MINUTES

MONTANA SENATE
59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN MIKE WHEAT,** on March 30, 2005 at 9:05 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:
Sen. Mike Wheat, Chairman (D)
Sen. Brent R. Cromley (D)
Sen. Aubyn Curtiss (R)
Sen. Jon Ellingson (D)
Sen. Jesse Laslovich (D)
Sen. Jeff Mangan (D)
Sen. Dan McGee (R)
Sen. Lynda Moss (D)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)
Sen. Jim Shockley (R)

Members Excused: Sen. Gary L. Perry (R)

Members Absent: None.

Staff Present: Valencia Lane, Legislative Branch
Mari Prewett, Committee Secretary

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

Committee Business Summary:
Hearing & Date Posted: HB 414, 3/24/2005; HB 368, 3/24/2005; HB 536, 3/24/2005; HB 577, 3/24/2005
Executive Action: HB 577; HB 414; HB 368

HEARING ON HB 414

Opening Statement by Sponsor:

REP. DEE BROWN (R), HD 3, said that HB 414 is the result of findings in an audit and relates to the Juvenile Delinquency Intervention Program (JDIP) funds. JDIP is a general fund program that provides an alternative method of funding juvenile placements and services in the state. Historically, District Court expenses, including Youth Court expenses, were administered at the county level. Any surplus JDIP revenue was distributed by the Department of Corrections to local governments and spent using the local government appropriation process. HB 414 implements a provision of the JDIP statute which, prior to a state assumption, was administered by local governments.

Proponents' Testimony:

{Tape: 1; Side: A; Approx. Time Counter: 2.1 - 3.6}

Beth McLaughlin, Supreme Court Administrator's Office, said that the JDIP is based in the Department of Corrections and its revenue is allocated to each of the 22 Youth Courts. If a district has money left over at the end of the year, by statute, they are allowed to use the revenue for prevention and intervention programs. Prior to District Court assumption by the state, the revenue was sent directly to the counties. After state assumption, auditors determined that it would be inappropriate for the revenue to be sent to counties because Youth Courts were no longer a part of county governments. HB 414 authorized the Department of Corrections to remit the leftover revenue to the Supreme Court, who, in turn, will pay Youth Courts for their intervention and prevention programs.

Karen Duncan, Youth Services Division, Department of Corrections, spoke in support of HB 414.

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses: None.

Closing by Sponsor:

REP. DEE BROWN requested the Committee's support of HB 414.

HEARING ON HB 368

{Tape: 1; Side: A; Approx. Time Counter: 5.0 - 9.6}

Opening Statement by Sponsor:

REP. SCOTT MENDENHALL (R), HD 77, said that the Supreme Court has given police officers broad authority to pull people over. The purpose of traffic enforcement is the safety of the motoring public. A well-marked police car does the job of traffic safety because it has a suppressing effect on traffic. HB 368 prohibits the use of unmarked police cars for traffic enforcement purposes.

{Tape: 1; Side: A; Approx. Time Counter: 9.6 - 15.3}

Proponents' Testimony:

Doug Nulle, Retired Attorney, Clancy, said that although he did not believe in tying the hands of law enforcement, he felt that some parameters needed to be placed on certain enforcement operations where the interest of maintaining flexibility of enforcement operations is outweighed by the public interest in protecting their safety, such as the enforcement of minor traffic violations. He was very concerned about the impersonation of a police officer for the purpose of committing far more serious crimes. He felt that as the population of Montana grows, so too will the level of crimes, including violent crimes. Although he lauds efforts to increase the penalty for impersonating a peace officer, he felt it insufficient to deter someone's intention to commit a far more serious crime. To minimize the number of unmarked police vehicle stops, would be a beginning.

Chris Christiaens, MT Farmers Union, spoke of two incidents between Billings and Wolf Point where a single mother was approached by an unmarked car. He said that while the Farmers Union feels that covert vehicles have their place, rural and long distances out in the country are not the places to be using them.

Opponents' Testimony:

{Tape: 1; Side: A; Approx. Time Counter: 15.3 - 24.6}

William Dial, Whitefish Police Chief, provided written comments in support of HB 368.

