab

SJR 10

POSITION PAPER

in opposition to
S. 1686 Ninth Circuit Court of Appeals
Reorganization Act (8/2/1991)

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 4

DATE 9/3/95

FILE NO. SJR 10

PREPARED BY: The Office of the Circuit Executive for the United States Courts for the Ninth Circuit, 101 Spear Street, # 215, San Francisco, CA 94105 (415-744-6150) 9/25/91

PROPOSAL: S. 1686 would create a new Twelfth Circuit consisting of Alaska, Idaho, Montana, Oregon, and Washington, with nine active circuit judges. A new Ninth Circuit would consist of Arizona, California, Hawaii, Nevada, Guam, and the Northern Mariana Islands, with 19 active circuit judges.

EXECUTIVE SUMMARY: No reason exists to split the Ninth Circuit. A strong majority of judges and lawyers in the Ninth Circuit opposes efforts to divide it. The circuit is a national leader in developing innovative caseload management and court administration techniques, and is functioning well. For the Ninth Circuit, size has been an asset, particularly in preserving a consistent body of law over a wide geographic area. The Federal Courts Study Committee recommended that Congress, the courts, and the bar study alternative federal appellate structures for the next five years before taking any action on dividing existing circuits, particularly the Ninth Circuit. The Ninth Circuit recommends that the United States Congress reject any proposal to divide the Ninth Circuit.

WHY THE NINTH CIRCUIT SHOULD NOT BE DIVIDED

The United States Court of Appeals for the Ninth Circuit is the largest of eleven regional courts of appeals, with 28 judges handling over 6,700 appeals from nine Western states. The Ninth Circuit is functioning well and strong reasons exist to maintain the circuit intact:

Federal Courts Study Committee Recommendation. The 15-member Federal Courts Study Committee appointed by the Chief Justice at the direction of Congress to make a complete study of the federal courts issued its exhaustive report in April 1990. It recommended that Congress, the courts, bar organizations, and legal scholars carefully study

the fundamental structural alternatives to appellate court structure over the next five years. Before taking any action on circuit divisions, it suggested studying the concepts of consolidating circuits, creating a single, national circuit, establishing subject-matter courts, and the like. Concerning the Ninth Circuit, it concluded, "The Court of Appeals for the Ninth Circuit . . . apparently manages effectively, however, and according to some observers is not unduly troubled by intracircuit conflicts. In short, we would let more time pass before definitively concluding that larger circuits are unworkable." (at p. 122) It went on to add, "Perhaps the Ninth Circuit represents a workable alternative to the traditional model. If not, the entire present appellate system needs restructuring before other circuits become the "jumbo" courts toward which they are gradually evolving." (at p. 123) The success of the Ninth Circuit presents another solution that would avoid the many disadvantages of proliferation of smaller regional circuits.

Judges and Lawyers Oppose Division. Four times in the past ten years, most recently in August of this year, the judges and lawyer members of the annual Ninth Circuit Judicial Conference have voted by overwhelming majorities to support resolutions opposing division of the circuit. In 1989, and again this year, the Ninth Circuit Judicial Council and the judges of the United States Court of Appeals for the Ninth Circuit both adopted resolutions opposing efforts to break up the circuit. Unlike the situation which prevailed in 1980 in the old Fifth Circuit, in which the judges were nearly unanimous in support of circuit division, Ninth Circuit judges are nearly unanimous in opposition to circuit division. In 1989-1990, seven of ten state or territorial bar organizations went on record against splitting the circuit, demonstrating the strong support of the bar for the judges' position.

Preserve a Consistent and Predictable Body of Law. A single court of appeals serving a large geographic region promotes uniformity and consistency in the law. Maintaining a single body of federal law along the entire Pacific Coast as well as throughout the Pacific maritime area has facilitated trade and commerce and contributed to stability and orderly progress in the region. By dividing the circuit, conflicts would inevitably develop, diminishing predictability and uniformity. A division of the circuit is also likely to make keeping abreast of the law more difficult for the many lawyers who practice across the circuit, particularly in highly charged or newly emerging areas of the law where different

circuits might decide the same issue in different ways.

Size is an Asset. The size of the Ninth Circuit is an asset in several respects. The court of appeals is strengthened and enriched by the variety of backgrounds of its judges, drawn from the nine states comprising the circuit. The court regularly sits in four locations - Seattle, Portland, San Francisco, and Pasadena, and periodically in Alaska and Hawaii. The judges are assigned to locations on a rotating basis, regardless of their place of residence. In 1979, the court experimented with a program in which each judge sat and heard cases only in the areas of the judge's residence. After six months, the circuit judges overwhelmingly voted to abandon the experiment. The loss of intellectual interchange with a larger group of judges with varied backgrounds outweighed any perceived benefits. Division of the circuit would make permanent a parochialism that experience led the judges to reject.

Thanks to its size, the Ninth Circuit has a large pool of district judges available for assignment to districts that develop a temporary but acute need for judicial assistance. A large circuit is better able to draw upon its own resources in such a situation, rather than find itself in the position of calling on Washington, D.C., or other circuits for short-term aid.

National Leader in Court Administration Innovations. Due in part to its size and the variety of backgrounds of its judicial officers, the Ninth Circuit is a national leader in developing innovative caseload management and court administration techniques. Fourteen legal scholars recently concluded a study of the circuit and published their findings in a book, Restructuring Justice: The Innovations of the Ninth Circuit and The Future of the Federal Courts (1990), that recounts the many valuable lessons learned from such innovations and their applicability to all courts. ". . . [T]he Ninth Circuit experience strongly supports the utility of regional divisions as laboratories for experimentation in matters of governance and administration," according to Professor Arthur Hellman in Restructuring Justice (at p.21). More than a dozen courts in the Ninth Circuit are serving as pilot testing grounds for decentralized budgeting, alternative dispute resolution, electronic docketing, cameras in the courtroom, video court records, and many other cutting-edge developments in court administration. A large circuit, with its greater resources, diversity, and staff support, is better able to encourage such experiments that will lead the way to the better administration of justice for all Americans.

Duplication and Cost of A New Circuit. An issue that proponents of division rarely mention in this day of tight federal budgets and fiscal constraints is the cost of establishing a new Twelfth Circuit that would be required to duplicate all of the tasks now performed by the Ninth Circuit. Preliminary estimates of the major costs associated with creating a new Twelfth Circuit suggest that, at a minimum, the judiciary could experience roughly \$6.9 million in start-up costs and over \$.5 million in additional annual operating expenses. These estimates are conservative in that they assume that most operating costs in the Twelfth Circuit will be offset by corresponding reductions in the (not much) smaller Ninth Circuit.

These figures are based upon section 3 of the legislation which proposes nine judges in the new Twelfth Circuit and nineteen judges in the old Ninth Circuit. Section 5, however, states that judgeships would be determined by residence which would result in a split of eight and twenty judges. Thus, unless one existing judge were prevailed upon to change residence from the Ninth to the Twelfth Circuit, Congress would need to create a new judgeship in the Twelfth Circuit to achieve the level of nine specified in the bill. On the other hand, if the volume of case filings determines the number of judgeships in each circuit, statistics for 1990 indicate that the division should be seven and twenty one judges instead of nine and nineteen judges. In that case, for the proposed Twelfth Circuit to consist of nine judges as envisioned by the bill, Congress may need to create two additional judgeships which could increase circuit operating costs by almost \$.4 million per judge per year.

RESPONSE TO PROPONENTS OF DIVISION

S. 1686 is the seventh attempt to divide the Ninth Circuit in the last half century. Each time the proponents predicted that the circuit could no longer function for reasons ranging from size and travel to conflicts among panels and unmanageable caseloads. Congress rejected each proposal in turn. The circuit has continued to function well, handling the largest caseload of any court of appeals in the country and disposing of matters before it with reasonable promptness. We respond below to some of the principal arguments advanced by proponents of the most recent proposal for division:

Size. Sheer size of the Ninth Circuit, with 28 authorized circuit judges and an expanding population of over 45 million, is cited as a reason to divide the circuit. Yet the Ninth Circuit is functioning well irrespective of its size and in some respects because of its size. Almost all circuits are growing in population and in appellate court filings, and in two -- the Second and the Seventh Circuits -- appellate filing rates are increasing faster than in the Ninth. If size alone required division, then many existing circuits would soon be fragmented, placing an intolerable burden on the Supreme Court to resolve additional, inevitable inter-circuit conflicts. "Proliferation of new regional circuits would further balkanize the law," according to Professor Hellman in Restructuring Justice (at p.9). Even under the present proposal to divide the circuit, the new Ninth Circuit would still be larger than any other circuit in the country, and still subject to the same alleged flaws of the present Ninth Circuit. Perhaps consolidating circuits, and increasing their size, as suggested by the Federal Courts Study Committee, is a more logical solution in the long run.

Nearly Unmanageable Caseloads. Caseload levels are not unmanageable in the Ninth Circuit. Case terminations per active circuit judge in the Ninth Circuit are higher than they have ever been (343), yet still fall slightly below the median (400) for all circuits. Case processing time has steadily improved since the 1989 earthquake which closed the historic court of appeals headquarters and scattered the court's staff to varying floors in five different buildings. Despite this major disruption which has continued for almost two years, the court has been able to reduced the elapsed time from filing the notice of appeal to the date of filing the last brief from 6.5 months to 5.9 months. Similarly, the court has reduced the time from filing of the last brief to the date of hearing or submission. Perhaps the most significant statistic is the one for which the judges are totally responsible, i.e., the time it takes for judges to decide cases. In argued cases, the median disposition time is 2.7 months compared to the national average of 2.5 months. Ninth Circuit judges dispose of non-argued cases in .3 months compared to the national average of 1.1 months. The court's 1991 overall case disposition time has decreased since its earthquake-induced peak in 1990 and improvement is expected to continue when the court is reunited and relocated in a single downtown office building later this year. As Fifth Circuit Judge John Minor Wisdom stated in recognizing the contributions of the Ninth Circuit to judicial administration, "In sum the extraordinary

demonstration that a large court can be efficient and effective and perform its federalizing function deserves the high honor of the Devitt [Distinguished Service to Justice] Award."

Domination by California Judges. Sponsors of the legislation to divide the circuit cite the need for a court free from domination by California judges and California judicial philosophy. They assert that the Northwest states confront emerging issues that are fundamentally unique to that region and that cannot be fully appreciated or addressed from a California perspective. All cases in the Ninth Circuit are heard by rotating three-judge panels composed of judges from all parts of the circuit, and all panels apply federal, that is, national, law to cases before them. Judges sensitive to local concerns may, by random computer selection, be on any particular panel and will most certainly participate in the development of the law in a field of sufficient importance to come before the court in more than one case. The assertion that a judge's place of residence prejudices his or her determination of a case was rejected as completely unacceptable by former Chief Justice Warren Burger in his remarks concerning an earlier version of the sponsors' legislation: "I find that a very offensive statement to be made that a United States judge, having taken an oath of office, is going to be biased because of the economic conditions in his own jurisdiction." (Record, August 2, 1991, S 12277)

Experiments in Judicial Administration. The sponsors of S. 1686 state their fundamental opposition to using the Ninth Circuit to experiment with new methods of court administration and caseload management. The judges and courts in the Ninth Circuit, however, have prided themselves on their successful, and often replicated, experiments in judicial administration and have become national leaders in developing such innovations. A recent study of these innovations concluded, "What is important is not their origins but their implications for the future. Separately, they represent a variety of approaches that may serve as models for court systems of any size. Together, they may offer a way of meeting the challenge of increased caseloads without resort to more drastic reforms." **Restructuring Justice**, at p. 8.

The court of appeals has pioneered decentralization through the establishment of administrative units to manage administrative responsibilities more effectively. It is also the only court to use the limited en banc procedure of 11 judges to efficiently resolve intracircuit

conflicts and establish controlling circuit precedent. Ten years ago, the circuit created the first governing judicial council composed of an equal number of circuit and district judges, a salutary change that was mandated for all circuits by legislation passed in 1990. The Ninth Circuit remains the only circuit with an expert Bankruptcy Appellate Panel to expeditiously handle bankruptcy appeals. The Federal Courts Study Committee and an independent study by the Federal Judicial Center have remarked on its success and the Committee urged other circuits to adopt a similar mechanism. Thanks in part to its size, a large circuit is able to provide the necessary support, resources, and diversity to encourage such experiments that will lead the way to the better administration of justice for all Americans.

Consistency of the Law. Proponents of division often cite the inconsistency of the law that develops when thousands of three-judge panels are making decisions, and the unpredictability of the development of the law with so many different judges involved. All appellate courts that sit in panels face the problem of maintaining inter-panel consistency. However, the Ninth Circuit Court of Appeals has dealt with this common problem directly and effectively. All fully briefed cases are reviewed by court staff attorneys. The issues in the appeal are coded and entered into a computer. Cases that raise the same issues and become ready for calendaring at the same time are assigned to the same panel. The computer is also used to inform later panels of similar issues heard by earlier panels but not yet decided. The first panel that receives the issue decides it. If conflicts nonetheless arise, a limited en banc procedure is employed to decide them. The success of these efforts is indicated by the few cases that have to be taken en banc -- less than a dozen each year. A recent study of the consistency of the law in the Ninth Circuit concluded, "In any event, the study suggests that the pattern [of multiple relevant precedents] exemplified by high visibility issues . . . is not characteristic of Ninth Circuit jurisprudence generally. Nor is intracircuit conflict." Restructuring Justice, at p. 86.

SOME HISTORICAL BACKGROUND

S. 1686 raises once again the question whether the Ninth Circuit should be divided by carving out a separate circuit comprised of the Northwestern states. Similar proposals have been made, and have been rejected by Congress as not in the public interest, on at least

seven occasions beginning as early as 1940.

Congress rejected the proposals because they were based on faulty premises or they were shortsighted, oftentimes both. In 1940, the proposal to split the circuit would have created a new circuit that did not have enough filings to warrant even a three-judge court. The 1953 and 1964 proposals rested on the premise that a circuit could not operate effectively if it had more than nine circuit judges -- a premise which, if true, would require the creation of six new circuits today.