EXHIBIT(jus67a01)

Lieutenant Colonel Mike Tooley, Deputy Chief, MT Highway Patrol (MHP), said that the MHP has 13 vehicles that would be considered unmarked, and they are multi-use vehicles. They are used in targeted traffic patrol, to transport MHP officers to regional schools, and executive protection for the Governor. The whole point of unmarked vehicles is public safety.

Lt. Colonel Tooley added that the MHP has a policy in place for the use of unmarked cars, in that only a uniformed officer will operate and make traffic stops with them. The problem of impersonators exist, they have existed, and they will continue to exist. If he felt that HB 368 would eliminate the problem, he would stand in support of it. HB 368 limits the ability of law enforcement to work certain hazardous violations that require the use of unmarked cars. He recommended the strengthening of current impersonation laws or restricting the use or sale of law enforcement-related equipment to private individuals as an alternative to HB 368.

{Tape: 1; Side: A; Approx. Time Counter: 24.6 - 30.7}

Marty Lambert, Gallatin County Attorney, said that it is not productive for the Legislature to base public policy on awful scenarios brought forth by both sides of an issue. It should look at a normal circumstance where there is a trained, experienced officer doing a good job, as the vast majority of the officers in the state are, and a citizen who will stop if an officer attempts to pull them over for a traffic offense. He asked, if a person is a good citizen and obeys the law, what do they have to fear from law enforcement? The County Attorney's Association opposes HB 368.

{Tape: 1; Side: B; Approx. Time Counter: 34.7 - 35.3}

Jim Kembel, MT Police Protective Association (MPPA), said that MPPA has concerns with the language in HB 368 because it provides loopholes in a legitimate pullover.

Informational Testimony: None.

Questions from Committee Members and Responses:

{Tape: 1; Side: B; Approx. Time Counter: 35.3 - 39.2}

SEN. BRENT CROMLEY, SD 25, asked what constitutes vehicle markings under HB 368 and was it correct that police vehicles had to have sirens but not lights under the required markings statute. **REP. MENDENHALL** said lights are permissive under current statute. HB 368 refers to decals that are permanently affixed to

police vehicles. Magnetic decals would be insufficient under HB 368.

{Tape: 1; Side: B; Approx. Time Counter: 39.2 - 42.1}

SEN. JON ELLINGSON, SD 49, asked about the suggested amendment to HB 368 from **Chief Dial** to make it legal for drivers, who reasonably believe that they should not stop, to proceed to a place of safety using emergency flashers. **REP. MENDENHALL** said that some surrounding states have that type of language in statute, but he was unsure whether that language would fit within the title of HB 368. If it could fit within the title, he would consider it a friendly amendment. However, if the proposed amendment were to replace the language of HB 368, he would oppose it.

{Tape: 1; Side: B; Approx. Time Counter: 42.1 - 46.5}

SEN. DANIEL MCGEE, SD 29, asked if HB 368 were to pass as written, would it have a detrimental effect upon the Whitefish Police Department to investigate crime using unmarked police vehicles. **Chief Dial** said, no, not to investigate crimes. However, it would affect the Department in the areas of DUI, road rage, or reckless driving.

SEN. MICHAEL WHEAT, SD 32, asked how HB 368 would solve a criminal problem. **REP. MENDENHALL** said that from a legislative policy standpoint, does it want law enforcement to be readily identifiable for traffic enforcement or does it want to have an increasing trend toward covert law enforcement for routine traffic. **SEN. WHEAT** asked if there was an increasing emphasis on using unmarked cars to make routine traffic stops within the MHP. **Lt. Col. Tooley** said five of the 13 unmarked MHP vehicles are not used for traffic enforcement. It is not the MHP's intention to become more covert. However, it is in the rare cases that the MHP needs this tool to be available to focus its efforts in certain areas of the state that receive many reckless driving complaints. **Chief Dial** added that the use of unmarked vehicles is increasing in Whitefish, particularly in the areas of DUI and reckless driving enforcement. They have proven to be a very effective tool. If HB 368 were to pass in its current form, it would prevent the use of unmarked police vehicles in those situations.

SEN. MCGEE asked if the concern of HB 368 was pointed more toward the MHP or local law enforcement. **REP. MENDENHALL** said that his concern was more in the realm of the MHP. However, if it is good policy to limit the use of covert vehicles while there is an increasing trend towards their use, then they should be limited wholesale rather than piecemeal.

{Tape: 1; Side: B; Approx. Time Counter: 49.0 - 55.7}

SEN. JIM SHOCKLEY, SD 45, asked if a reasonable compromise could be to allow the use of unmarked vehicles for DUI purposes only. **REP. MENDENHALL** said that DUI has already been exempted from HB 368.

SEN. ELLINGSON said that one of the primary merits of HB 368 is the publicity about impersonators and that Montana's law-abiding citizens would recognize that if someone approached them with an unmarked vehicle, they would know that they are being pulled over by an impersonator and not feel the obligation to stop, particularly for a highway violation.

Closing by Sponsor:

REP. MENDENHALL said that although there would be a level of cost to HB 368, he did not sign the fiscal note because he felt that the amount was too high. Montanans, especially women, should be free to drive its highways with a sense of safety and security. HB 368 will help provide that assurance. The use of unmarked police cars for routine traffic enforcement can create considerable anxiety in the minds of motorists who are uncertain whether individuals seeking to stop their vehicles are, in fact, police officers.

HEARING ON HB 536

Opening Statement by Sponsor:

{Tape: 2; Side: A; Approx. Time Counter: 0.7 - 1.7}

REP. TIM CALLAHAN (D), HD 21, said that HB 536 revises the court automation surcharge, extends the termination date to 2009, and moves what is currently state special revenue into the general fund. The revenue addresses information technology (IT) issues and is to be used for that purpose only.

Proponents' Testimony:

{Tape: 2; Side: A; Approx. Time Counter: 1.7 - 7.4}

Jim Oppedahl, Administrator, Montana Supreme Court, Judicial Branch, said that the Court automation surcharge has turned out be an inadequate and unstable funding source for the over 200 courts around the state. Historically, court IT has had less than $900,000 to use. In 2003, the surcharge was increased from $5 to $10, and it was thought, at the time, that the Judicial Branch

would have $1.8 million each year for deployment of court technology. Since that time, the Branch has had to check with the Department of Revenue every month to see whether it could continue its IT programs.

He said that the surcharge is paid based on various court cases, but the revenue is adversely affected by an individual's ability to pay--the payment of fines and fees on an installment basis, the nonpayment of fines and fees, and by local ordinance changes. It is also affected by the prioritization of the surcharge, of which court IT is at the bottom of the list.

Mr. Oppedahl added that currently, his office has no court IT funding beginning July 1, 2005, because the surcharge has a 2-year sunset, resulting in the inability to contract on a long-term basis with vendors like every other state agency. In addition, the Branch is treated differently in the budgeting process. Getting away from the surcharge and receiving the funding from the general fund is a good idea.

{Tape: 2; Side: A; Approx. Time Counter: 7.4 - 9.5}

Gordon Morris, Director, MT Association of Counties (MACo); Ted Clack, MT Magistrates Association; and Mary Phippen, MT Association of Clerks of District Court, spoke in strong support of HB 536.

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

{Tape: 2; Side: A; Approx. Time Counter: 9.5 - 12.4}

SEN. SHOCKLEY said that he carried the extension bill in the 2003 Session. He asked how much money the bill was thought to raise, how much it actually raised, and how little was accomplished with what was raised. **Mr. Oppedahl** said that the Branch left the 2003 Session thinking that there would be $1.8 million each year of the biennium. It received $1.2 million the first year and approximately $1.4 million in the second year. The Branch has over 100 Courts of Limited Jurisdiction fully automated with a state-standard, case management system, and it developed a graphical, user-interface to put over the top of a very old case management system in the District Courts. **SEN. SHOCKLEY** said that the emphasis was put on the Justice Courts because they were the ones raising the money. His concern is that the data received from the District Courts is terrible. He asked, if the revenue

comes from the general fund, will priority be given to the District Courts? **Mr. Oppedahl** said that the proposal before the House Appropriations Committee is for the deployment of a similar modern, case-management system in the District Courts and additional staff for its deployment. Although all Courts are a priority for the Branch, with limited resources, the Branch has to start somewhere. In addition, the Branch secured federal funds from the Federal Highway Safety Commission to deploy case management in Courts of Limited Jurisdiction. Without adequate, long-term and stable funding, it is difficult to do all 200 Courts at the same time.