In 1972, Congress created the Commission on Revision of the Federal Court Appellate System chaired by Senator Roman L. Hruska (Hruska Commission) to study the existing division of the federal circuits. The Commission eventually recommended the split of the Fifth and Ninth Circuits based on its assumption that a court of more than 15 judges and an en banc panel of more than nine judges was unworkable.

Congress rejected the Hruska Commission's recommendation. It was concerned that the perpetual multiplication of circuits would only create new problems for the judiciary and more work for the Supreme Court as it sought to resolve intercircuit conflicts. Congress recognized, as did the Hruska Commission, that circuit divisions were at best a temporary solution to the problem and that more enduring reforms were necessary. It was in this spirit that Congress passed Section 6 of the Omnibus Judgeship Act of 1978. Section 6 provided the court of appeals with an opportunity to innovate, rather than split, in the face of increasing caseloads and the corresponding increase in judgeships. Congress recognized that factors which may have made a large circuit impractical 20 years earlier might be irrelevant today.

Section 6 provided that any court of appeals with more than 15 active judges could divide itself into administrative units and perform its en banc function with less than all its judges. Congress invited the large circuits to report to Congress on their progress and to recommend additional legislation that might be necessary to provide for the effective administration of their courts. In 1980, the Fifth Circuit chose to request division of the circuit and Congress acquiesced. The Ninth Circuit accepted Congress's invitation and embarked upon an extensive program of administrative innovations. Since 1982, the circuit has submitted four reports to Congress on its progress. The last report concluded, "In 1989,

the court can report that the innovations of the past decade provide a solid foundation for the continued growth of the Ninth Circuit. The circuit continues to refine the concepts it has developed over the past ten years with the hope that they may assist other circuits in confronting the challenges of a burgeoning federal caseload in the twenty-first century."

Fourth Biennial Report to Congress, at p.71.

In 1983, another proposal was put forth to divide the circuit, but did not reach the floor of the 98th Congress. Yet another proposal, nearly identical to the present one with the exception that Hawaii, Guam, and the Northern Mariana Islands were aligned with the new Twelfth Circuit, was introduced in both houses of Congress in 1989. Subcommittee hearings were conducted on both the Senate and House sides, but no bill reached the floor.

Very little has changed since the 1989 proposal failed. The principal difference is that in 1990 the Federal Courts Study Committee suggested further study of various structural alternatives before dividing any existing circuits. In doing so, it advised watching the experience of the Ninth Circuit as an example of how a large circuit may function as a workable structural alternative to the present configuration. We submit that this recommendation is solidly based and should commend itself to the Congress in considering the most recent proposal for splitting the Ninth Circuit.

att. - S. 1686, Ninth Circuit Reorganization Act

OFFICE OF THE CIRCUIT EXECUTIVE
UNITED STATES COURTS FOR THE NINTH CIRCUIT
P.O. BOX 42068
SAN FRANCISCO, CALIFORNIA 94142-2068
Telephone FTS/415 556 9693

S. 948, NINTH CIRCUIT COURT OF APPEALS REORGANIZATION ACT

S. 948 would create a new Twelfth Circuit consisting of Washington, Montana, Oregon, Idaho, Alaska, Hawaii, Guam and the Northern Marianas Islands, reducing the Ninth Circuit to California, Nevada and Arizona. The Twelfth Circuit would have 9 active judges. The Ninth Circuit would retain 19 active circuit judges.

I.

Background

S. 948 raises once again the question whether the Ninth Circuit should be divided by carving out a separate circuit comprised of the northwestern states and Hawaii. Similar proposals have been made, and rejected by Congress as not in the public interest, on a number of occasions, beginning as early as 1940.

The last such proposal was presented to the 98th Congress in 1983, but did not reach the floor. Ten years earlier, the Hruska Commission recommended division of the Fifth and Ninth Circuits and bills were introduced to accomplish this purpose. Congress

rejected those proposals and instead invited the two circuits to initiate new approaches to determine if a large circuit could work effectively. To assist in this effort, Congress provided in Section 6 of the Omnibus Judgeship Act of 1978 that any Court of Appeals having more than 15 active judges could divide itself into administrative units and perform its en banc function with less than all of its judges. Congress invited the large circuits to report to Congress on their progress and recommend additional legislation that might be necessary to provide for the effective administration of their courts.

The Fifth Circuit chose to request division of the circuit, and Congress acquiesced. The Ninth Circuit accepted Congress's invitation and embarked upon an extensive program of administrative innovations.

The Ninth Circuit submitted its first report to Congress in 1982 describing in detail the changes undertaken to manage a large appellate court. The second report, in 1984, noted substantial progress but acknowledged the challenges still to be met. The third report submitted in 1986 answered the question posed by Section 6 -- stating emphatically that a large circuit can perform well and that no further legislation is necessary to accomplish that result. That answer stands today. The Ninth Circuit is presently preparing and will submit to Congress its fourth report fully documenting the reasons why there is no need to fragment the Ninth Circuit at this time.

EXHIBIT 4A
DATE 2-3-95
SJR 10

II.

Objections to S. 948

1. There is no administrative need to divide the Ninth Circuit. It is working well. It is a source of pride that this 125 year old judicial institution performs its vital function with commendable economy and efficiency.

In calendar year 1988, the Court of Appeals terminated 6170 appeals, 17.7% more than the previous year. The Court was able to meet its workload despite three unfilled vacancies representing a total loss of over 50 months of judicial time. Despite a 20% increase in filings during the same period, the Court calendar remains current. Once a case is fully briefed by counsel, it is scheduled for the next calendar. This workload has been carried by hard work and innovations in use of staff.

2. Splitting the Ninth Circuit, or other circuits, would not address the real problem facing the Federal Courts of Appeals. The problem is not structure, but workload. Splitting the Ninth Circuit would not diminish the work, but merely divide it. The number of cases that must be heard would remain at least the same whether there is one circuit or two circuits in the western United States.

3. Creating more circuits would increase the workload of the U.S. Supreme Court. More circuits multiply inter-circuit conflicts. Implicit in the remarks of the sponsors of S.948 is the hope that federal law in the pacific northwest will differ substantially from federal law in California, Nevada and Arizona

(Congressional Record May 9, 1989, P.P. 5026-5028). Circuit conflicts would make inevitable the creation of a new tier of federal appellate review or the creation of additional specialized federal appellate courts to relieve the Supreme Court.

Growth followed by division, followed by another period of growth and another division would be an endless process. The Administrative Office of the United States Courts estimates the number of appeals filed will increase from 38,000 in 1988 to 66,000 in the year 2000, an increase of 74%. Increases in filings of that magnitude will require additional judgeships. The Fifth Circuit now has 16 circuit judges and has requested a 17th. If the ceiling for judges per circuit is 15, as proponents of S. 948 argue, the Fifth, divided in 1980, should now be divided again. Indeed since there would be at least 21 circuit judges in the new Ninth Circuit created by S. 948, the Ninth would have to be divided immediately. If Congress passes the pending judgeship bill five of the twelve circuits will have 15 judges or more.

4. The proponents of this legislation argue that the Judicial Conference is on record opposing courts of appeals with more than 15 judges. That position was taken in 1972 -- almost two decades ago. By adopting the Omnibus Judgeship Act of 1978, Congress recognized that courts of appeals with more than 15 judges were practicable. Subsequently, the Conference and the Congress confirmed that view by authorizing additional judgeships for both the Ninth and Fifth Circuits.

5. The size of the Ninth Circuit is an asset. Its Court of

Appeals is strengthened and enriched by the variety of backgrounds of its circuit judges, drawn from various parts of the circuit. Immediately following the passage of Section 6, the Court experimented with a program in which each judge sat and heard cases only in the areas of the judges residence. After six months, the judges overwhelmingly voted to discontinue the experiment. The loss of intellectual interchange with a larger group of judges drawn from a greater variety of backgrounds outweighed any perceived benefits. Division of the circuit would make permanent a parochialism that experience led the judges to reject.

6. Because of its size, the Ninth Circuit has a large pool of district judges available for assignment to districts that develop a temporary but acute need for help. For example, district judges were recently assigned temporarily to the district of Alaska to assist in the handling of the trial calendar because Alaska had a judicial vacancy and one of its remaining judges was committed to a year-long criminal trial. Judges throughout the circuit assisted the district of Hawaii when two of the three authorized judgeships remained vacant for a number of years. In recent years, the greatest need for help has arisen in districts that would be separated from the Ninth to create the Twelfth. In the last year, 42 individual assignments have been made from districts in the proposed Ninth to districts in the proposed Twelfth.

7. Preservation of a single circuit with a single court of appeals has resulted in the maintenance of a consistent and predictable body of federal law throughout the western states and the Pacific maritime area, facilitating trade and commerce and contributing to stability and orderly progress. If the admiralty and commercial law of the Pacific ports were to be divided between two separate and independent Courts of Appeals, conflicts would inevitably develop and predictability of the law would be diminished in this vitally important region.

8. The Ninth Circuit has taken the initiative in experimenting with the innovative procedures authorized by Congress to foster effective administration and to maintain a consistent body of law. A few examples are provided below:

- ° Three administrative units of the Court of Appeals were established pursuant to Section 6. The Northern Unit consists of Washington, Oregon, Montana, Idaho and Alaska; the Middle Unit encompasses Hawaii, Northern and Eastern California, Nevada and Arizona; the Central and Southern districts of California comprise the Southern Unit. Each of these units is led by an Administrative Chief Judge who is responsible for the administrative activities within the region.

- ° The Ninth Circuit exercised the authority conferred by Section 6 to create a limited en banc court. Cases taken en banc by a majority vote of the whole court are decided by a panel of 11 judges drawn by lot in each case. This procedure has been effective in maintaining a consistent body of law throughout the circuit.

- ° Following passage of the Judicial Councils Reform and Judicial Conduct and Disability Act of 1980, the Ninth Circuit reconstituted the Judicial Council to include 5 circuit judges including the Chief Judge of the Circuit and 4 district judges from throughout the circuit. Representatives of the circuit's bankruptcy judges, magistrates and senior judges participate in all

deliberations of the Council. The Judicial Council in turn created an administrative structure in which all elements of the system throughout the circuit -- circuit judges, district judges, bankruptcy judges, magistrates, supporting personnel and members of the bar -- actively participate in efforts to improve the administration of the courts within the circuit. By reorganizing in this way, the Ninth Circuit has created a unique partnership among federal judicial officers and members of the bar in the western United States to accomplish this purpose.

- Only the Ninth Circuit exercised the authority granted by Congress to create a Bankruptcy Appellate Panel. This highly successful court of experienced bankruptcy judges has developed a body of uniform, high-quality bankruptcy precedents, and relieved both the district courts and the court of appeals in the Ninth Circuit of a substantial burden.

- The Ninth Circuit initiated the movement that led to the present pilot project to determine the feasibility of decentralizing responsibility for financial management to the courts spending the funds. The results have exceeded expectations; each pilot court has reported substantial savings over its prior level of expenditure.

III.

Responses to Statements by Senators on the Introduction of S. 948 (Cong.Rec. page S5027 - 5/9/89)

1. Consistency of the Law -- Senator Hatfield notes that in a survey of judges and attorneys conducted by the Ninth Circuit, a majority of judges and lawyers disagreed with the statement "[t]here is consistency between panels considering the same issue." A different picture emerges in responses to other questions in that same survey. For example, a strong majority of both judges and lawyers agreed with the statements that the "Ninth Circuit decisions generally adhere to law announced in earlier opinions" and that the "quality of published opinions is good."

All appellate courts that sit in panels face the problem of maintaining inter-panel consistency. However, the Court of Appeals for the Ninth Circuit has dealt with this common problem directly and effectively. All fully briefed cases are reviewed by court staff attorneys. The issues in the appeal are coded for entry into the computer. Cases that raise the same issue and become ready for calendaring at the same time are assigned to the same panel. The computer is also used to inform later panels of similar issues heard by earlier panels but not yet decided. The first panel that gets the issue decides it.

If conflicts nonetheless arise, a limited en banc procedure is employed to decide them. The success of these efforts is indicated by the very few cases that had to be taken en banc. A follow-up, more detailed, survey of the judges and lawyers of the

Ninth Circuit is now being conducted to identify any inconsistent lines of authority that remain. Preliminary results indicate that few such conflicts exist.

2. Domination by California: Sponsors assert that the Northwest States "are simply dominated by California judges and California attitudes." The underlying premise of the argument is that circuit judges drawn from different parts of the circuit decide cases differently. Anyone familiar with the work of the court knows this is not true. Panels are drawn by computer from a pool that includes all judges. The program is so arranged that each judge sits with every other judge in the pool an equal number of times, and sits in the places where the Court sits (principally, Seattle, Portland, San Francisco, and Pasadena) an equal number of times. It is rare that all three judges on a panel will be from the same area. Judges sensitive to local perception may be on any particular panel and will almost certainly participate in the development of the law in an area of sufficient importance to come before the court in more than a single case. In view of these facts, it would be virtually impossible to correlate decisions with the geographic origins of the judges. The proponents of S. 948 have made no effort to do so.

3. Median Times: A sponsor noted that the time required to process an appeal in the Ninth Circuit is 14.5 months. Of that 14.5 months, only 2.5 months [for orally argued cases] and .9 months [for submitted cases] is spent in judges' chambers -- the

time from submission to disposition. These steps requires less time in the Ninth Circuit than the national average. This source of delay is not judicial. The greater portion of the 14.5 months is spent by court reporters and attorneys in record preparation and briefing to get the case ready for submission for decision. The work of court reporters and attorneys requires about 50 days longer in the Ninth Circuit than the national average. Much of this delay is caused by economic conditions that are peculiar to Los Angeles. While these delays are a statistical problem for the whole circuit, they do not impact Seattle and Portland. The Court has taken steps to reduce this delay in the non-judicial aspects of case processing and is planning others. The Court anticipates a substantial shortening of the disposition time during the next year.