{Tape: 2; Side: A; Approx. Time Counter: 12.4 - 17.6}

SEN. MCGEE asked how long the surcharge had been in effect. **Mr. Oppedahl** said, since 1995, and it primarily pays for some in-house development of case management systems. He said that most of the $900,000 appropriation has been spent for ongoing maintenance. He added that in 2002, $126 million was the state expenditure for IT--$123 million was spent by the Executive Branch, $2 million by the Legislative Branch, and less than $1 million by the Judicial Branch. **SEN. MCGEE** said that the surcharge was enacted in 1995 so that there would be a funding source for Court IT. Over 10 years, it has generated approximately $10 million. He asked who the Judicial Branch was working with to ensure that the state was getting something for $10 million worth of income. **Mr. Oppedahl** said that the Judicial Branch is working with the Commission on Technology of the Court, the Courts of Limited Jurisdiction, and District Court Judges to develop a long-term plan of how the IT resources are going to be deployed.

{Tape: 2; Side: A; Approx. Time Counter: 17.8 - 19.7}

SEN. MCGEE questioned whether HB 536 should be amended to require that the activities, as they relate to IT, of the Judicial Branch be under the strict jurisdiction of the state's IT director. **REP. CALLAHAN** said that the Committee could do whatever it chooses to HB 536, keeping in mind that there have been significant changes throughout all of state government relative to IT issues. Many times, the state has gone down the wrong path because there has not been oversight, but that has changed. The Committee must also keep in mind the state assumption of the Court systems which has considerably changed the function of the Judicial Branch.

{Tape: 2; Side: A; Approx. Time Counter: 19.7 - 24.8}
SEN. CROMLEY questioned why the assumed $1.8 million from the surcharge decreased. **Mr. Oppedahl** said that it is part of the nature of the funding source. There are many surcharges within

the statutes, and the Judicial Branch is far down in the "pecking order". **SEN. CROMLEY** asked if HB 536 would change that scenario. **Mr. Oppedahl** said, no.

{Tape: 2; Side: A; Approx. Time Counter: 24.8 - 28.0}

SEN. SHOCKLEY asked if the Judicial Branch would have any objection to working with the Department of Administration's IT staff. **Mr. Oppedahl** said, no, because the Branch already works with them.

SEN. WHEAT said that every time the Judicial Branch comes before the Legislature and wants money, it simply asks for the money without giving an adequate explanation of where it is going and how it is going to be spent. He felt it simple for the Branch to lay out its plans. He believed that the Judicial Branch was underfunded. However, the Branch needed to understand the Legislature's frustration.

{Tape: 2; Side: A; Approx. Time Counter: 28.0 - 35.4}

Closing by Sponsor:

REP. CALLAHAN requested the Committee's support of HB 536.

HEARING ON HB 577

{Tape: 2; Side: B; Approx. Time Counter: 4.9 - 6.4}

Opening Statement by Sponsor:

REP. DAVE MCALPIN (D), HD 94, said that the goal of HB 577 is to help increase the conviction rate for rape by appropriating money to fund rape kits and examinations that would be used to improve evidence collection when a rape has occurred. He said that according to statistics, 25% to 33% of victims do not report the incident of rape within 24 hours of its occurrence. HB 577 would allow for the collection of evidence through forensic examinations and allow for it to be kept for 30 days.

Proponents' Testimony:

{Tape: 2; Side: B; Approx. Time Counter: 6.4 - 19.9}

Jenny Daniel, Crime Victims Advocate Office, Missoula, said that speaking as a survivor, in the initial moments after a person is raped, two key and conflicting factors result. First, the mind goes into a state of shock and is incapable of making major

decisions. Second, the body is evidence. While the mind is trying to make sense of what has happened, the clock is ticking when it comes to evidence gathering. Unfortunately, the mind will not come out of the state of shock until it is too late. HB 577 ends the conflict. She urged the Committee's support.