4. Diversity Cases: Senator Packwood stated that splitting the circuit ". . . will allow judges and their clerks to develop an even greater mastery of the state laws which their circuit encompasses than the high level of expertise which they currently exhibit." The number of diversity cases that reach the Ninth Circuit is small. According to Administrative Office statistics for the year ending June 30, 1988, the Ninth Circuit decided only 223 diversity cases. Almost three fourths of those cases were affirmances of the district judges who were practitioners in the state law. The remaining almost 6,000 cases involved issues of federal law.

EXHIBIT 4A
DATE 2-3-95
1 SJR 10

5. Supreme Court Reversal Rate: Senator Packwood suggests division would reduce the reversal rate by the Supreme Court. In the 1986/1987 Supreme Court term, the Ninth Circuit stood tenth among the twelve circuits in reversal rate, with a 47% reversal rate compared to the national average of 62%. Only the First (33%) and Third (46%) Circuits reversal rates were lower. It is interesting to note that splitting the old Fifth Circuit did not reduce the work of the Supreme Court for the region now served by the Fifth and the Eleventh Circuits.

IV.

Estimated Costs of Establishing a Twelfth Circuit

Preliminary estimates of the major additional costs associated with splitting the Ninth Circuit and establishing a new Twelfth Circuit as envisioned in S.948 suggests that, at minimum the Judiciary could experience roughly \$5.3 million in start-up costs and \$2.5 million annually in current dollars. These estimates are conservative in that they assume that most new operating costs in the Twelfth Circuit will be offset by corresponding reductions in the smaller Ninth Circuit. They further assume virtually no space remodelling to accommodate new Circuit operations other than construction of new library space and new judges' chambers. The most significant cost factors associated with division include:

- o Costs associated with at least two potential new judgeships indicated by projected filings in the new Twelfth Circuit (\$658,000 annually plus roughly \$1.1 million in remodelling costs for new chambers).
- o Upgrading space expansion and related equipment and furnishings - principally associated with upgrading of the current Seattle library space (\$3.1 million).
- o Upgrading of main library and chambers collections (\$1.1 million).
- o Annual space rental and maintenance costs (\$1.1 million annually).
- o Net additions to existing staff (\$0.7 million annually) and new computer systems (\$0.1 million).

EXHIBIT 4A
DATE 2-3-95
1 SJR 10

Conclusion

The creation of additional regional circuits will create more problems for the federal courts than will be solved. The federal courts are federal, not local, not parochial. Their responsibility is to enforce the nation's federal law. S. 948 would defeat that purpose. Any local benefits would not outweigh the economic and institutional costs of fragmentation.

6/2/89

NINTH CIRCUIT COURT OF APPEALS

1. The Ninth Circuit includes Arizona, Alaska, California, Hawaii, Idaho, Montana, Nevada, Oregon and Washington, and reviews the decisions from Guam and the Northern Mariana Islands. Its Court of Appeals is the largest in the country, both geographically and in volume, with 28 authorized, full-duty judges and a number of seniors. In terms of its docket, the most recent report shows it having 8,092 case filings in a year. The next highest is the Fifth Circuit with 6,264, and the Eleventh with 5,780. All the others are at the 3,000 and 4,000 level, except for the District of Columbia Circuit, which has 1,770 and the smallest circuit, the First (most of New England), which has 1,370 filings.

The Circuit has two special mechanisms to deal with the problems of size. First, it maintains three separate administrative units, for the north, south and central portions of the Circuit. Second, in order to solve the problems of conflicts among panels or to determine especially important matters without overuse of judicial time, it hears en banc matters with a limited en banc court of 11, as authorized by Congress. The judges for each en banc court are the chief judge and ten judges chosen on a random basis from the whole court. The court reserves the power to have the entire court hear a matter, but no such episode has ever occurred.

The court has aggressively attacked its docket -- it had 500 more dispositions than filings last year, the only circuit court with such a record. But inescapably behind because of its heavy workload, the court has requested ten additional judges. This request to Congress has been approved by the Judicial

Conference of the United States but has not yet been acted upon by the Congress.

2. From time to time, there have been proposals to divide the Circuit. These proposals have taken various forms:

a. There have been suggestions to make California a separate circuit since about 3,748 of the court's 8,100 cases come from that state. The practical effect of that proposal would be to leave as the remainder of the Ninth Circuit a sort of a giant horseshoe running from Arizona to Alaska and south to Hawaii and Guam. The administrative center of the Circuit and its functioning central court would presumably then become either Portland or Seattle. So far this proposal has not seemed appealing to anyone.

b. A second proposal, which has been circulated, is to divide California, creating a southern circuit centered in Los Angeles with Nevada and Arizona and perhaps Hawaii, and a northern circuit of the remainder. While this would divide the workload, it is extremely unpalatable to Californians who resist it under the slogan of "the same law for San Diego and Sacramento."

Both of these California proposals have so far died a-borning.

c. A third proposal is to create a circuit of the northern states, Alaska, Idaho, Montana, Oregon and Washington. Basic problems with this proposal are that it creates more administrative problems than it solves. Quantitatively, such a circuit would, by workload, be extremely small. The aggregate number of cases in such a circuit, based on the most recent

statistics, would be 1,678, making it the second smallest circuit in the country, with only the First Circuit having fewer cases. Of the 11 regular circuits, excluding the District of Columbia as a court of special jurisdiction, the court with the median volume is the Second, with 3,986 cases; the possible northern circuit would be well under half that. Take away the northern states, and the Ninth Circuit would still have the largest volume in the country. In short, such a plan creates not much of a circuit and gives not much relief.

There would be high dollar cost consequences of such a division. At least one major new courthouse with new clerks and other staff would have to be created; the construction costs alone would go up from \$100,000,000. From the building standpoint, this would create no relief since the San Francisco center is in the process of major reconstruction after the recent earthquake and it and the Pasadena structures were designed to be and are fully adequate to the needs of the Circuit as a whole.

Such an arrangement would, for the moment, leave too many circuit judges in the northern circuit with not as much to do per judge as the remaining circuit. Under the existing system, some effort is made to have at least one judge from each state in the Circuit and there are presently eight active circuit judges now residing in the northern states, as compared to the six active judges in the First Circuit which is comparable for docket. What happens currently is that California is shorted in relation both to its population and to its volume of cases by the present geographic distribution pattern of judges. The northern states have roughly a third of the judges and a fifth of the cases; their labors are

presently indispensable in carrying the heavier docket of the southern states. Hence, there would be pressure for an immediate increase in the number of judges for the southern circuit to make up for the departure of the present northern judges since the overwhelming bulk of the cases come from the south. This would require immediate costs simultaneously with the division.

3. A remaining possibility which has been suggested but with scant support is the movement of Arizona from the Ninth Circuit to the Tenth Circuit. Arizona contributes 720 cases to the Ninth Circuit docket, which is about 10 percent of that docket, more than any other state but California. Of all the proposals, this is the least appetizing from Arizona's standpoint, since its commercial ties and legal traditions run to the Pacific coast and its ties both commercially and legally to the interior Rocky Mountain states are relatively minor. California has for many years been the chief law source for Arizona and any change in this relationship would be extremely unsatisfactory to it.

4. But the remaining and largest question is why make any change at all. The real question is whether there is any reason to divide the Ninth Circuit in any fashion. The court works well; see the comprehensive study, Arthur D. Hellman, ed., Restructuring Justice: The Innovations of the 9th Circuit and the Future of the Federal Courts (Cornell U. Press, 1990). The current Almanac of the Federal Judiciary, based on extensive polling, reports that the lawyers "almost unanimously praise" the court, and, with regard to circuit splitting, "all seem to agree that such a division would be difficult and probably unsatisfactory."

The concern, of course, is that with multiple panels there may be conflict in the cases, but the en banc system seems to take care of that well. As litigation grows in volume, circuits will simply have to grow bigger to handle the work. Congress, in making the social policies of the country, keeps adding to the work of the courts. The sentencing guidelines are an example; they have engendered an enormous number of appeals. The federalizing of what were otherwise regarded as state criminal offenses also have a necessary expanding effect. This will make for bigger rather than smaller circuits.

With respect to the Ninth Circuit, a resolution of the Lawyers Representatives' Committee at the annual Judicial Conference of the Ninth Circuit by the overwhelmingly vote of both the lawyers and the judges present, endorsed the proposed added number of judges for the Court of Appeals. The court, though large, is conscientiously kept on a comfortable collegial level; it has felt a sense of responsibility in this regard which outruns some of the smaller courts of the country. The short of it is that collegiality is a factor of personality, not of the size of the court. The present Circuit is performing a valuable function in keeping the federal law consistent within the nine western states. The court publishes some 1,000 opinions a year, which have worked well to fill in the details of Circuit law.

CONCLUSION

Any of the proposed divisions of the Circuit are inevitably costly and, in several of the possibilities, downright destructive. At best, they cannot serve any very useful judicial purpose. The Circuit is managing well with its heavy docket, though it needs more judges, and there is no occasion for breaking it up.

JUDGES OF THE COURTS

SEVENTH CIRCUIT—Continued

SENIOR CIRCUIT JUDGES—Continued

HARLINGTON WOOD, JR. 5-28-76 Springfield, Ill.
 RICHARD D. CUDAHY 9-26-79 Chicago, Ill.
 JESSE E. ESCHBACH 12-11-81 West Palm Beach, Fla.

EIGHTH CIRCUIT

HARRY A. BLACKMUN, 5-14-70 Washington, D.C.
 Circuit Justice

CIRCUIT JUDGES

RICHARD SHEPPARD ARNOLD,* C.J. 2-20-80 Little Rock, Ark.
 THEODORE McMILLAN 9-23-78 St. Louis, Mo.
 GEORGE G. FAGG 10- 1-82 Des Moines, Iowa
 PASCO M. BOWMAN, II. 7-19-83 Kansas City, Mo.
 ROGER L. WOLLMAN 7-22-85 Sioux Falls, S.D.
 FRANK J. MAGILL 3- 4-86 Fargo, N.D.
 C. ARLEN BEAM* 11-9-87 Lincoln, Neb.
 JAMES B. LOREN 10-17-90 St. Paul, Minn.
 DAVID R. HANSEN 11-18-91 Cedar Rapids, Iowa
 MORRIS SHEPPARD ARNOLD* 5-26-92 Little Rock, Ark.
 DIANA E. MURPHY 10-11-94 Minneapolis, Minn.

SENIOR CIRCUIT JUDGES

FLOYD R. GIBSON* 6- 8-65 Kansas City, Mo.
 DONALD P. LAY 7-22-66 St. Paul, Minn.
 GERALD W. HEANEY 11- 3-66 Duluth, Minn.
 MYRON H. BRIGHT 6- 7-68 Fargo, N.D.
 DONALD R. ROSS 12-12-70 Omaha, Neb.
 J. SMITH HENLEY* 3-24-75 Harrison, Ark.
 JOHN R. GIBSON* 3-30-82 Kansas City, Mo.

NINTH CIRCUIT

SANDRA DAY O'CONNOR, 9-22-81 Washington, D.C.
 Circuit Justice

CIRCUIT JUDGES

J. CLIFFORD WALLACE,* C.J. 6-23-72 San Diego, Cal.
 JAMES R. BROWNING 9-18-61 San Francisco, Cal.
 PROCTER HUG, JR. 9-16-77 Reno, Nev.
 MARY M. SCHROEDER 9-26-79 Phoenix, Ariz.
 BETTY B. FLETCHER 9-26-79 Seattle, Wash.

* Former U.S. District Judge.

JUDGES OF THE COURTS

NINTH CIRCUIT—Continued

CIRCUIT JUDGES—Continued

JEROME FARRIS 9-27-79 Seattle, Wash.
 HARRY PREGERSON* 11- 2-79 Woodland Hills, Cal.
 CECIL F. POOLE* 11-27-79 San Francisco, Cal.
 DOROTHY W. NELSON 12-20-79 Pasadena, Cal.
 WILLIAM C. CANBY, JR. 5-23-80 Phoenix, Ariz.
 STEPHEN REINHARDT 9-11-80 Los Angeles, Cal.
 ROBERT R. BEEZER 3-28-84 Seattle, Wash.
 CYNTHIA HOLCOMB HALL* 10- 4-84 Pasadena, Cal.
 CHARLES E. WIGGINS 10-11-84 Reno, Nev.
 MELVIN BRUNETTI 4- 4-85 Reno, Nev.
 ALEX KOZINSKI 11- 7-85 Pasadena, Cal.
 JOHN T. NOONAN, JR. 12-17-85 San Francisco, Cal.
 DAVID R. THOMPSON 12-17-85 San Diego, Cal.
 DIARMUID F. O'SCANNLAIN 9-26-86 Portland, Or.
 EDWARD LEAVY 3-23-87 Portland, Or.
 STEPHEN S. TROTT 3-25-88 Boise, Idaho
 FERDINAND F. FERNANDEZ* 5-22-89 Pasadena, Cal.
 PAMELA ANN RYMER* 5-22-89 Pasadena, Cal.
 THOMAS G. NELSON 10-17-90 Boise, Idaho
 ANDREW J. KLEINFELD* 10- 7-91 Fairbanks, Alaska
 MICHAEL D. HAWKINS 9-15-94 Phoenix, Ariz.

SENIOR CIRCUIT JUDGES

RICHARD H. CHAMBERS¹ 4-30-54 Tucson, Ariz.
 CHARLES M. MERRILL 9-21-59 San Francisco, Cal.
 EUGENE A. WRIGHT 9-15-69 Seattle, Wash.
 JOHN F. KILKENNY* 9-16-69 Portland, Or.
 HERBERT Y. C. CHOY 4-23-71 Honolulu, Hawaii
 ALFRED T. GOODWIN* 11-30-71 Pasadena, Cal.
 JOSEPH T. SNEED 8-24-73 San Francisco, Cal.
 THOMAS TANG 10-12-77 Phoenix, Ariz.
 OTTO R. SKOPIL, JR.* 9-26-79 Portland, Or.
 ARTHUR L. ALARCON 11- 2-79 Los Angeles, Cal.
 WARREN J. FERGUSON* 11-27-79 Santa Ana, Cal.
 ROBERT BOOCHEVER 6-18-80 Pasadena, Cal.
 WILLIAM A. NORRIS 6-18-80 Los Angeles, Cal.