Kate Cholewa, MT Coalition Against Domestic and Sexual Violence, provided written comments in support of HB 577. She also provided a list of proponents and written comments from **Jane Dubbe, Sexual Assault Nurse Examiner, Helena,** in support of HB 577.

EXHIBIT(jus67a02)
EXHIBIT(jus67a03)
EXHIBIT(jus67a04)

{Tape: 2; Side: B; Approx. Time Counter: 14.4 - 20.5}

Tina Hedein, Registered Nurse, said that since 2002, she has cared for over 90 victims of sexual assault. In her experience, the most important step in successfully prosecuting assaults is early evidence collection. According to the standard of care by the International Association of Forensic Nurses, the best evidence is collected within 72 hours of the assault. After that time, it begins to disappear. The second step in successful prosecution is educating care providers on how to provide the collection evidence.

{Tape: 2; Side: B; Approx. Time Counter: 19.9 - 24.3}

Dawn Hayden, MT Coalition Against Domestic and Sexual Violence, said that HB 577 would provide victims with the time they need to work with an advocate, get support, and make a decision about reporting without compromising evidence collection that promotes the identification, apprehension, and prosecution of offenders.

Jessica Grennan, Associated Students of the University of Montana; Jim Kembel, MT Association of Chiefs of Police, spoke in support of HB 577.

Matthew Dale; Office of the Attorney General, said that the Attorney General's Office would be administering the program if HB 577 passed. HB 577 creates a "Jane Doe" option, creates uniform rape kits across the state, standardizes the cost of sexual assault examinations, and provides payment of the cost for victims whose expenses are not covered otherwise; and it would accomplish all of this without additional staff.

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

{Tape: 2; Side: B; Approx. Time Counter: 24.4 - 28.7}

SEN. JEFF MANGAN, SD 12, asked how much the Billings Hospital charged local law enforcement for forensic examinations. **Ms. Hendein** said, $250, which is the low end of the spectrum. Some hospitals charge as much as $1,200.

SEN. MANGAN said that the use of the $61,000 appropriation is not specifically laid out in the bill as it was during testimony. He asked what the money would be used for. **Mr. Dale** said that none of the $61,000 will be used to pay staff of the Office of Victim's Services and Restorative Justice.

{Tape: 3; Side: A; Approx. Time Counter: 0.1 - 14.8}

SEN. MCGEE was unsure why the local police was paying for any collection of evidence. **Ms. Cholewa** said if the police have to collect evidence in local communities, it is part of the cost of doing police business. With a rape victim, the person's body is the scene of the crime, so the collection of evidence is just like the collection of evidence in a house robbery, which is why the police department pays for it. **SEN. MCGEE** asked if HB 577 could be amended to say that, if a person has chosen the "Jane Doe" option and later decides to seek prosecution, the county would reimburse the Office of Victim's Services and Restorative Justice fund. **Mr. Dale** saw no down-side to the proposed language.

SEN. O'NEIL asked if evidence from forensic examinations was kept in a database. **Mr. Cholewa** said that nothing would be done with the evidence until a person reports the crime. If the crime is not reported, it would only be kept for the 30 days and then destroyed. If a person reports the crime four days later, there is immediate evidence even though the report is received 4-days late.

SEN. LYNDA MOSS, SD 26, asked if the program under HB 577 provided assistance to rural hospitals. **Ms. Hendein** said, yes.

SEN. MANGAN asked if some of the appropriation in HB 577 could be used to facilitate, through training, the current successful programs within the state. **Ms. Cholewa** said that it may not be necessary because, once the rape kits are made uniform, there is training that goes along with their use.

SEN. CROMLEY asked if the 30-day time period was currently in statute because it was not included in HB 577. **Ms. Cholewa** said that was the intent of HB 577, and the time period would have to be laid out in administrative rules.

{Tape: 3; Side: A; Approx. Time Counter: 14.8 - 22.5}

SEN. ELLINGSON understood that under HB 577, if a person does not initially want to report a rape and exercises the "Jane Doe" option, the bill for the examination does not automatically go to the Department of Justice. It only goes to the Department if the person does not go forward with a prosecution. **Mr. Dale** agreed, saying that it only goes to the Department after the 30-day window has closed and the victim made the decision to not prosecute. He added that the medical provider has no desire to track the evidence. The hospital provided a service, and they want to get paid for it. Any holding or brokering of the payment would need to fall on someone other than the hospital.

SEN. MCGEE felt it better to not amend HB 577 at this time, but rather have the Department return to the 2007 Session with information on whether there should be a reimbursement from the police to the Restorative Fund.

Closing by Sponsor:

REP. MCALPIN requested the Committee's support.

EXECUTIVE ACTION ON HB 577

{Tape: 3; Side: A; Approx. Time Counter: 22.5 - 24.7}

Motion: **SEN. MANGAN moved that HB 577 BE CONCURRED IN.**

Discussion: **SEN. CURTISS** asked if HB 577 could include amendatory language to specify that particular attention be paid to DNA collection. **SEN. WHEAT** said that once the evidence is collected and if DNA evidence exists, once the rape victim decides to go forward with a prosecution, at that point in time, the DNA will be catalogued by the State Crime Lab.

Vote: **SEN. MANGAN'S motion that HB 577 BE CONCURRED IN carried unanimously by voice vote. SEN. PERRY was excused. SEN. MOSS will carry the bill.**

EXECUTIVE ACTION ON HB 414

{Tape: 3; Side: A; Approx. Time Counter: 24.7 - 27.5}

Motion: **SEN. CROMLEY moved that HB 414 BE CONCURRED IN.**

Discussion: **SEN. JESSE LASLOVICH, SD 43,** felt that HB 414 created a youth intervention and prevention account that has no money in it. **SEN. O'NEIL** said that money flows into the account, but it cannot be kept from one year to the next because of the lack of a statutory appropriation.

Vote: **SEN. CROMLEY'S motion that HB 414 BE CONCURRED IN carried unanimously by voice vote. SEN. PERRY was excused. SEN. O'NEIL will carry the bill.**

EXECUTIVE ACTION ON HB 368

{Tape: 3; Side: A; Approx. Time Counter: 27.5 - 31.3}

Motion: **SEN. SHOCKLEY moved that HB 368 BE CONCURRED IN.**

Discussion:

SEN. MCGEE said that the Committee must ask itself if it wants law enforcement to be a covert operation. He was not against unmarked police cars being used for investigatory duties, but he was totally against using them for traffic offenses because it created a Gestapo mentality. He discussed offering an amendment to make HB 368 apply to the MHP rather than city police and sheriff's offices.

{Tape: 3; Side: B; Approx. Time Counter: 3.4 - 6.7}

SEN. SHOCKLEY felt it good public policy to have the police driving around in such a manner that people know who they are. He said that he would feel uncomfortable if someone were following him in the middle of the night out in the middle of nowhere. He supported HB 368. **SEN. CURTISS** agreed, but felt it wise to amend the bill to apply outside of the city limits only.

SEN. MOSS felt that HB 368 was unnecessary because criminals are very clever. They could take an unmarked car and give it the appearance of a marked car by using decals and magnetic stickers. It was important to recognize that the local police and the MHP make the decision as to how they use unmarked cars.

Motion/Vote: **SEN. O'NEIL moved to amend HB 368 by striking lines 22 through 25--This section does not prohibit the use of an**

unmarked police vehicle for other law enforcement purposes. . . Motion carried unanimously by voice vote.

Motion/Vote: SEN. MCGEE moved that HB 368 BE CONCURRED IN AS AMENDED. Motion failed on a 5 to 7 roll call vote. SENATORS O'NEIL, SHOCKLEY, MCGEE, CROMLEY, and CURTISS voted aye.

Motion: SEN. MANGAN moved that HB 368 BE TABLED AND THE VOTE REVERSED. SENATORS O'NEIL, SHOCKLEY, MCGEE, CROMLEY, and CURTISS voted nay.

ADJOURNMENT

Adjournment: 11.26 A.M.

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SEN. MIKE WHEAT, Chairman

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MARI PREWETT, Secretary

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LOIS O'CONNOR, Transriber

MW/mp

Additional Exhibits:

EXHIBIT(jus67aad0.PDF)