TENTH CIRCUIT

RUTH BADER GINSBURG, 8-10-83 Washington, D.C.
 Circuit Justice

CIRCUIT JUDGES

STEPHANIE K. SEYMOUR, C.J. 11- 2-79 Tulsa, Okla.
 JOHN P. MOORE* 5-10-85 Denver, Colo.

* Former U.S. District Judge.
¹ Deceased Oct. 21, 1994.

EXHIBIT NO. 5
 DATE 2/3/95
 5281

To: Chairman Crippen and Members of the Senate Judiciary Committee
From: Judy Wang Assistant City Attorney, Chair Missoula Family Violence Council
Re: Senate Bill 278
Dated: February 3, 1995

Introduction to Senate Bill 278

Senate Bill 278 proposes changes to two areas of Montana law that deal with violence and victims of violence. The first change removes TROs (Temporary Restraining Orders) from a subsection in the marriage and divorce statutes and places them in their own code section. The proposal renames TROs Orders of Protection. The new section revises Montana law to allow victims some protections that are currently not available. As an example, the proposal allows rape victims to get an Order of Protection.

The second change revises the criminal code concerning assaults within the family and between partners. We propose changes that cause these assaults to be taken more seriously, so that they are treated like similar crimes. The proposal calls for suggested minimum sentences for a first and second offense partner or family member assault that are similar to DUI sentences. We ask that local governments be allowed, but are not required, to establish probation offices to monitor offenders after conviction, to increase sentence compliance and reduce the rate of reoffending.

This bill was drafted by a committee of people including a prosecutor, a legislator, victim advocates, family law attorneys and children's advocates. A number of people who had input into the bill attended a National Conference on Family Violence Legislation and some of the proposals in the bill began as ideas from that Model Code. The proposal was reviewed and suggestions were implemented from a District Court Judge, County Attorneys, a Justice of the Peace, Health care workers, Victims of Family Violence, Victim Advocates and the Attorney Generals office.

Senate Bill 278 looks longer and more complicated than it really is. The proposal renames the crime currently called Domestic Abuse Partner or Family Member Assault and the renaming process called up many statutes that aren't otherwise impacted by the proposal. The real essence of the bill starts on page 10.

The easiest way to explain why the changes are needed in Montana now is to give examples of problems that have occurred under current Montana law. I will then explain how the proposal would prevent the problem from happening under the law as it will read if Senate Bill 278 is enacted.

Name Changes (Sections 10, 45-5-206 and Sections 21-29)

The current criminal statute that prohibits violence within the family is called "Domestic Abuse". Using everyday definitions for those terms the crime sounds like "Tame" (domestic) "misuse" (abuse). It hardly sounds like a crime at all!

The proposal renames that crime "Partner Assault" or "Family Member Assault". That makes the offense "sound like" a crime. As it is renamed the title refers to the criminal act (Assault) and the victim in the crime (Partner or Family Member). This is similar to other Montana Statutes (Assault, Mistreating Prisoners, Endangering the welfare of children).

Orders issued by a judge to protect a victim from further violence are currently called Temporary Restraining Orders (TROs). Sometimes other terms are used like Preliminary Injunction or Injunction or Restraining Order. The different titles we currently use have created confusion and don't make it clear what the real purpose of the statute is to protect victims of crime. The proposal renames TROs Orders of Protection and Temporary Orders of Protection. This makes the purpose of these orders clear, to protect victims of crime from further violence.

Suggested Minimum Penalties (Section 10 45-5-206(3)(a) and Section 12)

Missoula County District Court Judge Douglas Harkin is a member of Missoula's Family Violence Council. He sees third offense felony Domestic Abusers (to be renamed Partner or Family Member Assaults). Many of the offenders that he sees for felony offenses have not spent any time in jail other than when they were arrested. Basically many of the offenders are charged with a felony before they even "get it" that what they have done is a crime.

The proposal calls for minimum sentences that are similar to first and second offense DUIs. The minimum sentences are proposed in strong language "an offender convicted of partner or family member assault shall be fined... and shall be imprisoned in the county jail not to exceed 1 year or not less than 24 hours...". The committee's intention was that those sentences are strongly suggested, but not necessarily absolute. We did not add language that stated that those sentences cannot be suspended. The intent is that the minimums could be suspended given appropriate circumstances. For example, an indigent defendant who could not pay the fine or an offender so ill that incarceration could endanger his or her health could have the minimums imposed, but suspended. The purpose of the minimums is to make it clear that, like DUIs, this is a crime and there are penalties that follow when you commit a crime.

TROs (to be renamed Orders of Protection) frequently are not taken seriously under Montana's current laws. In Missoula Municipal Court we frequently see offenders who have committed two, three, four sometimes even five TRO Violation offenses. Each and every one is a misdemeanor offense and often times offenders are only penalized with a small fine. Some times traffic offenses are taken more seriously than TRO Violations.

The proposal calls for a third offense Violation of an Order of Protection to be a felony. It also suggests a minimum sentence for a second offense TRO Violation (to be called a Violation of an Order of Protection).

Victims Who Still Need Protection (Section 10, 45-5-206 (2)(a) and Section 22)

There are still victims of crimes who need protection but are not eligible for a TRO under current Montana law. The proposal makes Victims of Rape, Incest and Sexual Assault eligible for an Order of Protection, regardless of their relationship to the offender. Inlaws who commit one of the listed crimes against a family member could be served with an Order of Protection. Senate Bill 278 includes people who have had a child with their abuser in the definition of "Partner" so that they are eligible for an Order of Protection, if they have been the victim of one of the listed crimes committed by their partner.

Counseling (Section 10, 45-5-206 (4)(a) and (b))

Montana law mandates 25 hours of counseling upon conviction for the offense of domestic abuse (to be renamed Partner or Family Member Assault). There is no assessment prior to counseling.

A few years back a Missoula offender in counseling disclosed in group that he had been a "Hit Man" for the Mafia prior to moving to Montana. He was in the same group with offenders who had been cited for their first offense. It doesn't make sense that we could or should put an experienced killer in with first time offenders. That is exactly what we did. We undoubtedly do mix inappropriate people in the same counseling group when we do not assess offenders before we send them to counseling.

The proposal calls for an assessment of violence, dangerousness and chemical dependency prior to counseling. It only makes sense that we want to figure out what the offenders problems are before we try to fix them with counseling.

Notice of Rights to Victims (Section 15, 45-6-602 and Section 20)

Currently Victims are given some information about their rights and the services that are available at the time of an arrest. Some of the information that is given, under our current statutes, is misleading. No one other than peace officers is required to give a notice of rights to victims.

The proposal calls for a corrected notice of rights, both to reflect current law and the other proposed amendments. Health care workers, when they suspect that a partner or family member assault has occurred, under Senate Bill 278, also give a similar notice of rights. The reason for including health care workers is that there are many many victims of family violence who seek health care for their injuries but who do not connect with anyone else in the system. We propose that health care workers also give a notice of rights so that we get the message out to victims about their rights and services that are available.

Organization of Montana Laws relating to Victims of Family Violence
(Sections 5, and Sections 21 through 29)

Currently TROs are located as a subsection of a Marriage and Divorce statute. That doesn't make sense when stalking victims and victims of sexual assaults also need Orders of Protection. Most people who get a divorce do not need an Order of Protection. Many of the

people who get an Order of Protection do not need a divorce and many are not married to the offender.

Our proposal moves Orders of Protection (formerly TROs) to a victims rights section. It simply makes sense that an Order of Protection is very different than a divorce.

Sentence Monitoring (Section 18)

We really don't have a way to make sure that offenders follow the sentences that are required of them under current law. We tell them to quit drinking, get counseling or stay away from the victim but we don't have a method of making sure that they do what we tell them to do.

The proposal gives local governments the authority to create misdemeanor probation officers who can monitor offenders. The probation officers can monitor DUI offenders and other misdemeanants as well. Senate Bill 278 allows local governments to set up these offices but did not make it mandatory that they do so.

Protections Available (Section 23)

There are a number of kinds of protections for victims available under current law. We continued the protections currently available and added some other protections.

The proposal gives judges the discretionary authority to order that an offender shall stay a certain number of feet away from a victim. That is important because some offenders, if ordered to just stay away without being told a foot restriction, will go where ever and when ever the victims is on public property and terrorize her or him. Having a foot restriction gives the victim a comfort zone and makes it clear to the victim or the offender where the boundaries are. The proposal gives a judge the option to order that an offender stay away from other named family members and order some additional property protections where and when it is appropriate.

Practical Problems (Sections 24 and 27)

Currently there is some question about whether TROs are enforceable throughout the state. There are still a number of courts that will order that a victim of a crime, who requests that he or she be protected by an TRO (to be renamed an Order of Protection) be restricted in her contact with the offender. An additional question is whether and when a TRO is moved to district court.

Senate Bill 278 resolves all of those questions. It states clearly that an Order of Protection is enforceable throughout the state. It states that the process to get an Order of Protection is the same for all persons. To get an order of Protection you must swear out a Petition that you are a victim of a crime. No one can get an Order of Protection by simply showing up at a hearing and asking that it goes both ways. We clarified when and if a

EXHIBIT 6
DATE 2-3-95
SB 278

Petitioner should file an Order of Protection in District Court or a court of limited jurisdiction.

Brief Summary of Written testimony

District Court Judge Douglas Harkin
Dawson Deputy County Attorney Charles Unmack
Pam Anderson with Turning Point the DUI school in Missoula
Sam Lemaich Regional Supervisor Probation and Parole
Anonymous Victim a Survivor
Prevention Education Specialist Linda Hanson
Andrea Mauer a Survivor
Karin Nesse a Survivor
Thresa Troutman a Survivor
Jim Neumayer Sergeant City of Missoula Police Department
Gail Hammer an Attorney who has worked with battered women

On behalf of the Missoula Family Violence Council, the Missoula City Attorneys Office and personally as a Prosecutor with 8 years experience prosecuting Partner/Family Violence cases, I request you to vote for Senate Bill 278 as it is amended.

- DAWSON COUNTY ATTORNEY -
215 SO. KENDRICK • P.O. BOX 1307
GLEN DIVE, MONTANA 59330
(406) 365-2532

February 1, 1995

Senate Judiciary Committee
Bruce Crippen, Chair
Capitol Station
Helena, MT 59620

Re: Domestic Violence Legislation

Dear Senators:

I hoped I could be present for your hearing on the Domestic Violence legislation on Friday, February 3, 1995, but my schedule does not permit me to make the trip. I hope you will accept my written comments for your discussion of the bill.

I am a Deputy Dawson County Attorney and I am frequently required to apply the domestic abuse laws. Domestic abuse is a serious problem in our community. It devastates our families. It humiliates the victim and overwhelms the children. Domestic violence often places the abused spouse into our welfare system. The children often become involved in the youth judicial system, either as youths in need of care or as juvenile delinquents. The social cost of domestic violence is enormous.

From my experience, many instances of domestic violence occur in families with a history of violence. It is natural for people to act in the manner in which they observed their parents act. I have also witnessed women get away from an abusive man only to fall

EXHIBIT 6
DATE 2-3-95
SB 278

Senate Judiciary Committee
February 1, 1995
Page -2-

in with another abusive man. I do not know why. But I do know that intervention and education are keys to the problem.

I am asking your support for this legislation for the following reasons:

1. The bill refines the process of obtaining a restraining order. Currently, restraining orders may be obtained in the statutory section dealing with divorce. But the crime of domestic violence occurs in many more situations than just divorce. This bill creates a new section for orders of protection. That section should be more readily understood by distraught, abused spouses.

2. The bill increases the minimum penalties for committing the crimes of Domestic Abuse and Violation of a Protection Order. Presently, a violation of a Protective Order is a misdemeanor for any number of offenses. The bill will make a third offense a felony. I strongly support increased penalties for repeat offenders.

3. The bill provides a more detailed educational course for an offender and gives prosecutors more latitude in requiring additional hours of counseling for offenders. If we are to break the cycle, we must do it through education.

4. The bill expands the categories of persons eligible for an order of protection. Presently, the protection of victims falls on county attorney offices. Sadly, we often do not accomplish enough on behalf of victims. This bill will allow victims to be more active on their own behalf.

Senate Judiciary Committee

February 1, 1995

Page -3-

I hope you will give your support and your vote to this legislation. It represents a strong and informed step toward crime.

Sincerely,

A handwritten signature in cursive script, reading "Charles Frederick Unmack". The signature is written in dark ink and is positioned above the printed name.

Charles Frederick Unmack

EXHIBIT 6
DATE 2-3-95
SB 278

WESTERN MONTANA
MENTAL HEALTH CENTER
TURNING POINT

500 North Higgins, Suite 101
Missoula, MT 59802

(406) 543-8623

February 2, 1995

TO: Senator Bruce Crippen, Chair
Senate Judiciary Committee

FROM: Pamela B. Anderson, Supervisor, Montana ACT Program

This is being submitted in support of SB 278, An Act Revising The Domestic Violence Laws, particularly as it relates to allowing local governments to establish a misdemeanor probation office.

Over the last fifteen years, I have been involved with the Montana ACT Program, the assessment and education program mandated for DUI offenders. As a consequence, I have worked closely with the lower court systems and have a great deal of respect for their power and effectiveness in terms of intervention and deterrence. The lower courts tend to be more of a "people's court" where defendants often represent themselves and disclose information to the judges that they might not do in a more formal setting, or in the presence of an attorney. This then allows a judge to fashion sentencing conditions that deliver the necessary punishment, and offer rehabilitation. It is not uncommon in Missoula for a judge to sentence a DUI offender to the maximum jail term and then suspend part of the sentence provided that certain conditions are met. These conditions are typically designed to intervene in a pattern of substance abuse and they are often applied in domestic violence convictions as well given the high incidence of alcohol or other drug involvement in those cases. If the conditions are violated, the Court may then revoke the suspended sentence and the defendant may serve the maximum jail term. For many, the fear of further jail time is an essential motivating factor in bringing about the necessary change and in deterring them from engaging in behavior that could lead to further illegal activities.

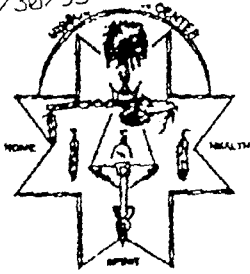
Unfortunately, the diligence of the court systems in applying these strategies is hampered by there being no mechanism in place to monitor compliance with the sentencing order. SB 278 specifically addresses that deficiency. Given the high correlation between substance abuse and domestic violence, a program to monitor compliance with sentencing conditions for family violence offenders would target both populations. We, in the chemical dependency treatment field, believe that change will occur when the cost of use outweighs the perceived benefit. Adverse consequences consistently applied by the legal system often tip the scales in favor of providing the motivation to engage a recovery process.

Finally, I suspect it would be the rare felon who did not leave behind a trail of misdemeanors. Swift and certain punishment at the misdemeanor level, combined with stringent sentencing conditions and close monitoring could serve to intervene in that progression. In terms of the financial cost to society and the human cost to victims, early intervention efforts would seem to be worth serious consideration.

Thank you.

01/30/95

11:20



MISSOULA INDIAN CENTER

2300 Regent St., Suite A • Missoula, MT 59801-7939

Telephone (406) 329-3373 • Fax (406) 329-3398

January 30, 1995

To whom it may concern,

This letter is in support of The Proposal, L. C. 265. I feel this proposal addresses many of the issues we are facing today, concerning domestic violence, in a more timely and appropriate manner than current laws in existence. Required counseling assessments prior to counseling can only help to insure more effective counseling. Expanding the definition of relationship to include in-laws and people who have parented children will help to reduce the barriers that prevent many people from accessing help through legal means. It will also help to reduce the overwhelming numbers of child abuse in this state through mandating better ways to deal with violent behavior. A lot of the violence among our youth today is because this behavior has been role-modeled in their home environment.

It is time for our state laws to take a more workable stand against violent acts perpetrated on one human being by another and see to it that people who are convicted of domestic violence receive the education they need to better communicate their feelings of frustration and anger. If a person is continuing to appear in court on domestic violence charges then apparently that person is not benefitting from the counseling and the criminal charges should be raised to a felony status. I feel the same way about TRO violations remaining misdemeanors after multiple violations. Most people have learned to be accountable for their behavior by the time they reach adulthood. Allowing continuing TRO violations to remain misdemeanors is allowing these people to thumb their noses at the entire legal system and endangering the lives of their victims. A third offense TRO violation should be raised to a felony status.

Sincerely,

Linda Hansen

Linda Hansen
Prevention Education Specialist

EXHIBIT 6
DATE 2-3-95
SB 278

In August of 1993, my ex-husband was returning my four children after a week-end visitation. I am the sole custodial parent. He has the first and third week-ends with the children. He entered my house against my request that he remain outside, he pushed me up against the wall, knocked me down....He hurt me badly so I called 911 for help. I was hurting, both physically and emotionally, and it came through clearly in the phone call. I ended up in emergency care. X-rays showed injury to my neck, arms, and back. On Monday morning, the next day, I went from the medical clinic to the police and requested a temporary restraining order. The judge granted the TRO. A date was set for hearing in September. At that hearing, my ex-husband showed up with his attorney. Unfortunately, no evidence was presented. I had my medical records with me, etc. The opposing attorney simply stood up and told the court that I might, sometime in the future, come to my ex's home or place of business and assault him, so a mutual restraining order was necessary. I had not been to his home or store in any of the years (1987 on) since the children and I had left him and did not intend to ever be near him at any time. Yet, I was not allowed to even protest --- a mutual restraining order was issued to my utter shock and amazement!

Looking at the preceeding, one could obviously assume a case of "sour grapes." Not so! I was married to this man from 1972 until 1991. We had five children. Some times were good, some times were horrible. He hit me, he broke bones, he threw me down stairs, ad nauseum. I loved him and I stayed with him. I dragged us from counselor to psychologist to psychiatrists, to marriage seminars, to family seminars.... to no avail. He would be kind for a period of time and then all hell would break loose again. I left him when he began hitting the children. The pattern of violence and pain had to stop!

I got my first restraining order in 1976. I fled with my infant daughter from Lewistown, Montana, to California to escape the pain. My ex followed me to California, convinced me that change was possible, and thus began the ride of counselors. I was forced to obtain multiple restraining orders over the following years, just to keep him away from me. He usually obeyed these orders. But once an order expired, I was facing violence again. We left him for good in the fall of 1987. In October of 1988, he attacked me in my home, severely injured me in front of all the children, and the summer of that year, he was found guilty of Domestic Abuse. He appealed to District Court and plead guilty there. He got a suspended sentence and a round of mandatory counseling. He'd seen enough therapists in the past so, of course, there was no significant changes.

With this brief history, it should be apparent that I needed and once again, applied for, a restraining order. I

had not gone to this man's home or office, entered it, and assaulted him. He was at my home, hurting me, while the children cried. So, why the mutual restraining order in September of 1993? He had not requested this TRO. I had done so. Yes, there was a history of pain and anger and abuse. Yet, on the assumption that I "might" assault him at some time in the future, I was made equally guilty as he when the mutual restraining order was issued. Is this fair? Or is something wrong here?

In the year that followed the issuance of this order, I would receive numerous phone calls at odd times of the day or night. I would pick up the phone and my ex would tell me that we were not allowed verbal contact with each other as a result of the mutual restraining order. He would tell me that because I spoke to him (i.e. saying, "Hello!" when I picked up the phone) that he was going to "put me away for good this time" and that I was violating the court's order. He was allowed, by terms of the order, to call the children. However, most of the calls were placed when the children were either in school or in bed because it was so late at night. The harassment continued, I spoke to the police, and they recommended an answering machine to screen my calls. In the spring of 1994, I bought a machine. My ex was furious and accused me of trying to avoid him and keep the children from him, etc. etc. I was forced to change my life in other ways as a result of the mutual order. I changed my driving patterns so that I was never near his home or store, I hid in the house when he arrived to pick up our children for visitation, etc. ---- all because of his threats to get me in some violation of the order. It was a very paranoid way to live. He did, in fact, try to file some restraining order violations against me. My children and I were all forced to go to the police and each of us answer his so-called allegations. They did not hold up as a matter of fact. It was a bad year! Gary did violate the order and ^{was} charged with the violation.

Mine is not an isolated case. I was presumed to be as guilty as my ex because of the mutual restraining order. I was never given a chance to prove otherwise. I have heard many other cases (I volunteer at the Domestic Violence Assistance Center here in Missoula) where exactly the same thing occurred. It makes a person not want to ask for help because just the fact of asking for protection puts them in the position of having the tables turned on them. They end up as guilty as their abuser. This is very, very wrong and should not be allowed!!!

EXHIBIT 6
DATE 2-3-95
SB 278

I am writing this as a means of protesting the court's handing down mutual restraining orders. It seems to have become almost routine practice for the courts to issue these orders in domestic violence and/or stalking cases. Such a ruling presumes that both parties at the restraining order hearings are equally guilty when, in fact, it is almost overwhelmingly one party, the injured party, who has applied for the relief afforded by these orders. Why should the innocent party be deemed as guilty as the offending party? It is my belief that only in very, very rare cases should a mutual restraining order be utilized by the courts. It appears that it is easier and less time-consuming for the courts to simply issue these mutual orders rather than taking the time for a brief hearing where the parties could present their cases, where the injured party could present his/her evidence as to why they asked for a temporary restraining order in the first place and why they need to have this order continued, either permanently or for a year. By issuing mutual restraining orders, the courts are failing to protect those individuals who have come asking for their help.

Harin Diane Sellman-Nesse

1-1-95

Chairman Crippen and Members of Senate Judiciary Committee:

I was married for a period of five years, during which time I went from a relatively normal existence, to living in fear both for my own life and the life of my young son.

In the beginning of the marriage, my husband's behavior was somewhat distant and would occasionally erupt into fits of anger. Over the next several months, he became increasingly argumentative, his mood swings more frequent, and his anger more explosive. He would have violent rages resulting in breaking any object he could find. Some of his greater challenges included throwing objects directly at me; like the butcher knives he would try to "stick" in the walls and counters around me. For a short time, he seemed satisfied that these rages were having the desired effect upon me.

I slowly became isolated from friends and family, I kept my fear to myself, and I worked very hard at trying to keep my husband happy to avoid his wrath. His bizarre behavior soon became a way of life, but I tried to create a sense of normality and security, especially after the birth of my son. My days were consumed by either bracing for, or recovering from, yet another violent rage. As I live within this realm of escalating violence, I became immune to my husband's outbursts and when I ceased to react to his tantrums, he became even more infuriated. He then went to even greater lengths to maintain the previous level of fear and thus, his control.

After a few years, my husband became more abusive and began to threaten my life more directly by using guns during his rages. Initially, he would only wave the gun around or shoot off a round outside. In later months, he would wake me during the night, stand over me, point a loaded gun at my head, and pull back the hammer. This too became some what routine.

I did not believe that I could get out of the marriage. I truly believed that my husband would kill me if I tried to leave him or if I notified authorities. My only concern then became protecting my son at all costs. For this reason, I sought out legal advise from an attorney. I

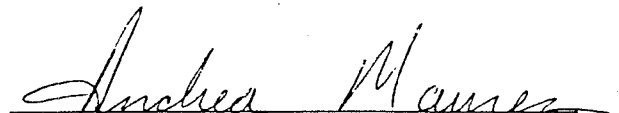
intended to have a will drawn up in the hopes of removing my son from my husband after my death. Sometime after a will was in place, I decided to go through the divorce process, even though I firmly believed that I would not see it finished.

During the months that followed, I had a "TRO" in place; this deterred my husband, but did not stop him. He would follow me, disable my car, call me and otherwise harass me. He also continued to threaten me. I knew that he had guns in his possession and I didn't feel very certain that a piece of paper would stop a bullet. I live in fear as I awaited my certain fate. I only hoped that I might have enough time to react when my husband would break the TRO for the last time with the intent to kill me.

I believe that in my case at least, if a law had been in place to make multiple TRO violations a serious offense, I would have been safer and my husband's ability to harm others greatly reduced. He was basically a coward, but he felt no intimidation or threat from laws which restricted his contact with me.

I have been lucky, I am still alive and enjoying life with my son. My ex-husband is now serving time in Deerlodge for assault, among other crimes. I feel safer now than I have in many years, but the fear never really goes away. I am unsure of the best way to prevent the problems of an abusive society. I do believe however, that the time to place restrictions and penalties on abusers is before they become murderers.

Please take the time to consider Senate Bill 278.


Andrea Mauer

February 1, 1995

To Members of the Montana State Senate:

I am writing in support of SB-278. I am presenting my testimony anonymously, and in writing, to prevent reprisals from my former husband. My former husband is a well-known business and political figure in our community. He is also well-known to the members of the legislature as a lobbyist.

I believe there is a perception among many that domestic violence only occurs in households at the lower end of the socio-economic scale. My husband always wore a suit and tie. He was pleasant and well-spoken. He appeared to be very attentive and concerned while we were in the presence of the medical care providers. In actuality, his concern was based on a need to be sure that I would not disclose the real cause of my injuries.

My marriage to this man was marred by domestic violence. I suffered injuries which ranged from bruises to sprains to cracked ribs. To conceal the cause of my injuries, my husband did not take me to the same medical provider twice in succession. Although I received medical treatment numerous times, no medical provider ever discovered the true cause of my injuries. This was due, in part, to the fact that my husband never left my side at any time during the medical examinations. In each emergency room, at each doctor's office, my husband gave a detailed account of how my injury occurred. Of course, the explanation was always untrue but, because I was never left alone with the medical staff, I never had the opportunity to give an accurate account of the cause of my injuries. On at least two occasions, when the medical care providers suspected I might have broken bones, my husband insisted on accompanying me while x-rays were taken. I never had the opportunity to describe what had actually happened to me. If the medical care providers ever suspected that my injuries were not consistent with the explanations given by my husband, they never had the opportunity to question me outside the presence of my husband.

At the time, I was unaware of any options available to me to remove myself from this situation. I had a small child and no independent income. I had no family in town nor in this state. My circle of friends were primarily persons who were associated with my husband and his business. My husband repeatedly warned me not to disclose what had occurred, convincing me that no one would believe me. I was convinced that I had no options.

I believe that the provisions of this Bill, which would require medical care providers to speak to a person suspected to be a victim of family violence outside the presence of the suspected perpetrator, might have given me the information I needed to extricate myself from this relationship. I believe that many times the explanation of my injuries were not consistent with the

EXHIBIT 6

DATE 2-3-95

SB 278

injuries themselves. However, no one had the opportunity to question me about my injuries nor did any one have the opportunity to inform me of my rights as a victim of family violence. My ordeal might have ended months, maybe even years, earlier if this Bill had been in effect.

Since my divorce I have worked with other victims of family violence. In my experience with other victims, many feel as I did. They don't know where they will go or what they will do. They are unaware of any options that may be available to them and they are unaware of any rights they, as victims, might have. The provisions of SB-278 would give vital information to victims, through law enforcement and through medical providers. I strongly urge you to pass this bill.

Theresa H. Troutman
303 Bannack Ct.
Missoula, MT 59801
Feb. 1, 1995

Dear Mr. Chairman,

I am writing this letter to you concerning Senate Bill 278. I strongly believe a third restraining order violation ought to constitute as a felony. I also believe making a restraining order mutual without having any basis of violence or intimidation to be unjust and unfair, if not ridiculous.

In September of 1993 I separated from my husband John. We had been married for 6 years. During our entire relationship of 8 years he had become violent with me on many occasions. 2 days before I left him he was particularly violent with me and was consequently arrested and convicted of domestic violence. To this day John thinks he was justified in his treatment towards myself.

For 2 months after our separation John threatened my welfare and my life. He followed me everywhere and called me on some days over 20 times. To say the least I was terrified and found it very difficult to go about my regular daily schedule of attending the University of Montana and taking care of our 2 children. I was increasingly worried about ~~myself~~ our survival. I decided to get a restraining order. From day 1 John never took it seriously. I would see him outside my classes and he would follow me where ever I went. He was cited 4 times for violating the restraining order. Each time he was cited he would become more furious and become even more insistant and sneaky about how to come in contact with me. By March of 1994 I was a nervous wreck and I was increasinly frightened to stay at my home. On many occasions I took the children and went to stay where I knew John could not get to me. His threats and strange behavior and his past violence made me very aware of what he is capable of doing to me and my children. In June of 1994 he was convicted of violating the restraining order and because it was only a misdemeanor he was again warned to stay away from me and given a fine.

John's blatant disregard for the restraining order needs to be used as an example. Obviously to violate the restraining order brought on no dire consequences. None at all. I am fortunate in the fact that I was able to get away ~~from~~^{to} John and keep myself and my family safe, but if John had been arrested and been tried for a felony instead of a misdemeanor then I would have been protected according to the law.

I believe the restraining order should be mutual without any basis of explanation. There was no justification or reason for

Respectfully,

Theresa H. Troutman

Theresa H. Troutman



CITY OF MISSOULA POLICE DEPARTMENT

"Professionalism With Pride"

PETE LAWRENSON, Chief of Police

BOB WEAVER, Assistant Chief

Senate Bill 278

February 1, 1995

Chairman Crippen
Members of the Committee

EXHIBIT 6
DATE 2-3-95
SB 278

My name is Jim Neumayer and I am a sergeant with the Missoula Police Department. I am an active member of the Missoula Family Violence Council and I direct four other police officers that are also involved with the Family Violence Council. I regret that I am unable to attend the hearing in person, however, I would like to express my thoughts on Senate Bill 278.

I have been employed as a police officer with the Missoula Police Department since November of 1976. My background in law enforcement has imparted me with a unique insight into family violence and the impact on family members. This knowledge has strengthened my belief, the home environment is the safest place any person should know.

Montana's current domestic violence laws are critical tools in dealing with the nationwide epidemic of violence. One simply needs to pick up a newspaper or turn on the television to see the consequences of family violence on our society.

Stringent and enforceable laws in dealing with the abuser is vital. However, this cannot be at the expense of the victim. Refining Temporary Restraining Orders and ensuring that all victims have accurate information regarding assistance will help them break the cycle of violence.

Family violence and the ensuing circle of violence is a **learned behavior**. Early intervention, whether through strong and clear legislative measures or support organizations, is crucial in sending the message throughout the family, to include the children who witness the abuse, that violence is not the answer.

Montana has a unique opportunity and **obligation**, to confront the issue of family violence in a pro-active manner with the approval and passage of Senate Bill 278.

I am in favor of the proposed changes in the statutes and I thank you for your time and consideration in this matter.

Respectfully submitted,

James Neumayer

February 2, 1995

Dear Chairman Crippen and Members of the Senate Judiciary Committee:

I am a native Montanan who has worked for the past nine years as a volunteer crisis counselor for several organizations opposed to domestic violence. I am also an attorney with eight years' experience representing protective parents of children at risk of abuse or neglect in custody cases. My experiences prompted me to write this testimony, to urge you to adopt Senate Bill 278.

Domestic violence is a serious health and social problem in the United States and in Montana. The only significant reduction in domestic violence seems to come from a consistent and firm message from the community that it is unacceptable behavior and will not be tolerated in a civilized society. Meaningful protective orders consistently enforced play an important role in carrying this message.

Mutual protective orders carry a different message, one that diffuses accountability and furthers the myth that both parties are in equal positions, so both are equally able to stop or prevent the violence. Such a message ensures that the violence will continue.

According to the AMA, domestic violence is the single largest cause of injury to women in the United States, exceeding car accidents, rapes, and muggings **combined**. Nearly four million women are injured by domestic violence each year. One in six pregnant women are physically assaulted by their partners during pregnancy. Domestic abuse during pregnancy is the leading cause of birth defects.

The Montana legislature created restraining orders to protect battered citizens from domestic partners, family members and former spouses. Mont. Code Ann. 40-4-121(3)(a). Some courts routinely issue mutual protective orders. This practice appeals to judges and lawyers because it saves time by avoiding show-cause hearings. But saving time at the expense of safety and lives of Montana citizens is misguided.

Often people who have been battered do not oppose mutual orders because they want to expedite the proceedings and avoid any further violent reactions from their abusers. Since they do not intend to commit acts of violence, they have no objection to a mutual restraining order.

MUTUAL PROTECTIVE ORDERS DO NOT PROTECT

Mutual restraining orders have harsh, unanticipated results. When police officers respond to a domestic violence call and discover a mutual restraining order, they may not know who has the actual history of battering. It may be unclear who the real victim is. They can only assume both parties have been violent. They may arrest both parties, even with no evidence of mutual abuse. This possibility will prevent many battered people from seeking much needed assistance from public safety officials. Or police may decline to arrest either party, leaving the victim to face the batterer's retaliation alone.

Mutual orders and mutual arrest give the wrong message to both batterer and battered. They say the person who was battered is equally responsible for the violence. They absolve the batterer from responsibility and give permission for further battering.

MUTUAL PROTECTIVE ORDERS PERPETUATE DOMESTIC VIOLENCE

Mutual protective orders give the wrong message to victim and batterer alike. They create the impression that the battered person is equally responsible for the batterer's violent behavior, thereby reinforcing a basic misconception held by many victims that they have either instigated or somehow deserve the abuse.

The abuser will interpret a mutual order as a message from the court that the batterer is not accountable and the battered person is as much to blame for the violence. Rather than helping to break the cycle of domestic abuse, mutual orders enhance the probability of future violence. The batterer must be held accountable and both parties must understand that violence is unacceptable.

Although many battered people do fight back against batterers, their actions are largely defensive and the effect is less severe than the batterer's violence. The critical question is which party truly needs protection.

The self-defense must not be equated in severity or purpose with the violence initiated by the batterer. Equating self-defense and battering helps the batterer rationalize the defensive behavior of the battered person as justification for further battering.

Mutual orders can put the victim in a worse position than if there were no protective order at all. REPORT OF THE NEW YORK TASK FORCE ON WOMEN IN THE COURTS, 15 FORDHAM URB. L.J. 11 (1986-87). Mutual protective orders can make the battered person look equally violent in the eyes of the courts, and may make it harder to get a more restrictive order if the violence recurs.

We can draw an analogy between the approach we should take to domestic violence and the successful approach used to combat drunk driving. The combination of saturation education of people of all ages, innovative prevention, strict enforcement, and stringent punishment have had a dramatic impact on highway fatalities associated with drunk driving. *Developments in the Law: Legal Responses to Domestic Violence*. 106 Harvard Law Review 1505 (1993). The same approach can work with domestic violence.

People who have been battered must receive meaningful protection. Batterers must receive the clear, unequivocal message that their violence is unacceptable and will not be tolerated. Mutual orders accomplish neither.

Assault on a "loved one" is as unacceptable as any other form of assault. Inappropriate mutual orders further victimize and stigmatize the one battered and absolve the batterer of all accountability for the violence.

Mutual restraining orders are appropriate only when each party petitions for protection and proves the other engaged in assaultive behavior.

Respectfully submitted,



Gail Hammer
501 West Alder #B
Missoula, Montana 59802



Missoula Police Association

P.O. Box 8682 • Missoula, Montana 59806 • Phone: (406) 721-4700

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 7
DATE 2/3/95
FILE NO. 278

February 2, 1995

Senate Judiciary Committee
Fifty-Fourth Session
Senator Crippen, Chairman

RE: SUPPORT OF SENATE BILL 278

Chairman Crippen and Committee Members,

My name is Mark Muir. I am a Police Officer for the City of Missoula, representing the Missoula Police Association and the Montana Police Association. We ask that you consider the following written testimony and urge you to support the passage Senate Bill 278 into law. It is a bill that is needed in Montana.

In my years of law enforcement experience, I have seen an escalating awareness to the crimes associated with domestic violence. Violence between partners and family members has frequently resulted in serious bodily injury or in some cases violent deaths. This awareness, by all facets of the community, has brought increased pressure on all phases of law enforcement and the judicial system for tougher enforcement and penalties. Senate Bill 278 provides the tools to respond to these demands.

Many officers from the Missoula Police Association have become involved in numerous ways. Our members, across all ranks and divisions, have attempted to become more educated in the causes and dangers of domestic violence cycle if left unchecked. Several officers have volunteered their time on the Missoula Family Violence Council. Their participation has included presentation of concerns and observations, to assist with developing solutions to negate the rising trend of domestic violence. This bill takes into account the many areas that we have added input to, along with other experts in the field of domestic violence.

Another way that our officers are getting involved is through increased arrests for family/partner violence. Missoula has experienced a 14% increase during the last six months compared to the same period a year ago. This results from increased awareness of the officers in recognizing when family violence occurs and knowing that they have the support of a law that prefers arrest in all cases involving physical violence. The incidence of reporting is also on the rise and this is a result of the reputation that Missoula has developed in the prosecution of offenders. Increased arrests alone are not the answer to solving our problems with family/partner violence, the problem is multi-faceted and requires attack from many directions.

A propensity to family violence can be passed from generation to generation and it is our hope that through sentencing enhancements, improvements in counseling, and victim education and protection, that this tendency will diminish.

Areas of the law that we currently feel need restructuring are addressed by SENATE BILL 278, some of those being:

1. Sentence enhancements for family/partner assaults and violation of protective orders.

- Suggested minimum sentences, similar to current DUI law (another high profile offense - frequently resulting in death and injuries).
- Initial counseling assessments to determine levels and areas of counseling needed, still maintaining the current minimum of 25 hours.

2. Moving of protective orders from marriage and divorce laws to a new section protecting crime victims of many categories without regard to relationship.

- Many victims of violence fall outside the boundaries of marriage and divorce laws. These victims need the additional protection offered by SB 278.

3. Clarifying the victims rights/remedies under Section 46-6-602, MCA.

- These language changes should result in easier understanding by the victim and higher likelihood of follow through on their part.
- The bill also provides for health care providers to give this same notification to any suspected victim. This does require notifications to law enforcement, which poses no conflicts with confidentiality.

4. Establish rights of all courts to place additional restrictions against offenders in sentences.

- First and second offenders of family/partner violence laws are still considered misdemeanants but we must recognize the opportunity to re-offend and therefore allow the court to control some aspects of that offenders freedoms to obtain the objective of rehabilitation while under the courts jurisdiction.

5. Establish option for establishing local misdemeanor probation offices and authorities.

- This will allow for better monitoring of offenders completion of counseling, payment of restitution, and compliance with restrictions placed by courts for objectives of rehabilitation. Creation of this feature would be strictly optional for each court.

EXHIBIT 7
DATE 2-3-95
SB 278

One goal that must be strived for is an improvement in the recidivism rate of offenders. Family / partner violence is something that can destroy the very fiber of family existence and it needs our additional concern and support right now.

The above issues should all help address that issue and are covered in SB 278 as it is proposed to you. It is for these reasons we urge you to pass this important piece of legislation for the safety and welfare of the citizens of Montana.

Sincerely,



Mark Muir, Legislative Rep
Missoula Police Association
435 Ryman
Missoula MT 59802
(W) - 406-523-4777

MONTANA WOMEN'S LOBBY

P . O . B O X 1 0 9 9 H E L E N A , M T 5 9 6 2 4 4 0 6 . 4 4 9 . 7 9 1 7

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 8
DATE 2/3/95
FILE NO. 278

To: Senate Judiciary Committee

Re: Support of SB 278

The Montana Women's Lobby urges your support of SB 278. SB 278 includes several proposals that will allow the state of Montana to better respond to the problem of partner and family member assault. In renaming the offense previously called domestic abuse to partner and family member assault, we acknowledge the nature of the offense that effects three to four million American women per year. The violence done in domestic abuse cases is an assault on an individual whose suffering is not alleviated, nor whose battering is made less horrifying, by the fact that the offender was a household member. Domestic violence, according to data put out by the National Association for Female Executives, is often treated with a slap-on-the-wrist. The same violence that would be called assault when committed against a stranger, is somehow diminished, perceived as a lesser crime, when done unto a spouse or family member and called domestic abuse. We believe the renaming better describes the crime and thus, better instructs the public and police as to its violent, unacceptable nature and how we need to deal with it.

We also support, in particular, in section 24, bringing the end to mutual restraining orders made for the convenience's sake. Those who are not a threat should not be treated as one. It is wrong to blame the victim, to criminalize the victim, for purposes of simplification.

We support SB 278 with the sponsor's amendments in its entirety. We ask you to join us in that support.

Facts:

A third of female emergency room patients are battered women.

A third of all homeless women in the U.S. are fleeing domestic violence.

Thirty percent of female homicide victims are killed by their male partners.

(National Association for Female Executives)

SB 278

2-3-95

from: Martha A. "Marty" Bethel
Hamilton City Court
223 S. 2nd
Hamilton MT 59840
(406)363-6823

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 9
DATE 2/3/95
FILE NO. 278

Chairman Crippen, members of the Committee:

My names is Marty Bethel. I am a City Judge for the City of Hamilton. I have had the honor of serving as a member of the Montana Courts of Limited Jurisdiction for the past nine (9) years. I have been a Montana Magistrate's Association training Judge, under direction of the Supreme Court Commission on Courts of Limited Jurisdiction for the past 7 years. As such, I travel and provide the very first training available to new Judges taking the bench through election or replacement in Western Montana.

I am here today to speak in support of Senate Bill No. 278. In light of the limited time, I have decided to speak to three aspects of the proposed bill:

- (1) the proposed name change;
- (2) the aspect of a mandatory period of probation for batterers, and ,
- (3) mandatory jail time for a conviction under family violence law.

(First) the proposed name change from "Domestic Abuse" to "Partner or Family Member Assault" is an important change to be made at this time. There exists a pervasive element of "minimization" when it comes to domestic violence. Over the past nine years, literally dozens of offenders have appeared in my Court to answer to the charge of Domestic Abuse, and when giving their admission statements, some have said, and I quote, "I don't see the big deal here, I didn't commit an ASSAULT, or anything. She's my wife!", or, "I had to get control", or "I disciplined her as you would discipline a child (in that case, he head-butted her and left a welt the size of a tennis ball). I don't think so. This is not a "socially acceptable" discipline, this is an assault. This crime often packs the elements of an assault by the letter of the law, and THEN SOME. To soft-sell the nature of this violent crime by its' placement among statutes which deal with marriage and divorce law, undermines the deterrent value of a conviction for such a violent crime. Did you know that a second offense cruelty to animals is a felony under Montana law. It requires a THIRD offense domestic violence to rise to the level of a felony, and by possibly I mean that that choice still rests within the city or county attorney's discretion as to whether to prosecute the case as a misdemeanor or a felony. WHAT IS WRONG WITH THIS PICTURE?

(second) probation is a welcome aspect of this proposed legislation. Family or Partner Violence offenders often fall through the boards in the floor, if you will, due to lack of effective "tracking" of their compliance with a sentence. The courts of limited jurisdiction attempt to "track" the compliance of domestic violence offenders, but there is a definite percentage of slackers whom we, the Courts, lose jurisdiction over before treatment is complied with or recommendations for further, or related, treatment are reported to us.

(last) I believe that mandatory jail time is necessary as an effective deterrent for this crime. The "cooling-off" period this would implement would have a chilling effect on the offender and a breath of peace for the victims. The offender's first counseling session could follow immediately thereafter, and hopefully, a positive turn would flow therefrom.

The lack of an effective deterrent the current law provides speaks to its' failure. We have a growing sickness in our troubled families. To quote from a Supreme Court case out of the State of North Carolina":

"It is better to draw the curtain, shut out the public gaze and leave the parties to forgive and forget."

Surprisingly, this Supreme Court case is from the year 1874. How chillingly familiar does this quote sound when compared to current social response, or lack of response? The damage done from this lack of intervention plagues us to this day. Our society's demand for an effective deterrent has ruled this tone of apathy out, and suggests an immediate move toward effective intervention. This proposed legislation is a constructive move toward such intervention.

You might wonder why I would take the time to come here and testify to the importance of these changes. I care about the people I serve and I, too, am a survivor.

Thank you.



MARTHA A. BETHEL

Chairman Crippen, members of the Judiciary Committee, I am grateful for this opportunity to speak now today. My name is Patrina Sims and I was a victim of ~~physical~~ ^{partner's} assault ~~at~~ for 6 1/2 years. My husband started beating me within the first month of our marriage. At first the beatings occurred behind closed doors then in front of my children as they cringed in the corners of the room. There were times when I used my body as a shield to protect my children from harm as his fists and kicks connected to my body. The last beating left me bruised and swollen yet I fled Fortine, Montana because he threatened to beat my oldest son severely. Previous attempts to get away in my car proved hopeless. He would pull plugs & wires or grab the children to keep us from running away. The Lincoln County Crisis Line helped me seek shelter at the Domestic Violence Assistance Center in Missoula. By the time I found a home in Missoula, custody visitations were granted allowing my ex-husband's ^{to continue his} menacing threats breaking personal property and harassing my children & I both at our home and in their school. After physically restraining me from dialing 911, I obtained a temporary Restraining Order. When police officers again responded I felt confident appropriate steps would be taken to assure us, ~~my children and my safety~~ we would not be harmed.

My ex-husband's incarceration in Deer Lodge gives me temporary relief, but once he's out I would fear ways of his movements were monitored and I could obtain an order of Protection for my children and I despite the time elapsed since this last offense.

By voting yes on this bill, I truly believe the revisions will make it less lethal for all victims. Please vote yes.

Thank you for allowing me to be heard.

Sincerely,
Patrina Sims
Missoula, MT. 59801

DOMESTIC VIOLENCE - HAS ANY THING CHANGED IN TWENTY YEARS?

By Jan Healy, R.N., B.S.N., C.E.N.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 11
DATE 2/3/95
FILE NO. 228

Has anything changed in twenty years in the way society views domestic violence? How about the judiciary and law enforcement, has their attitude changed? The health care providers, the mental health workers, the social service agencies, the clergy, has their attitude changed? When you see today's news headlines, it makes you wonder at the number of women who have "fallen through the cracks" of the system that is supposed to protect and help them, and as a result have been brutally assaulted and murdered. Why does abuse have to reach the sensational headline status before attention is paid ever so briefly to the victims of the abuse and their rights?

Emotional abuse starts long before the physical assault. Emotional abuse is the cruelest and longest lasting of all the forms of abuse. Emotional abuse scars the heart and damages the soul according to Andrew Vachss, noted author and attorney. Like cancer emotional abuse does its most dangerous work internally. Yet little attention is paid until the physical assaults cause serious physical injury to the victim, the batterer or both. Why does society not respond sooner to avert tragedy? The following story is a prime example.

The other day I visited with my former attorney who is now a judge. We chatted about my children, where they are and how they are doing. Then we talked of the events leading up to and that occurred after the court proceedings I was requesting information on. Toward the end of our visit the judge made the comment that perhaps if he had been a little more adversarial in my behalf, that tragedy could have been averted twenty years ago. But this story could have happened yesterday.

It was on March 23, 1974, Saturday afternoon at 12:20, that my husband of six years broke down the locked front door of my home and in front of our two small children, ages five and nine years, shot me seven times and then killed himself. It was the culmination of many threats and acts of violence that escalated into that final act. There were many beatings over trivial things, bouquets of red roses, apologies and promises that it would never happen again, if only I were thinner, a better wife, mother, housekeeper. His rationalizations went on and on. First came the emotional abuse with continual put-downs and attempts to completely control me. My husband was a manipulator par excellence. He manipulated my and my belief in the sanctity of marriage and a traditional family life. But no matter what I did, it was not right, nor was it enough. I sought help and counsel from my church leaders where I was affectionately patted on the hand and told to, "Try a little harder dear, be more submissive and your marriage will work." I am sure they were thinking love can conquer all. But this re-enforced my husband's blaming me for his battering and increased my feelings of failure and responsibility for the abuse. My self esteem was so low, I felt I had no rights as a wife, mother or person. It reached the point that even though I was employed full time, my husband would give me \$75 to buy groceries. Then after purchasing the groceries, I would give my husband the change. He then would check off the items on the grocery receipt as I put them away. He felt all money in the household was his and he controlled it as he saw fit.

When the physical abuse started, I learned to wear long sleeved blouses and dark hose or pants to cover the bruises on my arms and legs. I did not want anyone to know. I did not tell anyone because I was so ashamed. This kind of

thing did not happen to anyone I knew. There must be something wrong with me. I lived isolated in constant fear. But my friends at work knew and protected me from being questioned too closely by others about my black eyes. Finally one night after drinking he came home, raped me, beat me and then threw me out of the house in my pajamas. It was the end. I could take no more. I told my husband either he get help or I would leave and take the children with me. He then committed himself voluntarily to Warm Springs State Hospital for treatment for ninety days. Toward the end of that ninety day period, the psychiatrist from Warm Springs called me one evening at work. He informed me my husband had told him that if he was released from Warm Springs, he would come back to Billings and kill my children and me. The psychiatrist said he was obligated by law to warn me, but that was all he could do. Because my husband was there on a voluntary commitment they could not hold him once the ninety days were up. I will never forget the cold terror that gripped me at that moment and from then on became my constant companion. I felt totally helpless and exposed. No one could or would protect me or my children from this man. The nightmare intensified.

My husband was released from Warm Springs and instructed to stay away from my children, my home and me. He also was to report to the local Mental Health Center for further follow up counseling and drug therapy.

Needless to say, he did not comply with his treatment regime. Within a day of returning to Billings, he was back at my home harassing me. I never knew from one moment to the next when he was going to show up threatening me with guns and knives at all hours of the day and night. I was held at gun point on several occasions. Then when all the guns were taken by the sheriff's deputies, I was held at knife point while my husband threatened to kill himself if I did not let him move back in the house with me. He was there so often the sheriff deputies and I had a signal worked out. They would just "stop by" to see how things were if they saw a certain light turned on (it was a light I never turned on otherwise). I refused to let my husband move back in. Strangely enough, I remained calm. Each time he showed up I called the police and tried to file a complaint. However, some of the times when I would go to the sheriff's office to file a follow up complaint, I would be told there was no report filed by the officers so I could not file a complaint. Nothing worked to keep him away. I obtained a restraining order to "legally" keep him from harassing me. Still he came back!

Finally in desperation, I went against my religious beliefs and filed for divorce. I would not have had the courage had it not been for a counselor at the Mental Health Center. He had called and suggested I come in for some supportive counseling. When I went in to see him, he validated my feelings that I was being beaten unjustly -- that no one has the right to beat anyone!

At this time, December 1973, I was working full time and taking pre-nursing courses at a local college. I had been accepted into the School of Nursing of Montana State University, and was scheduled to start classes winter quarter, January, 1974. This meant my children and I would have to move 144 miles away to Bozeman. I thought that at least here we would be safe. Besides, there was to be absolutely no contact with my husband except through my attorney. He was not even to know what town we were in.

My husband had been in and out of jail and the psychiatric unit at Deaconess Medical Center many times. Yet, after each release he came back to harass and

beat me day or night. I lived with constant mortal fear every moment of every hour of every day. So, on the advice of his psychiatric social worker and because of my husband's persistent non compliance with his treatment regime and I had found him hiding in the crawl space under my house with a loaded 357 magnum pistol, I started commitment proceedings.

At his trial he was represented by an attorney who was more concerned with protecting my husband's civil rights than his mental health. An attorney who had no concern for the safety of my children or me. My husband was interviewed for an hour by a psychiatrist who did not know his case at all because the psychiatrist in charge of my husband's case was out of town at the time. My husband was a highly intelligent professional person who knew how to play the game and work the system. He used to laugh about how he could fool them. And he did it this time too. The court turned him loose January 3, 1974.

Within a month, on a Saturday afternoon, when my children and I returned to our apartment in the married student housing at M.S.U. after a day of skiing, he was on our doorstep. That was the only time the terror got the best of me. I had thought we were safe. I had tried so hard to follow the advice given to me by the police, the psychiatric social worker and my attorney. Yet not even the law or hiding could keep him away from us. I managed to get the children inside the apartment and lock the door. Thank God it was a metal door so his pounding did no harm. I was hysterical and crying when I called the police for help. They told me I did not have a restraining order in Gallatin County so there was nothing they could do. I pleaded with them to call the Yellowstone County Sheriff's Department and my attorney. I then called some friends from church. The police came. My husband left. My friends arrived and took my children and me home with them for the night. I could not stop crying. After that I neither saw nor heard from my husband until the time of the shooting over a month later.

Winter quarter at M.S.U. ended. I was so proud and happy I had received my M.S.U. nursing cap signifying I was ready to start my clinical training. That was a Friday. That night my children and I returned to our home in Billings about 10:30 unannounced. The next morning I had a neighbor girl come and babysit my children while I met with my attorney concerning the divorce proceedings that were to take place the following week. I had just returned home from the meeting when my husband knocked down the locked front door of my home. His eyes were blood shot and there was the smell of beer on his breath. I looked in his eyes. I knew this time was different -- he was going to kill us! My son screamed, "He has a gun! He has a gun!" I shoved my son out the hole in wall that had been the door. The babysitter took my daughter out the family room door. As I turned back around to face my husband, he shot me three times point blank in the abdomen, then once in each side of the chest. By this time I too was out the front door. I fell off the front steps and he shot me again once in each hip. Mike then killed himself with one shot to the head. I was so confused. His last words to me as he stood over me shooting me were, "I am going to fix you so no one will ever think you are beautiful or love you again." I did not understand. He was the one that ran around and had the extra-marital affairs. I was the one who was forgiving and stayed home taking care of the children and the home.

Although I lived when the doctors said I would not, went skiing six months after the doctors said I would not walk because my right leg was paralyzed by femoral nerve palsy due to a partially severed femoral nerve, graduated from

M.S.U. with a Bachelor of Science in Nursing on June 10, 1977, and have worked as a registered nurse for the past seventeen years, I still have problems with my self esteem and have a difficult time trusting people. I still have my strong religious beliefs and have raised two outstanding children by myself. My son, Jim, is married to a wonderful young woman and is the father of the world's cutest three year old boy and eight month old baby girl. Jim is currently on a full ride scholarship to Stanford University Medical School and is in his third year of their M.D./Ph.D. program. Michelle, my daughter, is a senior at Brigham Young University majoring in psychology. This summer she married a sweet king young man. Both children served outstanding missions for our church, Jim in Denmark, Michelle in South Korea. Despite the success in raising my children and my nursing career, I could never quite understand all that went on during those traumatic years. I felt I must be deeply flawed that this had happened to me. There must have been something more I could have done. I must have failed.

The understanding that I was not flawed, that I did not fail, did not start for sixteen years. Not until May 1990 when I attended the first McGuire Memorial Conference on Family Violence. As I sat there listening to the lectures, it was as though a knot deep within my soul was untied and I began to understand at last. There was nothing I could do to control my husband's behavior or prevent his battering. He was the one responsible for his actions. I was so relieved tears ran down my cheeks as I sat there among my colleagues from the emergency department.

Now I am committed to the education of the public - both lay and professional - in the hopes that other women will not have to live with the terror and confusion that were a part of my life for so many years. For this reason I share my story. Frequently I am asked if I have any anger about what I have been through. I would not call it anger -- it is rage. A rage that has been channeled into productive means. No one will ever hurt me or my children that way again! No one should have to go through what we went through! My children and I had fallen through the cracks of the system. Unfortunately today there are still thousands of stories similar to mine. So I ask, "Has anything changed in twenty years? Why are nearly 4,000 women being murdered each year by their spouses, former spouses, boyfriends or ex-boyfriends?" According to the National Coalition Against Domestic Abuse 4,000,000 women each year are battered so severely they require police or medical assistance.

Somethings have changed in twenty years. Most states have laws making domestic abuse a misdemeanor. Law enforcement goes on the domestic abuse call and makes the arrest. Unfortunately it is to the same residence, involving the same people again and again, frustrating the officers, prosecutors and judges involved.

The key to making substantial changes in community attitude about domestic is EDUCATION. Educating everyone from the judiciary, to the prosecutor, to the law officer, to the health care professionals, to the clergy, to the layman on the street. Orders of Protection must be stringently enforced. Sentences once the batterer is convicted must be stringently enforced. Victims must be informed of their rights by health care professionals as well as law officers. WE MUST DO EVERYTHING IN OUR POWER TO KEEP THE VICTIMS OF DOMESTIC VIOLENCE SAFE!!! We must assist them in accessing social service agencies, child care and legal assistance. WE MUST HAVE EARLIER INTERVENTION!!

Testimony on Senate Bill 278EXHIBIT NO. 12

February 3, 1994

DATE 2/3/95FILE NO. 278

Judy A. Williams, Billings, MT

Chairman Crippen and members of the Senate Judiciary Committee:

Thank you for allowing me to speak to you today. My name is Judy Williams. I am a lawyer from Billings, a 1977 graduate of MSU-Billings and a 1985 graduate of the University of Montana School of Law. Although I am currently working for the State Bar of Montana as coordinator of a pro bono project, the focus of my law practice with Montana Legal Services for the previous nine years has been representing victims of family violence.

First, I wish to note that I favor the proposed name changes in the bill before you: family or partner assault calls this crime by its proper name: assault. Order of protection, aside from being more descriptive, is specific. No one understands what preliminary injunctions are.

Although many aspects of the bill before you are noteworthy, the rest of my testimony will be confined to the issue of prohibiting mutual orders of protection, and the prohibition against arresting a petitioner for alleged violations of an order of protection. By adopting those two specific changes you will do much to improve the process of protecting family assault victims.

Too often, our over-worked and frustrated law enforcement personnel must answer family assault calls. Where a protective order is in place, the officer must decide whether there has been a violation and, if so, whether to make an arrest. Too often, the facts are muddled. Frequently, the respondent (restrained party) alleges that, although he may have violated an order, it was because of an invitation by the petitioner (victim). In too many cases for me to count, the victim is arrested by the officer. That should not happen.

Seeking protection from the Courts is one of the most difficult things a family assault victim ever does. It exposes a very private and usually embarrassing problems to others, often for the first time. Victims in need of protection are in no position to argue with a judge who often states it is the Court's policy to make protective orders mutual. But problems with mutual orders include:

1. Violation of Due Process: the opposing party/assaulter does not need to fill out the petition and affidavit the victim did, so the victim has no notice of the claims against her and no opportunity to defend herself against such claims.

2. If law enforcement assistance is necessary, responding

officers have difficulty determining who the real victim is when a protective order is mutual. On more than a few occasions in Billings, when confronted with such a dilemma, officers have arrested both parties, resulting in even more trauma to the real victim and any children, who find themselves in foster care.

3. Mutual orders suggest that the victim is somehow responsible for what happened to them. The victim goes to the Court for help and is essentially told: we will give you an order for protection, but you have to live under the same restraints as the person who harmed you.

The absurdity of this is, perhaps, best illustrated by a short analogy. Imagine you are driving home from work today and you are hit by a drunk driver. Your car is demolished, your arm is broken, and you are generally shaken up and bruised. The other driver is arrested and charged with Driving Under the Influence of alcohol.

You go to Court to testify against the other driver, who is found guilty, loses her driver's license, and is ordered to pay you restitution for the damages to your car and your medical expenses. After sentencing the drunk driver, the Judge turns to you and says that even though the accident was not your fault, if you had not been on the street you would not have been in this accident. So that you will not be in another accident and you will take this situation seriously, you will also lose your driver's license for a year.

When the situation is a family assault victim seeking protection, the circumstances are far more serious than in my illustration. Because, a mutual protective order also implies that the offender is not responsible for what he did.

Judges like mutual orders because many of them do not understand the dynamics of family violence and they think that the only goal of a retraining order is to keep the parties apart. A mutual order is easy. It is also wrong. Sometimes the only way to right a wrong is to pass a law. This is one of those times.

The only way for victims seeking self-help protection orders to avoid the mutual order trap is for you to legislate its prohibition.

I urge you to pass this bill, *as amended*.

Thank you for your time and consideration.

ROCKY MOUNTAIN PSYCHOLOGICAL & ADDICTION SERVICES

210 N. Higgins Avenue, Suite 202

Missoula, MT 59802

(406) 721-0909

fax (406) 721-0917

January 30, 1995

TO: Chairman Crippen

RE: Senate Bill 278

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 13

DATE 2/3/95

FILE NO. 278

Dear Chairman:

I am writing in support of Proposal L.C. 265, specifically to address the need for a counseling assessment prior to counseling for Domestic Abuse. As a practitioner providing batterers' treatment, it has been my experience that the current 25 hours is, in many cases, not sufficient to lower the risk of re-offending. In addition, the absence of counseling to address other complicating factors such as chemical dependency leaves the abuser at a significantly higher level of risk for repeat offense.

National statistics show 86% of domestic abuse cases have substance abuse involved in the incident. As a Montana State Certified Chemical Dependency counselor, it is likely I have had a greater awareness than many batterers' counselors of the frequency of substance abuse issues among my battering clients. My experience over the past eight years supports national statistics. Furthermore, it has been my experience that the skills taught in domestic abuse courses are essentially useless if the client has a substance abuse problem. It is difficult to incorporate skills that call for some sense of judgement and reason when an individual is intoxicated.

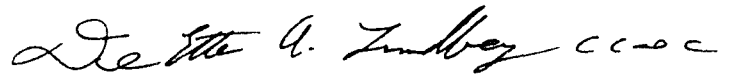
Aside from the issue of chemical dependency, there are several cases of domestic abuse in which the standard 25 hours of counseling, now allowed by law, is insufficient. For some of these men and women, 25 hours may only begin to break the denial. Many of these individuals' patterns of abuse are so long-standing and so ingrained that to expect major change in this amount of time is totally unreasonable and unfair to the client.

In closing, I urge you to seriously consider amending the current domestic violence laws to support counseling assessments up front and enforcement of any recommendations made by the counselor. I do not see this as punishment. As a counselor, my

interest in this matter is providing the best possible opportunity for positive change with domestic abuse clients. My experience suggests that many of these people do want to change, yet it almost always takes legal intervention to start the ball rolling. The current laws are just not enough!

Thank you for your careful consideration of this matter.

Respectfully,

A handwritten signature in cursive script, reading "DeEtte A. Lundberg", followed by several loops and a horizontal line.

DeEtte A. Lundberg, BS, CCDC



Montana Shooting Sports Association

P.O. Box 4924 • Missoula, Montana 59806 • (406) 549-1252 • FAX (406) 251-3824

Asserting the Rights of Gun Owners in Montana

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 14

DATE 2/3/95

FILE NO. 278

Officers

Gary S. Marbut

President

John M. Mercer

Vice President

mes M. McDonald

Secretary

Ronald E. Preston

Treasurer

Directors

Robert I. Davies

Bozeman

Don Doig

Helmville

Roger Koopman

Bozeman

Gary S. Marbut

Missoula

mes M. McDonald

Missoula

John M. Mercer

Sidney

Brian Sipe

Kalispell

Judy Woolley

Plains

January 31, 1995

Diane Tripp
464 Vigilante Drive
Helena, Montana 59601

Dear Diane,

This letter is a conditional letter of acceptance of the provisions of SB 278. First, I want to thank you for all the hard work you, personally, have put in on making this bill work. It seems to be a good effort, and law abiding gun owners sympathize with your goals.

Attached is a copy of the amendments to LC265, prepared by Valencia Lane on January 24th, and provided to me by yourself to cure concerns I have had about the bill. You have assured me that these amendments will be offered by the sponsor upon hearing in committee as an essential part of the bill. If these amendments are accepted and applied by the committee, MSSA has no objection to the bill.

However, should these amendments either not be offered to the committee, or not be applied to the bill by the committee, the official MSSA position would be one of opposition to the bill.

With the attached amendments applied, I hope SB 278 fares well. You are encouraged to share a copy of this letter with the committee when you testify concerning the bill.

Sincerely yours,

Gary S. Marbut
President

cc: Senator Larry Baer

Amendments to LC 265
First Reading Copy

Requested by Senator Brooke
For the Committee on ?

Prepared by Valencia Lane
January 24, 1995

unedit

1. Page 12, line 2.
Following: "offender"
Strike: "charged or"

2. Page 12, line 3.
Following: "of"
Strike: "a"
Insert: "the"
Following: "firearm"
Insert: "used in the assault"

3. Page 12, lines 3 and 4.
Following: "The court may" on line 3
Strike: remainder of line 3 through "sentence" on line 4
Insert: "enforce 45-8-323 if a firearm was used in the assault"

4. Page 15, line 9.
Following: "using"
Strike: "any"
Insert: "the"
Following: "firearm"
Insert: "used in the assault"

5. Page 17, line 17.
Following: "seize"
Strike: "any"
Insert: "the"

6. Page 17, lines 17 and 18.
Following: "used" on line 17
Strike: remainder of line 17 through "used" on line 18

7. Page 17, line 20.
Following: "take"
Strike: "any"
Insert: "reasonable"

8. Page 17, line 25.
Following: "until"
Insert: "acquittal or"

9. Page 18, line 17.
Following: "using"
Strike: "any"
Insert: "the"
Following: "firearm"

EXHIBIT

14

DATE

2-3-95

SB 278

Insert: "used in the assault"

10. Page 21, line 2.

Following: "using"

Strike: "a"

Insert: "the"

Following: "firearm"

Insert: "used in the assault"



SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 15
DATE 2/3/95
CASE NO. 278

1130 West Broadway
Missoula, MT 59802
(406) 543-6691

February 1, 1995

Dear Chairman Crippen and members of the committee:

I am writing in support of Senate Bill 278 and urge you to vote yes on this very important piece of legislation.

It is important that we have individual filing for TRO's. Currently, when "Jane Doe" files for a TRO, "John Doe" can also ask that it be made mutual at the same hearing. He is not asked for witnesses or documentation and his allegations do not have to be substantiated. He (and in some cases she) needs to go through the same process as his/her partner in filing for a TRO.

In changing the name Domestic Abuse to Partner/family member assault - I feel this is a more accurate description of events than Domestic Abuse. Domestic has many meanings and brings up many thoughts and feelings - warmth, home, comfort etc. Abuse also has many applications. This is almost an oxymoron. The word "domestic" minimizes the seriousness of this crime. There is no question as to the meaning of partner and family member assault. With the change in nomenclature - Domestic Violence is treated as any other assault to a person crime - as it should be.

Thank you for your time in considering this letter.

Sincerely,

Dodie Moquin

Dodie Moquin, Case Manager, Domestic Violence Assistance Center

DEPARTMENT OF CORRECTIONS
AND HUMAN SERVICES

SERIAL 16
DATE 2/3/95
FILE NO. 578



STAN STEPHENS, GOVERNOR

1539 11TH AVENUE

STATE OF MONTANA

(406) 444-3930 FAX (406) 444-4920

HELENA, MONTANA 59620-1301

January 26, 1995

Judy Wang
Missoula City Attorney Office
Missoula Family Violence Council Chair
Missoula City Hall
435 Ryman
Missoula, MT 59802

Dear Ms. Wang,

Thank you for sending me a copy of the proposed legislation regarding family violence and DUI offenders and establishing of local misdemeanor probation officers to supervise these offenders.

I support the proposed legislation and view as very positive the plan to have these serious misdemeanor offenders supervised by probation officers. In both the cases of family violence and repeat DUI offenses, the offenders often pose a serious threat to community safety. This is even more true when they fail to get required counseling or follow court imposed conditions of release. I view monitoring for compliance an essential part of any effective probation in these cases.

As Regional Supervisor for State Adult Probation and Parole, I see as a side benefit to this misdemeanor supervision, the potential to divert offenders prior to their being further immersed into the Criminal Justice System and possibly the State Prison. Many of the offenders we see first came to the attention of the Criminal Justice System via a DUI or family violence issues.

Thanks again for sharing with me this proposed legislation and feel free to use this letter as support for your proposal.

Sincerely,

A handwritten signature in cursive script, appearing to read "Sam Lemaich".

SAM LEMAICH, Regional Supervisor
Probation & Parole Officer
127 E. Main, Suite 303
Missoula, MT 59802
(406) 549-0022

127-95

DATE 2/3/95

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: STR 10

HB 26

SB 278

< ■ >

PLEASE PRINT

< ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Sherman V Lohn	Self	STR #10		X
Russell B Hill	MT Trial Lawyers	HB 26	✓	
TIM OBERHOFFER	MT CHIEF OF POLICE ASSN.	278	✓	
MARK Muir	MISSOULA POLICE ASSN. MONTANA POLICE ASSN.	278	✓	
GENE KISER	MB CC	278	✓	
JAN HEALY, RN	BILLINGS AREA FAMILY VIOLENCE TASK FORCE	278	✓	
PATRINA Sims	M. County Farm Violence Council	278	✓	
Ellyn Gwenther	YWCA Gateway House	278	✓	
Mary Brady	Support of M.C. F.V.C. / private counsel	278	✓	
MARTHA D. BETHUNE	Cit Judge / Domestic Violence Coalition / Counsel	278	✓	
Judy A. Williams	Montana Legal Services	278	✓	
Deborah A. Anspack	MT Legal Services, Billings	278	✓	
Anita Conyell	YWCA Dom. Violence Ctr.	278	✓	
Kelly Slattery Robinsom	YWCA Dom Violence Missoula	278	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 2/3/95

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: SB 278
H 26

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Klaus D. S. He	Mont. Legal Service	SB 278	✓	
Janet Cahill	Mont. Coalition ^{Domestic Violence}	SB 278	✓	
Judith Wong	Missoula City ^{Domestic Violence} Office / Missoula Family Violence Panel	SB 278	✓	
Jevone Laender	Ad. Pub 6551	H 26	✓	
Ann Pfeifer	Women's Section of State Bar	SB 278	✓	
SHARON HOFF	MT CATHOLIC CONF	SB 278	✓	
Kate Cholewa	MT Women's Lobby	SB 278	✓	
Russell B Hill	MT Trial Lawyers	STR 10		?
John Connor	MT County Atty Assn	SB 278	✓	
Beth Baker	Dept of Justice	SB 278	✓	
Ely Frayer	Self	SB 278	✓	
Alaine Tripp	Mont Family Violence Panel	SB 278	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY