
Lawyer

THE STATE BAR OF MONTANA

Gender fairness



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document
project**



The candidates' profiles

A look at who's running for
chief justice & attorney general





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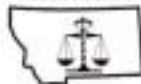
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PRESIDENT'S MESSAGE

Why are we in this profession?

New admittees are mirrors of ourselves

Jock Schulte

They say the older one gets, the faster time goes by, and I could not agree more. It seems like only yesterday when I took the oath at my swearing-in ceremony and became a Montana lawyer. What a proud moment!

On May 6, 2008, 26 new Montana lawyers were admitted at their own swearing-in ceremony. Chief Justice Karla Gray presided over the joyous occasion where family and friends observed this momentous event as their special person was admitted to the State Bar of Montana and granted the privilege of practicing law in this great state. Fifty-four candidates passed the February Bar Examination, so presumably 28 others will be admitted soon at individual swearing-in events.

Congratulations to the new Montana lawyers and welcome to the State Bar of Montana.

AS A UNIFIED AND mandatory bar, all Montana lawyers are required to be members of the State Bar of Montana. The Bar exists to serve Montana lawyers, who in turn practice law to serve the public. In this service, we support, protect and defend the Constitution of the United States and the State of Montana, the pillars of our system of justice. These organic foundations also provide the basis for our profession, which is why we take an oath upon admission swearing to support the constitutions.

My ambition to become a lawyer was initially rooted in an idealistic desire to seek and foster justice. I still have that ideal, although the enormity of the concept is somewhat daunting. Before law school and the practice, I naively believed that justice was a simple matter, easily identified and achieved by the professional efforts of competent attorneys. Fair and impartial judges would ensure that justice was delivered to all upon hearing the arguments and advocacy of counsel. After all, right is right and wrong is wrong. How difficult can that be?

Even with the excellent legal education that I received from the University of Montana School of Law and after years of practicing law, the concept of justice continues to

grow more complex to me. One person's justice can be another person's injustice. That is why our profession is so necessary to our functioning society. Lawyers provide the access to justice that allows citizens to achieve justice in an orderly and structured process, even if reasonable minds ultimately differ on what justice may be in any given situation. We bring finality and that finality becomes justice.

ONE OF MY CHILDREN graduates from the UM Law School on May 17. Especially over the last three years,

Dwight and I have had many discussions on the subject of justice and what it means to be a lawyer. His idealism is refreshing as I observe the evolution of his thinking. It is important that new and upcoming lawyers analyze the concept of justice as they begin their professional lives.

The Supreme Court holds two large ceremonies each year, one in May and the other in October, to

admit individuals to the practice who have successfully demonstrated and performed the prerequisites necessary to be a lawyer in Montana. While some are experienced in other states, the majority are new to the profession. It may seem that after law school the hard learning is complete, but in reality it is just beginning. The practice of law is continually evolving and so must the thinking of a lawyer – all lawyers, not just new lawyers and law students.

ATTENDING THE SWEARING-IN ceremonies and speaking to the new admittees, I do ponder on the motivation or catalyst that caused these individuals to pursue a law degree and the practice. I am sure that the reasons are as varied as the individuals' personalities, and I recognize the initial reasons to answer the calling may fade or no longer be relevant as the years of practice go by.

However, the search for justice, a concept that can be different things in different situations, must ultimately motivate and guide lawyers as we practice our profession. I expect that I will continue to contemplate the meaning of justice for as long as I can think. ○

Right is right and wrong is wrong. How difficult can that be? But the enormity of the concept of justice can really be quite daunting.

Supreme Court receives and approves. . .

the final Gender Fairness Report

In October 1999, the Montana Supreme Court established the Gender Fairness Task (GFTF). The GFTF was charged with the responsibility “to assist in promoting equality for men and women in the courts by determining whether gender bias exists in the Montana legal system and, if so, to examine the extent to which it affects decision-making in Montana courts.”

The GFTF was also charged with recommending methods of eliminating gender bias. (*See Order Appointing Members to the Gender Fairness Commission, Jan. 17, 2007.*) The Gender Fairness Commission was established on Aug. 17, 2000. The original Gender Fairness Commission worked hard to develop proposals and programs to implement the recommendations contained in the GFTF’s final report. Because of the importance of eliminating gender bias, a second Gender Fairness Commission was formed in March 2005. This Commission was composed of members Carol Graham, Michael Best, Shelly Hopkins, Roger Barber, and chaired by Julianne Burkhardt. The new Gender Fairness Commission’s term was extended to Dec. 31, 2007.

The following is the final report of the Gender Fairness Commission, containing five recommendations:

1. Create a standing commission. “Eliminating gender bias is an ongoing responsibility. To this end, the Gender Fairness Commission recommends this Court create a standing commission on gender fairness to provide for the continued implementation of the following methods of eliminating gender bias.”

2. A pamphlet for use At Montana court offices. “The Gender Fairness Commission has prepared a draft pamphlet to be utilized at all Montana court offices, including district courts, justice courts, city courts, and the Supreme Court (Exhibit 1). This pamphlet was adapted from a similar document prepared by the Administrative Office of the Trial Court and the Supreme Judicial Court of the Commonwealth of Massachusetts. The Montana Gender Fairness Commission has adapted this pamphlet to reflect Montana law and the Montana Constitution.”

3. Proposed amendments to the Canons of Judicial Ethics. “Rule 3.4 of the Montana Rules of Professional Conduct prohibits lawyers from engaging in conduct manifesting bias or prejudice when appearing before a court. Because the Canons of Judicial Ethics do not contain a specific section dealing

with bias and prejudice, the Gender Fairness Commission suggests this Court consider supplementing the Canons of Judicial Ethics so that they specifically address bias and prejudice. The Commission prepared a draft which is attached as Exhibit 2. The proposed additions to the Canons were taken from three sections of the Massachusetts Code of Judicial Conduct.”

4. Proposed revision to Jury Instruction MPI2d 1.02. “The Gender Fairness Commission also believes that it is important to address issues related to gender bias and prejudice during jury trials. To this end, the Commission prepared a revised version of MPI2d 1.02 which reflects these concerns. The proposed new language is in the second paragraph of the general evidence instruction which is read to the jury at the beginning of a trial. The amended paragraph reads:

At the outset, a witness is entitled to a presumption that his or her testimony is truthful without regard to race, color, sex, culture, social origin or condition, or political or religious ideas.

MPI2d 1.02 (modifications underlined). A copy of MPI2d 1.02, as modified, is attached as Exhibit 3.”

5. Grant writing. “The Gender Fairness Commission has explored various funding possibilities and determined that an excellent avenue for funding lies with the State Justice Institute. The Gender Fairness Commission envisions the preparation of a grant proposal seeking funding to develop a series of continuing legal education seminars addressing gender bias, as well as covering the cost of producing the pamphlet attached as Exhibit 1. The State Justice Institute grants are matching grants. Thus, they will not entirely solve the Gender Fairness Commission’s funding issues. However, they will go a long way to allowing the Commission to implement its proposals and reduce dependence upon funds from the State of Montana. The Montana Supreme Court has already obtained several grants from the State Justice Institute for projects within the Montana court system.”

6. Continuing Legal Education Seminars. “The Gender Fairness Commission envisions the presentation of CLE programs. Many of these programs are available from other states and can be adapted to the needs of Montana. The Gender Fairness Commission further envisions the preparation of one-hour seminar segments to be presented to various bench and

bar groups. The Commission recommends addressing the State Bar of Montana Annual Meeting, the Montana Trial Lawyers' Association, the Montana Defense Lawyers' Association, judicial conferences, and any programs addressed to the criminal bar, both prosecutors and defense attorneys. These programs can be prepared inexpensively and the current Gender Fairness Commission members have volunteered to assist in this process."

7. Conclusion. "Gender bias is an ongoing problem in our legal system. The foregoing report is designed to educate and address these types of problems in the Montana court system. The Gender Fairness Commission would also like to thank former Commission member, Carol Graham, for her hard work and dedication."

Exhibit I:

The recommended brochure

WITHIN OUR REACH: GENDER EQUALITY IN THE MONTANA LEGAL SYSTEM

Your Rights and Responsibilities

As a private citizen;
as a court employee;
as an attorney;
as a judge.

You have the right:

- To be treated with fairness, respect, and courtesy;
- To expect nonbiased treatment from everyone you encounter in the legal system; and
- To object to biased statements regardless of who makes them. You have the responsibility:
- To treat everyone with fairness, respect, and courtesy regardless of gender.

"The dignity of the human being is inviolable. No person shall be denied the equal protection of the laws. Neither the state nor any person, firm, corporation, or institution shall discriminate against any person in the exercise of [] civil or political rights on account of race, color, sex, culture, social origin or condition, or political or religious ideas." (Mont. Const. Art. II, § 4.)

These words, taken from the Declaration of Rights of the Constitution of the State of Montana form the foundation of the protection afforded to women to be free from gender bias.

The Montana Judiciary has a long tradition of protecting individual rights. In addition to faithfully fulfilling the duties of their professions, the judges, court employees, and attorneys in our court system work hard to eliminate unlawful and unconstitutional bias. As stated by our Supreme Court: "gen-

der bias and sexual stereotyping have no place in the jurisprudence or in the courtrooms of this state." *In re Marriage of Davies*, 266 Mont. 466, 482, 880 P.2d 1368, 1379 (1994) (special concurrence by Justice James C. Nelson, joined by Chief Justice Karla M. Gray).

Unfortunately, inappropriate language and behavior demeaning toward women is still too common in the courts, as in society at large. Despite improvements, the problem still exists and its import should not be underestimated or ignored. Although some practices may not be motivated by bias, they may nonetheless produce biased results or give the impression of bias, and it must be addressed.

This booklet offers valuable guidance for eliminating gender bias and discrimination in the courts of Montana. It effectuates the courts' policy of treating all people with respect and dignity and should be a blueprint for all who work in and are served by the courts.

Further, if we are to preserve the integrity of our courts, we must also work together to eliminate all inequities within the courts, including those based on disability, sexual orientation, religion, age, race and socioeconomic status. This booklet is an important step toward that larger goal.

The Role of Each Participant in the Montana Court System in Eliminating Gender Bias

JUDGES:

Judges are the most visible leaders of the court. You are in a unique position, both to prevent and eliminate biased behavior in the court. You can do this by serving as a model of respectful and equal treatment of others, by rendering fair decisions, and by intervening to stop the biased behavior of others, whether the bias is intentional or unintentional.

The canons of judicial ethics were adopted by the Montana Supreme Court on May 1, 1963. Canon 35 was amended on April 18, 1980. Judges are charged with the responsibility that every aspect of their conduct should be above reproach. Further, judges "should be conscientious, studious, thorough, courteous, patient, punctual, just, impartial, fearless of public clamor, regardless of public praise, and indifferent to private, political or partisan influences." Judges are also charged with the duty to "administer justice according to law, and deal with any appointments as a public trust. [Judges] should not allow other affairs or [] private interests to interfere with the prompt and proper performance of [] judicial duties." Canons of Judicial Ethics, Canon 34. In order to meet the foregoing obligations, judges must be intolerant of gender bias.

COURT EMPLOYEES:

In interactions with the public and colleagues, court employees play an important role in promoting equality and fairness in the courts. Members of the public generally have their first and often their only experience with the court system through interaction with an employee outside of the courtroom. By conveying respect equally to all individuals and providing effective assistance to all, court employees can help the users of the courts know and feel that they have been treated

fairly and respectfully. It is equally important to communicate respect and consideration to your colleagues, creating a comfortable and welcoming workplace for all.

ATTORNEYS:

As officers of the court, attorneys also play a critical role in maintaining the dignity and integrity of the judicial system. This is codified in the Rules of Professional Conduct, which prohibit lawyers from engaging in conduct manifesting bias or prejudice when appearing in a professional capacity before a tribunal (Rule 3.4). However, your contribution to a respectful and just judicial system extends beyond your conduct in a case. Fair and equal treatment of employees, litigants, and others, in and out of the courtroom, in both your professional and personal lives, as well as your participation in relevant activities sponsored by the Bar Association, also help to promote a court system which is fair for all.

MEMBERS OF THE PUBLIC:

The Montana courts are your courts. You should expect to be treated with fairness, respect, and courtesy, just as you would treat everyone else with fairness, respect, and courtesy. Your behavior in court can help set a tone of respect throughout the court community.

Stereotypes Have No Place in the Montana Court System

All of us recognize that bias exists in our society. We further recognize that sometimes it is difficult to overcome deeply ingrained preconceptions. All of us must make a sincere and honest effort to recognize unwarranted and impermissible assumptions and to prevent them from coloring our perceptions of individuals in the courtroom, our assessments of credibility, our fact-finding, our decision-making, and our priorities. The following consists of an explanation of how each participant in the Montana court system can assist in erasing stereotypes.

LITIGANTS:

The claims of litigants must be accorded equal respect regardless of the gender of the litigant. For example, we must guard against any tendency to label female litigants as more troublesome or emotional than male litigants, or to regard cases typically brought by female litigants, such as child support enforcement, as less important than other cases. Similarly, we must avoid stereotypes of male litigants, for example, applying different standards to assess damages for facial scarring of male and female plaintiffs. Stereotyping litigants from a particular racial or ethnic group is equally harmful.

VICTIMS:

Courts must take special care to treat all crime victims with respect and dignity and to remain sensitive to the trauma they have suffered. Victims of domestic violence and sexual assault must not be subjected to heightened scrutiny because of the nature of the acts perpetrated against them, or because of their

relationship to the perpetrator or because of the way they choose to conduct their private lives.

COURT EMPLOYEES:

All court employees should be accorded respect and courtesy. Do not assume that an employee's ability to assist you or level of authority is related to the employee's gender.

ATTORNEYS:

Good attorneys, regardless of gender, are zealous advocates. For example, do not expect that female attorneys will be more passive or aggressive in their advocacy, tolerate more interruption, or respond differently to reprimands. Recognize and treat all attorneys with equal attention, respect, and courtesy.

WITNESSES:

Be alert to the ingrained stereotypes of women when assessing witnesses. Do not assume that female witnesses are more likely than others to be irrational or unduly emotional, or disbelieve them when their actions are inconsistent with your stereotyped expectations. Conversely, do not discredit men who are more emotional than you might expect men to be. Credibility must be based on the evaluation of the individual witness, not on stereotypes.

EXPERT WITNESSES:

Expert witnesses must be judged on the basis of their qualifications and not their gender. Be sure that the standards for qualification as experts are unbiased.

Responsibilities of Each Participant in the Montana Court System

1. ADDRESS ALL INDIVIDUALS BY LAST NAMES AND APPROPRIATE PROFESSIONAL TITLES.

- Counselor or Attorney
- Mr./Ms. (unless Miss or Mrs. are requested)
- Dr. or Officer or Representative/Senator

Using first names and other informal forms of address can lead to many problems. On the one hand, when used to address women, such informality has traditionally suggested a lack of respect. On the other hand, informal address, particularly when used in familiar tones and with personal conversation, may suggest an acquaintance with and partiality in favor of the person addressed. To avoid differential treatment or the appearance of differential treatment, address everyone in the same formal, professional manner.

2. AVOID TERMS OF ENDEARMENT AND DIMINUTIVE TERMS — THEY DO NOT BELONG IN COURTHOUSE INTERACTIONS.

- girl or boy (for adults)

More GENDER FAIRNESS, Page 30

New water-right disclosures must accompany transfers of land starting July 1

With the passage of HB 473 in 2007, which provided general fund money to expedite the adjudication of Montana's water rights, the water-right fee under HB22, enacted in 2005, ended. During the collection of water right fees under HB22, thousands of owner records were updated because the parties to land transactions had not filed water-right owner updates as they should have over the years under 85-2-424, MCA. The 2007 Legislature passed HB39 to automate the updating of water right ownership records in the Department of Natural Resources & Conservation (DNRC) water-rights database.

The new system involves linking the Department of Revenues' (DOR) property geocode to the DNRC water-right records. When a piece of property is sold, the seller must state on the Realty Transfer Certificate (RTC) whether the water rights transfer. If they do, DOR will electronically send the DNRC the geocode for the property sold and the new owner's name. DNRC will then update the water-right record that matches the geocode with the new owner's name and address.

There are two situations where the DNRC records cannot be electronically updated: 1) when the property is divided up and sold, and 2) where the water right is exempted (reserved) from the property being sold. In these cases the seller will be required to file a DNRC Ownership Update form and fee.

So, how does this affect persons or professionals involved in land transactions?

First, any documents – for example, Notice of Purchasers Agreement, Buy/Sell Agreements or Option to Purchase – that transfers land that has water rights must contain the language below in 85-2-424(7), MCA. The intent of this provision is to make sure the buyer and seller know at the beginning of any land transaction that they will be required to pay the water-right ownership update fee at closing.

(7) Any written agreement to transfer land that has appur-

tenant water rights on record with the department must contain the following disclosure or words of a similar nature:

“WATER RIGHT OWNERSHIP UPDATE DISCLOSURE: By Montana law, fail-

ure of the parties at closing or transfer of real property to pay the required fee to the Montana Department of Natural Resources and Conservation for updating water right ownership may result in the transferee of the property being subject to a penalty. Additionally, in the case of water rights being exempted, severed, or divided, the failure of the parties to comply with section 85-2-424, MCA, could result in a penalty against the transferee and rejection of the deed for recording.”

Second, at the time of closing on a property transaction, the seller is required to disclose on the RTC form whether: 1) there are no water rights on the property, 2) water rights transfer with the land, 3) the water right is divided or has been reserved from the land, or 4) that the land is served by a public water supply (i.e. city or water district). If all water rights transfer, the closing agent must collect the ownership update fee and submit it to DNRC. If the seller discloses that the water rights have been divided or reserved from the land, a DNRC Ownership Update form and fee must be filed with the DNRC within five days of the recording of the deed.

Third, water rights can be severed from a piece of property and sold. If a land owner sells his water right but keeps the property, he is required by 85-2-424(5), MCA, to file a DNRC Ownership Update form and fee with the DNRC.

Approximately 80-90 percent of all land transfers with filed water rights will automatically be transferred. This automation of water right ownership records should significantly improve the public's ability to know prior to purchasing land the water rights that go with the land. To learn more, see §85-2-403, MCA and go to DNRC's website at <http://www.dnrc.mt.gov/>.

Dean Eck named to IRS oversight board

E. Edwin Eck, dean of the University of Montana law school, has been nominated by President Bush to be a member of the Internal Revenue Service Oversight Board, and is awaiting confirmation by the U.S. Senate.

The board is an independent body overseeing all aspects of IRS strategy and operations. It has nine members, including the Treasury secretary, the IRS commissioner and seven non-partisan appointees who serve five-year terms.

Dean Eck has taught courses on trusts, estate planning and federal estate and gift taxation. Most of his clients in private practice were small-business people, including farmers and ranchers, he testified at a Senate Finance Committee hearing on his nomination.

“They all desire a system of taxation which is understandable, where all of our citizens pay what is owed under the code,” he said. “They want access to websites, pamphlets and Internal

Revenue Service employees who will help them report their taxes as required by law.”

Finance Chairman Max Baucus, D-Mont., recommended Dean Eck for the position. The committee and the full Senate will have to approve his appointment.

“Mr. Eck's experience in private practice and as a law professor will be a great help in assisting the IRS in implementing our tax laws while respecting the taxpayers,” said Iowa Sen. Chuck Grassley, the top-ranking Republican on the Senate committee.

Candidates for state's top legal positions

Among the contested primary elections being held in Montana on June 3 are two top state legal posts. Two candidates will compete for primary votes to be chief justice of the Montana Supreme Court, with both non-partisan candidates going on to the November general election. And five candidates – two Republicans and three Democrats – will compete for their parties' nominations for the attorney general election in November. Most of the information in the following profiles of those candidates has been gleaned from the candidates' websites.

Chief justice of Montana Supreme Court

Mike McGrath

Mike McGrath was elected Montana's attorney general in November 2000 and ran unopposed for his second term in 2004. Prior to becoming attorney general, he served five terms as Lewis & Clark County attorney.



McGrath was raised in Butte. He earned a degree in business administration from the University of Montana in 1970 and graduated from the Gonzaga University Law School in 1975. He was a Reginald Heber Smith Community Lawyer fellow in Reno, Nev., providing legal services to low-income clients. He is the co-author of two articles published by the *Montana Law Review*. He is a veteran of the U.S. Air Force.

McGrath has served on the boards of the Montana Legal Services Association, Big Brothers/Big Sisters of Helena, the Helena Friendship Center (a shelter for domestic violence victims) and the Helena Youth Basketball Association.

He and his wife Joy have been married 36 years. They have two sons, Pat and Chris, and one granddaughter.

Among the accomplishments of Mr. McGrath and his Justice Department since he became attorney general, they:

- Created the Office of Victim Services. to improve services to Montana crime victims.
- Increased emphasis within the criminal justice system on family violence training for prosecutors.
- Formed Montana's first Fatality Review Commission.

- He has been an advocate for public access to school trust lands as a member of the state Land Board.

- He has been an advocate for the removal of the Milltown Dam on the Clark Fork River near Missoula.

- Actively supported EPA Superfund designation for Libby.

- Filed a lawsuit against the State of Wyoming in 2007 to protect Montana's water rights on the Tongue and Powder rivers.

- Successfully defended challenges to Montana's stream access law.

- Defended challenges to voter-passed initiatives prohibiting cyanide heap leach mining and restricting domestic game farm practices.

- Continues to pursue litigation against ARCO for damages caused to Montana's natural resources.

- Convinced the Legislature to move responsibility for consumer protection to the Department of Justice.

- Created an identity theft program.

- Created the Montana End-of-Life Registry.

- Actively promoted legislative efforts to restrict telemarketing practices by adopting a Montana Do-Not-Call List.

- Successfully sued some of the nation's energy traders for manipulating the Western energy markets.

- Filed suit against some major drug companies for defrauding seniors and taxpayers.

- Made improvements to the training programs for law enforcement, as well as prosecutors. The state forensic lab has added staff and, in 2005, became one of the few nationally accredited state

crime labs in the country.

- Initiated Montana's AMBER Alert system.

- Began a major initiative to combat the rise of methamphetamine abuse.

- Has supported expanded drug treatment courts.

- Worked with the Montana Legislature to enact criminal justice bills including: strengthening DUI laws, creating a process for post-conviction DNA testing, improving criminal procedures for prosecutors and law enforcement, and outlawing racial profiling.

- Successfully negotiated an agreement with the Northern Cheyenne Tribe to allow release by the federal government of the Otter Creek Coal Tracts to the State of Montana.

Campaign officials: not listed

Website: www.mikemcgrath.com

Ron Waterman

Helena attorney Ron Waterman is an experienced and well-recognized litigation attorney in Montana. His trial practice includes complex litigation, business transaction litigation, insurance defense, and construction law disputes. He has also litigated important civil rights cases, school law and gender-equity issues. Mr. Waterman has developed a strong expertise in product liability and environmental law.

In his March 19 announcement that he was running for chief justice, Mr. Waterman explained, "I hitchhiked to Montana from back east as a young man and put up hay and worked on a cattle ranch in the Big Hole Valley, which



became my first Montana home. I worked my way through college at Missoula and received my law degree from the University of Montana in 1969.” He has practiced law in Helena for 38 years. “More than 20 percent of my professional time in recent years has been devoted to pro bono services – free legal assistance for clients unable to pay for an attorney,” he said. For several years he was the lead attorney for the Montana Freedom of Information Hotline. He has neither sought nor held political office.

Before joining the Helena firm of Gough, Shanahan, Johnson & Waterman, Mr. Waterman was the law clerk to William J. Jameson, Montana’s senior U.S. district judge. He is admitted to practice in both state and federal courts in Montana and the 9th Circuit Court of Appeals. He is also admitted to practice before the U.S. Supreme Court. He is a member of the ABA (was state member chair from 1973-1977); the American Judicature Society, (board member, 1979-1983); American Law Institute; and American Bar Foundation, (state president, 1987-present). He is a member of the Board of Visitors at the University of Montana School of Law.

He works with the United Way, the Florence Crittenton Home, and several other organizations to help and guide social needs of youth. He is also a past board member and president of Helena’s Grandstreet Community Theater.

Ron and Mignon Waterman have been married for 42 years. Ms. Waterman served in the Montana State Senate. They have two adult children and two grandchildren.

“I have represented clients before Montana courts at every level – justice of the peace, district courts and the Montana Supreme Court. I understand the Montana court system very well,” Mr. Waterman said. “My clients have included thousands of individuals – both the poor and the more fortunate . . . I have also represented a wide diversity of organizations such as the high school association, the stockgrowers, the news media, people with mental illnesses and disabilities and a variety of businesses, large and small. During my career, I have presented matters to the Montana Supreme Court and to federal appeals courts close to 100 times.”

He said his legal career “has been devoted to improving the rights of Montana citizens – requiring gender equity in our high schools, providing stream access to citizens and providing Montana with the nation’s finest public defender system.”

He said he is running for chief justice because “Montana needs an energetic, hardworking leader in the highest court in these critical, changing times . . . The state is growing, changing and urbanizing. These changes will confront Montana standards and values and those challenges will inevitably play out in our courts. I believe that we need to have a

qualified, hard working lawyer as chief justice with practical skills and analytical abilities to provide leadership as the Court addresses these issues.

“Most of all,” he continued, “I am running for chief justice based on the values and visions that I hold for our judicial system. Fundamentally, I believe that each person accused of a crime is innocent until proven guilty and that all persons deserve competent lawyers.”

Campaign co-chairs: Dorothy Bradley and Sherri Ohs.

Campaign manager: Jim Oppedahl.

Campaign treasurer: Gordon Bennett.

Website: www.waterman4justice.com/

Attorney general for Montana

Lee Bruner Republican



Attorney Lee Bruner has been a member of the Butte law firm Poore, Roth & Robinson for the past 13 years, and a partner in the firm since 2000. He has represented individuals, businesses, and international clients.

Mr. Bruner also has worked as an underground miner, fire-crew member, construction laborer, carpenter, and operates his family ranch. He taught environmental law, served on the state board assisting businesses with petroleum cleanup, and represents both citizen and business groups involved in resource development.

A sixth-generation native Montanan, Mr. Bruner is a 1980 Butte Central High School graduate, volunteered for and served four years in the Air Force. In 1990, he earned an associate’s degree in Computer Systems, and a bachelor of science degree in Physics from Montana State University in 1992. He is a 1995 graduate of the University of Montana School of Law.

Mr. Bruner is actively involved in education as a volunteer with Butte Central, Butte Silver Bow Montessori Program, other local schools, and was an

instructor of Environmental Law at Montana Tech. He and his wife Pollann have three sons.

Among his campaign statements, Mr. Bruner has said:

- As attorney general serving on the Land Board, he would bring valuable insight to develop our natural resources. Mr. Bruner has been actively involved in the management of grazing and timbered lands with full knowledge of agricultural business. As a hunter and fisherman, he understands the benefits of public access to these lands.

- He would commit to keep children safe from major threats, including meth and Internet predators.

- He would protect senior citizens from elder abuse, Internet scams, and identity theft.

- He is against “frivolous lawsuits,” especially those filed against doctors. Mr. Bruner would fight to keep Montana’s \$250,000 cap on non-economic damages from malpractice awards. “This limit on unreasonable awards is now under attack from many quarters,” he said. He said he has defended more health-care issues before the Supreme Court than any other candidate, and that he is the only candidate for attorney general whose practice is dedicated to defense of health-care providers.

- He is an active member of NRA and a Montana Shooting Sports member, and is concerned about individuals’ right

to own firearms.

Campaign manager: Rachel Roberts

Campaing treasurer: Robert Dwyer

Website: www.leebruner.com

Tim Fox Republican

Helena attorney

Tim Fox was born and raised in Hardin. He graduated from the University of Montana with degrees in Geology (1981) and Law (1987). He was a standout athlete in high school and college, and an amateur athlete after college.

After serving as a law clerk to Associate Justice L.C. Gulbrandson of the Montana Supreme Court, Mr. Fox began practicing law with the Billings law firm of Moulton, Bellingham & Longo in 1988. He first entered public service in 1990 when recruited to develop a new environmental regulatory program for the Montana Board of Oil & Gas Conservation. After three years as a State of Montana employee, he established a solo law firm in Billings where he served as a contract public defender for the City of Billings practicing criminal law, in addition to maintaining a civil law practice.

Mr. Fox and his family moved to Helena in 1995 to assist then Gov. Marc Racicot in his bid for reelection. Shortly after arriving in Helena, he went to work for the Montana Department of Environmental Quality as a special assistant attorney general. In 1998, he was promoted to a division administrator position with the DEQ where he managed people, programs, and budgets. In 1999, he was hired as vice president and legal counsel for a Helena-based national bank, Mountain West Bank. He served in that position for over four years before re-entering private practice with the Helena law firm of Gough, Shanahan, Johnson & Waterman.

Mr. Fox has litigated numerous complex cases for individual Montanans and Montana businesses. He devotes considerable time to providing pro bono legal services to Montanans who cannot



afford an attorney, and to charitable and faith-based organizations. As a business, real estate, environmental, and commercial law attorney, Mr. Fox has served in leadership positions on the board of directors of low income and disabled housing projects in Billings, two Montana symphony orchestras (Billings and Helena), a faith-based private K-12 school, the Carroll College Saints Athletic Association, and the Florence Crittenton Home, among other charitable and faith-based organizations. As a nationally-certified track and field official, Mr. Fox donates his time, money, and travel expenses to college athletic programs throughout the Northwest.

Mr. Fox was also appointed by Gov. Racicot to serve on the board of directors of the Montana Historical Society, and by Gov. Judy Martz to serve on the Montana State Banking Board.

Mr. Fox and his wife, Karen, have three daughters, a son, and one grandchild.

“My mandate as attorney general will be to protect our citizens and to make sure our law enforcement officials have everything they need to prevent crime,” Mr. Fox said in a campaign statement. “I will promote a system of justice that protects our constitutional rights, fosters stability in the rule of law, and does not seek or encourage judicial activism.”

He also has said that if elected he will yank the amicus brief current Attorney General Mike McGrath filed in federal court supporting former President Bill Clinton’s controversial roadless area rule.

Mr. Fox touts his experience from 20 years of Montana law practice: in criminal law as a contract public defender, in public administration managing people and programs for two Montana agencies, in public law as a special assistant attorney general, in corporate law as in-house counsel for a bank, and in a private law practice serving individual Montanans and Montana small businesses.

“The office of attorney general is, at its core, a leadership job demanding education and experience in public administration and management,” Mr. Fox said. “Being just a good lawyer is not enough to effectively carry out the duties of attorney general.” He said that since attending graduate school in the

public administration program at the University of Montana, he has developed a regulatory program for one Montana agency, and managed a 100-person division of another. “I am no stranger to budgeting, staffing, planning, working with the Legislature, the governor, and the courts, and to rolling up my sleeves to work with dedicated public servants. No other ... candidate for the office of Montana attorney general brings such important education and experience to the job.”

Campaign treasurer: Jean Turnage

Website: www.timfox4ag.com

Steve Bullock Democrat

Steve Bullock began his public service career as chief legal counsel to the Montana secretary of state.

Thereafter, from 1997-2001, he served as executive assistant attorney general, then acting chief deputy with the Montana Department of Justice. During his nearly four years with the Attorney General’s Office, Mr. Bullock undertook complex civil and criminal cases. Mr. Bullock defended Montana’s stream-access laws against constitutional challenges from out-of-state attacks, and helped draft the landmark attorney general’s opinion that permits recreational stream access by means of publicly owned bridge rights-of-way. Mr. Bullock helped write and pass Montana’s Telemarketing Fraud Protection Act. He also served as the legislative director, coordinating the attorney general’s efforts and regularly testifying before the Legislature.

From 2001-2004, Mr. Bullock practiced law with the Washington, D.C., firm of Steptoe & Johnson. He has case management and trial experience in matters involving disputes from \$500,000 to \$50 million and more. Early in his career, he practiced law in New York City. From 2002-2004, Mr. Bullock also served as an adjunct professor at the George Washington University School of Law.

A Montana native and product of the



Helena public schools system, Mr. Bullock received his undergraduate degree from Claremont McKenna College and his law degree with honors from Columbia University Law School in New York.

Mr. Bullock and his wife Lisa have three children.

For the past several years, Mr. Bullock has been in private practice in Helena, representing individuals, consumer organizations, labor unions, peace officers, associations of political subdivisions, and small and large businesses.

“Steve’s statewide practice reflects the values he holds,” said a campaign statement, “be it going to court so sheriff’s deputies get paid what’s fair under state law, protecting the rights of unionized workers, fighting to ensure that Montana’s limited-income residents have affordable electricity and gas, or representing conservation districts to protect them from water-supply losses relating to mining.”

In 2006, Mr. Bullock was one of the driving forces and the director of Raise Montana, an organization that successfully proposed and promoted a ballot initiative to increase the state minimum wage.

Mr. Bullock has a 20-year history of organizing and working on behalf of candidates and campaigns, including working for the Montana Democratic Party on staff and then as Coordinated Campaign director (1990), serving as a delegate to the Democratic National Convention (1992), and running Joe Mazurek’s first campaign for attorney general (1992).

Mr. Bullock serves on the Public Policy Council of the Montana Nonprofit Association, the board of Healthy Mothers-Healthy Babies, the Gates of the Mountains Foundation, and the Lewis & Clark County Historic Preservation Commission.

Mr. Bullock regularly represents AARP Montana, fighting to ensure that Montana’s seniors and those on fixed or limited incomes have access to affordable energy.

If elected attorney general, he says he will establish a Senior Protection Unit in the Department of Justice’s Consumer Protection Bureau, aggressively prosecute fraud and abuse against

seniors, work with senior groups to protect against Internet scams and identity theft, and monitor health care and pharmaceutical industry programs.

Campaign treasurer: Joe Mazurek

Website: www.stevebullock.com

John Parker Democrat

State Rep. John Parker, a prosecuting attorney for Cascade County, currently serves as the top-ranking Democrat in the Montana House. He served as chair of the Law & Justice Interim Committee and was House Democratic Floor Leader during the previous session.

Mr. Parker earned a bachelor of science degree from Georgetown University and his juris doctorate from the University of Montana. He and his wife, Carrie, live in Great Falls.

Mr. Parker developed extensive trial experience as a deputy county attorney in the Cascade County Attorney’s Office. He serves as one of the two deputy Cascade County attorneys assigned to the 8th Judicial District Adult Drug Treatment Court.

During his three terms in the House, Rep. Parker became recognized as a leader on criminal justice and judicial issues. He served two terms on the House Judiciary Committee and two interims on the Law & Justice Committee, where he served as vice chair and chair. He succeeded in passing legislation that:

- Increased penalties for meth lab operators.
- Established a jurisdictional basis for drug treatment courts.
- Expanded the definition of child pornography to protect more children from sexual predators.
- Established the “predominant aggressor” concept to clarify victim’s rights in domestic violence cases, working closely with the Montana Coalition Against Domestic & Sexual Violence.
- Created the criminal offense of money laundering.
- Created the criminal offense of



vehicular homicide while under the influence.

- Restricted the ability of criminals to profit from their own crimes (the “Bar-Jonah” bill).

- Granted injured deputy sheriffs the same rights as injured police officers and highway patrol officers.

- Strengthened consumer protection by moving the State Consumer Protection Office into the Attorney General’s Office, with strong support from AARP;

Mr. Parker led the fight to provide state funding for drug-treatment courts and helped craft access-to-justice legislation that he carried in the last session.

As the House Democratic Leader, Mr. Parker worked with Gov. Schweitzer and legislators in both parties to pass a package of legislation that included a balanced budget, tax relief for homeowners, incentives for clean energy development, workforce training funds, a cap on tuition increases, K-12 school funding increases, and expanded access for the Children’s Health Insurance Program.

Mr. Parker also is active in the Great Falls community. He has served as president of the Great Falls Children’s Receiving Home board and the Great Falls Kiwanis Club, and was secretary of the Cascade County Bar Association. He and his fellow prosecutors founded the Cascade County Deputy County Attorneys Association, which is affiliated with MEA-MFT. Mr. Parker is a member of the attorney general’s Criminal Intelligence Advisory Board. He enjoys reading with kids in his wife’s classroom at Valley View Elementary.

His priorities for the office of attorney general:

- To continue his fight against Montana’s meth epidemic, with vigorous investigation, apprehension and prosecution of violent drug dealers, as well as treatment for low-risk offenders, prevention programs, and mentoring of at-risk youths.

- To improve training opportunities for police officers, deputy sheriffs, highway patrol officers and prosecutors at the Law Enforcement Academy.

- To protect consumers from fraud.

- As a member of the State Land Board, to guard the public’s right to a clean and healthful environment and to

stream access and keeping public lands in public hands.

● Access to justice for low-income Montanans.

Campaign treasurer: Leo Gallagher

Website: <http://parkermontana.com>

Mike Wheat Democrat



Bozeman attorney Mike Wheat's career encompasses work in private practice, as a prosecutor and as a state legislator.

From a long-time Montana family, Mr. Wheat was raised in Superior until he was 11, when his family moved to Nevada. He finished school in Nevada and joined the Marine Corps when he was 20. In the Marines he was trained as a machine gunner and served a tour of duty in Vietnam where he was wounded in battle and awarded a Purple Heart.

After his discharge from the Marines, Mr. Wheat helped his parents move back to Montana. They settled in the Whitehall area and he helped his Dad build a family cabin in the Tobacco Root mountains. That fall he attended Montana State University where he met his future wife, Debby. They were married in 1973 and lived in Missoula where they both attended the University of Montana. While in college, Mr. Wheat worked as a laborer and a carpenter. In 1978, he received his law degree from the University of Montana Law School.

Mr. Wheat's career in law began as a deputy county attorney in Butte-Silver Bow. He successfully prosecuted a wide range of cases – from homicides to DUIs.

The Wheats moved to Bozeman in 1981 where Mr. Wheat started a general

practice law firm with his law school friend, Michael Cok. The firm is now Cok, Wheat & Kinzler. Mr. Wheat's is a civil trial practice focused on helping injured people.

Mike and Debby Wheat have three sons, a daughter and two grandchildren.

Mr. Wheat was elected to the Montana State Senate in 2002. In the 2003 session he served on the Judiciary, Local Government, State Administration, and Veterans Affairs Committees. During the 2003 session, he was instrumental in the passage of legislation that reorganized the Veteran's Affairs Division and hired staff to assist veterans.

In the 2005 session, he served as chair of the Senate Judiciary Committee, and served on Local Government and Natural Resources committees. He introduced legislation that protected consumers and active duty National Guardsmen.

Between sessions, Sen. Wheat served on the Law & Justice Interim Committee and the Environmental Quality Council.

Mr. Wheat has received recognition from a variety of people and organizations for his work over the years, including:

● The Public Service Award from the Montana Trial Lawyers Association (1991) for his participation in the Peoples' Law School in Gallatin County and again (2006) for his work in the Montana Senate on behalf of consumers.

● The Meritorious & Distinguished Service Award from the Veterans of Foreign Wars (2003).

● Recognition by the Gallatin Responsive Interventions Partnership, Alcohol & Drug Services of Gallatin County (2004) for strengthening Montana DUI laws.

● The Guardian of the Guard Award (2007) for supporting the Montana National Guard.

Mr. Wheat has served as a board member and officer of the Gallatin County Bar Association and the Montana Trial Lawyers Association. He serve on the Board of Visitors for the UM School of Law. He has also served as a member of the boards of the Bozeman Public Library and Child Care Connections.

"I have been representing the public and individual citizens in the state and federal courts of Montana for nearly 30 years," Mr. Wheat said in a campaign statement. "I have prosecuted criminals and represented my friends and neighbors who were injured or mistreated. I have managed my own law firm for 26 years. I have worked with the Attorney General's Office on legislative matters while I was in the Montana Senate, so I understand the needs of the Department of Justice and the importance of a qualified attorney general."

In addition to being Montana's chief legal and law enforcement officer and the director of the Department of Justice, Mr. Wheat said, the attorney general also has administrative authority over the Motor Vehicle, Highway Patrol, and the gaming control divisions. "The demands and responsibilities of the Department require an attorney general who has legal and life experience to get the job done right."

He said he would use his skills to

● Make sure law enforcement and prosecutors get the training and resources they need to keep Montana safe from criminals.

● Protect kids from drug dealers and Internet predators.

● Defend senior citizens from abuse and exploitation.

● Protect consumers.

● Guard the environment against illegal pollution and degradation.

Campaign officials: not listed.

Website: www.wheatforag.com

Other judicial races of note

Although eight state district judgeships are up for election this year, only two are contested races.

Six candidates are competing for the judgeship in Helena's Judicial District 1 that is being vacated by Judge Thomas Honzel at the end of this year. They are attorneys Greg

Duncan, Dennis Loveless, Kathy Seeley, K. Paul Stahl, David Nielsen, and Steve Frankino.

In Judicial District 20 in Polson, attorney and former legislator Joey Jayne is challenging incumbent District Judge C.B. McNeil.

In the Montana Supreme Court, Associate Justice Patricia Cotter is unchallenged on the ballot for re-election. ○

Montana Constitution project unveiled at UM

By **Rob Natelson**, professor
UM School of Law

Documents ‘may change way we think’ about intent

A new collection of documents illuminating the state constitution is now on the University of Montana School of Law website. It is the Documentary History of the Ratification of the Constitution of Montana, and is available at: www.umt.edu/law/library/Research%20Tools/State%20Pages/MontanaConstitution

The content of this new collection could change the way we think about our state’s basic charter. For example, as discussed later in this article, the collection improves our understanding of the Montana Constitution’s environmental rights.

To understand why this collection is important, one must know something of the principles of constitutional interpretation. Lawyers and judges interpreting the Montana Constitution have tended to focus on the proceedings of the 1972 constitutional convention, where the document was drafted. The fact that the transcript of those proceedings has been readily available may explain this.¹ In reality, though, almost no competent constitutional lawyers think the meaning of a constitution is set by the intent of its drafters. The real meaning is to be found at the point of *ratification*.²

To see why, consider an analogy from contract law: When an offeror makes an offer that an offeree accepts, the offeror’s subjective intent does not control the content of the offer unless the offeree has reason know of that intent. In the constitutional context, the convention delegates are the “offerors” and the ratifiers are the “offerees.” By accepting the constitutional proposal, the ratifiers convert it into law.

Constitutional lawyers differ on

exactly when the force of a constitution should be set by (a) the ratifiers’ subjective understandings or (b) the “original public meaning” to a reasonable ratifier.³ But all agree it is the ratification that counts. And when a constitution is approved by thousands of voters – as the Montana Constitution was – virtually all would focus on the document’s original public meaning.

How does one reconstruct original public meaning? ConCon transcripts are one kind of evidence,⁴ but they usually are not the best kind. More direct evidence comes from material published during the ratification campaign – particularly publications the ratifiers would have relied on in casting their votes. This is the kind of material that University of Wisconsin researchers have long collected and published for the U.S. Constitution.⁵ This new web page does the same for the Montana Constitution.

Most, but not all, of the documents in this collection date from the period between the convention adjournment (March 22, 1972) and the public vote (June 6, 1972). They show how the ratification campaign shaped voter opinion. In addition to the official voter information pamphlet, there are news stories, opinion pieces, letters to the editor, pamphlets arguing the merits of the proposed constitution (pro, con, and neutral), transcripts of broadcasts, private correspondence, and copies of the 1889 constitution and the abortive 1884 constitutional proposal.

All these documents are in downloadable PDF format. To the extent possible (and it was not always possible), we made the documents word-searchable.

To illustrate how this material can be used, consider the long-disputed question of whether the state constitution’s rights to a “clean and healthful environment”⁶ are self-executing. Are these rights supposed to be enforceable by individuals in court, or are they merely directive to the Legislature?⁷

In *Montana Environmental Information Center v. Department of Environmental Quality*,⁸ the Montana Supreme Court held that they were self-executing. But the court relied almost entirely on commentary at the constitutional convention, and did not discuss at all how the ratifiers would have understood the environmental rights.

The court’s approach was criticized by then-Professor John Horwich.⁹ Although a strong environmentalist himself (he later left the law school for an environmental job), Horwich correctly argued that the court should have considered the ratifiers’ views. Unfortunately, he didn’t offer many suggestions about how to reconstruct those views.

This new web page provides the information that the court and Professor Horwich both lacked. I used the site to find ratification-era discussion of the environmental provisions in newspapers, pamphlets, advertisements, and personal memoranda and correspondence. Here’s what I learned:

■ **Newspaper articles.** Newspaper articles published during the ratification campaign repeatedly informed their readers that the environmental rights were not to be self-executing. Most of these representations seem to have been based on the views of the delegates themselves.

For example, an article in the *Kalispell Daily Inter Lake* quoted delegate Marshall Murray as declaring,

“This isn’t exactly what the environmentalists wanted. They would like a public trust doctrine, and with it they originally wanted the right to sue for environmental reasons. But that causes some special problems. . . . We didn’t feel we should include that particular thing in the constitution because it isn’t a proper right.”¹⁰ Reporter Charles Johnson quoted advocates as representing that the environmental right was directed at the Legislature.¹¹ In another article, Johnson concluded that the future effect of the environmental rights “all hinges on the Legislature.”¹² Similar conclusions were reached by Professor Ellis Waldron¹³ and reporters Dennis Curran,¹⁴ John Kuglin,¹⁵ and Emilie Loring,¹⁶ among others.

Newspaper suggestions to the contrary were exceedingly sparse. The Farm Bureau president, who opposed the Constitution, said there was “possibility” the environmental rights would be self-executing.¹⁷ Two environmentalists wrote an article admitting that they didn’t think the new constitution’s language was clear, but they hoped it might be construed as self-executing.¹⁸

■ **Pro-Constitution Pamphlets.** The most authoritative and most widely distributed “pro” pamphlet was a lengthy commentary prepared by MSU Professor Richard Roeder, a convention delegate and a leading spokesman for ratification. Thirteen major Montana newspapers published it as a supplement. Its only observation relevant to self-execution was that the Article IX right, “direct[s] the legislature to take necessary steps to preserve the environment.”²⁰ No “pro” pamphlets, as far as I can see, said the environmental rights would be self-executing.

■ **Pamphlets against the Constitution.** A Farm Bureau pamphlet claimed the Article IX environmental right required the legislature to authorize environmental class actions. A Montana Taxpayers’ Association pamphlet stated unequivocally that the right was not self-executing.

■ **Neutral pamphlets.** The official voter information pamphlet said very little about the environmental rights, other

than that they were new. Billings attorney Gerald Neely authored a fairly neutral pamphlet,²¹ which averred that the Article II right “was merely a statement of principle with no apparent operative effect,” but that it was possible that it “might not be inoperative.” Of the Article IX right, he noted that the convention had rejected the public trust doctrine (with its inherent right to sue) and pointed out that Article IX gave the legislature certain duties.

■ **Radio transcripts.** The proponents organized a broadcast campaign for the Constitution. The only radio ad that addressed the question told listeners that the new Constitution, “call[s] for the state and its people to protect the environment and requires the state to enact enabling legislation.”

■ **Personal correspondence and memoranda.** The website includes some personal correspondence and memoranda, particularly those of Professor Roeder. Among the most interesting are his notes on the Neely pamphlet, with which he took much exception. He did not take exception to Neely’s comments on the environmental rights, however.

Thus, the results of this particular search are pretty clear: The overwhelming message to the voters was that the environmental rights depended for their force on legislative action, and that they created no personal standing to sue.

Attorneys and judges may use the web page for investigating the meaning of any part of the Constitution.²² Of course, the answers will not always be as clear as the answer was in my example.

Special thanks for helping us put together this collection go to Bob Campbell of Missoula; Gerry Neely, Esq. of Billings, former Secretary of State Bob Brown, and the staffs of the Montana Historical Society, and the UM and MSU libraries.

ROB NATELSON is professor of Law at the University of Montana, where he teaches constitutional law and related subjects. He is a recognized national

expert on the American Founding. See www.umt.edu/law/faculty/natelson.htm.

NOTES

1. See http://courts.mt.gov/library/mt_law.asp.
2. See, e.g. Jack N. Rakove, “Original Meanings 18” (1996) (discussing the importance of the state ratifying conventions in giving meaning to the U.S. Constitution).
3. Robert G. Natelson, “The Founders’ Hermeneutic: The Real Original Understanding of Original Intent,” 68 OHIO ST. L.J. 1240 (2007) (discussing the dispute).
4. See, e.g., Vasan Kesavan & Michael Stokes Paulsen, “The Interpretive Force of the Constitution’s Secret Drafting History,” 91 GEO. L.J. 1113 (2003).
5. “The Documentary History of the Ratification of the Constitution” (Merrill Jensen et al. eds.) (multiple vols. projected; not all completed).
6. Montana Constitution art. II, §3 (“All persons . . . have . . . the right to a clean and healthful environment”); Mont. Const. art. IX, §9 provides as follows:

The state and each person shall maintain and improve a clean and healthful environment in Montana for present and future generations.
 (2) The legislature shall provide for the administration and enforcement of this duty.
 (3) The legislature shall provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.

7. Non-self-executing provisions, wholly dependent on legislative action, are more common in state charters than in the federal constitution. However, an analogue in the latter document is the Guarantee Clause, U.S. Constitution art. IV, §4, which the U.S. Supreme Court has long held to be non-justiciable. *Luther v. Borden*, 48 U.S. 1 (1849).
8. 296 Mont. 207, 988 P.2d 1236, 1999 MT 248 (1999).
9. John L. Horwich, MEIC v. DEQ: “An Inadequate Effort to Address the Meaning of Montana’s Constitutional Environmental Provisions,” 62 MONT. L. REV. 269 (2001).
10. *Kalispell Daily Inter Lake*, May 7, 1972.
11. See, e.g., *Great Falls Tribune*, Apr. 3, 1972.
12. *Billings Gazette*, Apr. 2, 1972.
13. *Great Falls Tribune*, May 5, 1972.
14. *Missoulian*, May 28, 1972.
15. *Great Falls Tribune*, March 27, 1972.
16. *Id.*, May 4, 1972.
17. *Missoulian*, May 16, 1972.
18. William Tomlinson & Clarence Gordon, *Great Falls Tribune*, May 9, 1972.
19. Richard Roeder, “The Proposed 1972 Constitution for the State of Montana” (undated).
20. Neely worked during the convention as a UPI “stringer.” He seems to have been initially favorable toward the project, but gradually became more doubtful and ultimately opposed the constitution. His pamphlet apparently was written en route. In some of his interpretive predictions, he proved prescient.
21. Gerald J. Neely, “The New Montana Constitution: A Critical Look” (1972). The title might suggest opposition, but the treatment was pretty balanced.
22. The scope of the Right to Privacy, Montana Constitution art. II, §10, comes to mind.

Nominations open for State Bar election

The State Bar of Montana will take nominations through July 7 for nine trustee positions and the office of president-elect for the Bar elections to be held on Sept. 5.

On the nomination form at right, a candidate for trustee must submit signatures of 10 active State Bar members who live in the candidate's area (an area map can be found on Page 189 of the Bar's 2008 Lawyers' Deskbook & Directory or on the Board/Executive Committee Page under "Groups" at www.montanabar.org).

Candidates for president-elect must have 25 signatures.

Up for Election are:

- One trustee in Area A (Kalispell/Libby area).
- Three trustees in Area B (Missoula, Hamilton, Polson).

- One trustee in Area C (Butte, Anaconda, Dillon, Deer Lodge).
- Two trustees in Area D (Great Falls, Cut Bank, Conrad area).
- Two trustees in Area G (Bozeman, Livingston, Big Timber).

Nominations are also sought for the ABA delegate position, which is now held by Billings attorney Damon Gannett. That position requires 25 nominating signatures.

Again, the filing deadline for the nominating petitions is July 7. Ballots will then be mailed to Bar members by Aug. 6, and must be returned to the Bar by Aug. 26. The ballots will be counted on Sept. 5.

Board nominates Murphy for posthumous award

The Board of the Montana Lawyers' Fund for Client Protection has nominated the late James P. Murphy of Billings for the Isaac Hecht Award for 2008.

Mr. Murphy, a founder of the law firm Murphy, Kirkpatrick & Fain, died at his office on March 19.

The Isaac Hecht Award for Excellence in the Field of Law Client Protection, is presented annually by the National Client Protection Organization (NCPO), honors the memory Isaac Hecht of Maryland. Mr. Hecht served as the treasurer of Maryland's client protection fund for 34 years and 18 years as a member of committees of the ABA supporting client protection programs in the U.S. and Canada.

The Hecht Award recognizes an individual, law-client protection fund, court or other professional organization that has demonstrated excellence in the field of law-client protection in the U.S. and Canada.

Mr. Murphy joined the Montana Bar in 1969 and was a member of the Lawyers' Fund Board from the time of its inception in 1976 to the date of his death on March 19, 2008.

In a letter nominating Mr. Murphy, the Montana Lawyers' Fund for Client

Protection Board said that Mr. Murphy "took his position as a Board member seriously and rarely missed a Board meeting during that time. From 1996 through 2001, Jim also served as the chair of the Lawyers' Fund Board."

In addition to his service on the Lawyers' Fund Board, Mr. Murphy received the State Bar's Distinguished Service award in 2001 and the Yellowstone Area Bar Association Professionalism Award in 2002. He also was the director of the Yellowstone County Bar Association from 1978 to 1980, chair of the American Judicature Society, a member of the Montana Trial Lawyers Association and of the Association of Trial Lawyers of America. He also served on the Board of Advisors for the YMCA from 1978 to 1998, the founding director for the Horizon Home for Abused Children and on the board for Billings Catholic Schools from 1995 to 1998.

At its last meeting, the Lawyers' Fund Board considered difficult claim over a lawyer who had stolen a significant sum from an injured girl's trust fund, the



Jim Murphy

nomination letter said. "Jim was a calm and reasoned voice throughout the discussions as he was in every meeting and on every claim that he helped resolve." Board members expressed their sorrow over his death in the nomination letter:

"I have many fond memories of Jim and all the help and guidance he freely and cheerfully gave, particularly when I was first Board Chair. His work with the Fund stands as a tribute to all that is good and right about our profession."

"Jim was a contributing member in every way...faithful in his attendance at meetings and always well prepared to participate. A past chairman of the Board, he was a stabilizing influence when debate became heated. He gave his membership and attendance priority in his professional life."

The letter concluded, "He spent his legal career promoting public confidence in the integrity of the legal profession."

Helena attorney Marcia Davenport is chair of the Montana Lawyers' Fund for Client Protection. Other members are James Aiken, W. Carl Mendenhall, Elizabeth A. Kaleva, Thomas M. Keegan, Robert W. Minto Jr., Jayne Mitchell, Douglas L. Smith, Mary VanBuskirk, and Denzil Young. ○

State Bar officer & trustee election

2008 nomination petition

I, _____, residing at _____, Montana, am a candidate for the office of () President-Elect; () ABA Delegate; () Area A Trustee; () Area B Trustee; () Area C Trustee, () Area D Trustee, () Area G Trustee; at the election to be held on Sept. 5, 2008. I am a resident of Montana and an active member of the State Bar of Montana. I request my name be placed on the ballot.

Signature _____

The following are signatures of active members of the State Bar of Montana supporting my candidacy. Trustee candidates include the area of residence. No fewer than 10 signatures must be provided for a Trustee; and no fewer than 25 signatures for a President-Elect candidate or ABA Delegate candidate.

NAME

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Return to State Bar of Montana, PO Box 577, Helena MT 59624. Must be postmarked no later than July 7, 2008.

Summary of April 4 Board of Trustees meeting

■ **Character & Fitness Application Process.** The Supreme Court's Character & Fitness Commission asked the Board for input on its proposal to hand off the investigations of new Bar applicants to the National Association of Bar Examiners, instead of having Bar staff complete the investigations. The Board and Law School Dean Ed Eck questioned whether a \$200 increase in the application fee would be a burden on law students. Although the Commission felt the online application process handled by the national association would facilitate more complete applications, the Board decided to discuss the proposal further at its May 30-31 retreat.

■ **Fee Arbitration Rule Revisions.** The Board approved changes in the Fee Arbitration Rules that were proposed by the Fee Arbitration Committee. The most substantive change is the addition of the wording in Rule 1.5, Rules of Professional Conduct, to let the arbitrators know Rule 1.5 is required when drafting fee agreements. The Committee also put together some arbitrators' guidelines and a guide for clients, based on material from other state bars. The rule changes will be posted on the State Bar's website. The rules also clarify that the program does not cover attorney-attorney fee disputes.

■ **Recommended Dues Increase.** The trustees approved a required report to the Montana Supreme Court which outlined the State Bar's financial status and whether or not a need exists for an annual dues increase. The report contains a recommendation for a dues increase based on increased costs including the substantial additional expense of the Lawyers Assistance Program (LAP). The Bar is experiencing cost increases beyond what it expected three years ago when the last report was filed with the Court. The addition of the Lawyers Assistance Program (LAP) has decreased the Bar's reserve account and is likely to deplete it further over the next three years. Inflation also is affecting the Bar's finances. It was noted that retiring attorneys are beginning to outnumber new admittees in Montana, causing a loss of Bar revenue; law school admissions and bar admissions are down nationally. The Board's approval of the report included an amendment to the dues increase recommendation excusing new admittees who have never practiced law elsewhere from paying any dues increase their first year of practice. The Board also amended the report's recommendations to include a \$20 Lawyers Fund for Client Protection fee for pro hac vice admittees."

More BOARD MEETING, Page 20

STATE BAR CALENDAR

May 29

State Bar Executive Committee meeting, 6 p.m., Grand Union Hotel, Fort Benton.

May 30-31

State Bar Board of Trustees retreat, Grand Union Hotel, Fort Benton.

June 2

Board of Bar Examiners meeting, 10 a.m., State Bar offices, Helena.

June 2

Annual Meeting Committee conference call, 3 p.m.

June 2

Deadline for advertising and content for June/July edition of *The Montana Lawyer* magazine.

June 6-7

JackRabbit Bar Association meeting, Snowbird, Utah.

June 16

Annual Meeting Committee conference call, 3 p.m.

July 7

Filing deadline for State Bar elections of president-elect, trustees and ABA delegate. Nomination forms (see Page 19) must be returned to bar on this date.

July 28-30

Bar Exam, Doubletree Hotel, Missoula.

August 5-12

ABA Annual Meeting, New York City.

August 6

State Bar election ballots mailed to Bar members.

August 26

State Bar election ballots must be returned by this date to Bar offices.

September 5

State Bar election ballots counted.

September 18-19

State Bar Annual Meeting, Butte

State Bar Award Nomination Form

2008 William J. Jameson Award

This is the highest honor bestowed by the State Bar of Montana. The Past President's Committee will be guided in its selection by the extent to which, in its judgment, the candidate:

1. Shows ethical and personal conduct, commitment and activities that exemplify the essence of professionalism.
2. Works in the profession without losing sight of the essential element of public service and the devotion to the public good.
3. Possesses an unwavering regard for the Rules of Professional Conduct, the Creed of Professionalism, the State Bar's Guidelines for Relations Between and Among Lawyers, and the State Bar's Guidelines for Relations Between Lawyers and Clients.
4. Assists other attorneys and judges in facing practical and ethical issues.
5. Participates in programs designed to promote and ensure competence of lawyers and judges.
6. Supports programs designed to improve the discipline process for judges and attorneys.
7. Participates in programs that aid the courts in ensuring that the legal system works properly, and continually strives for improvements in the administration of justice.
8. Is actively involved with public and governmental entities to promote and support activities in the public interest.
9. Actively participates in pro bono activities and other programs to simplify and make less expensive the rendering of legal services.
10. Actively participates in programs designed to educate the public about the legal system.

Nominee: _____

Address: _____

Please describe activities you believe qualify your nominee for the Jameson Award. Please attach additional pages as needed, and other supporting documents. Note: Awards will not be made posthumously and may be given to more than one person.

Your signature: _____ Print your name: _____

Your address: _____ Phone: _____

Nominations must be postmarked no later than **July 1**. Send them to:

Jameson Award
State Bar Past Presidents Committee
P.O. Box 577
Helena MT 59624
or e-mail mailbox@montanabar.org

BOARD MEETING, from Page 18

■ **Montana Justice Foundation Report.** A recent Justice Foundation report shows that IOLTA revenue is dropping. The federal-funds interest rate is at 3 percent, down from 5-1/4 percent last year. The report indicated that final numbers for private donations are around \$65,000 which exceeds 2007 by \$32,000. Requests in 2007 were not as organized and timed as well. A new committee has been established to look at IOLTA. A "Futures Committee" is looking at policy and revisions concerning future operations.

■ **Law School Construction.** UM School of Law Dean Ed Eck said the school is now working to raise about \$600,000 for furniture and equipment for the new building. Money received during the school's recent fund-raising campaign will cover the contracted work on the new Law School building, which is expected to be completed by July 1, 2009. The total cost of the construction project is estimated to be \$13.8 mil-

lion. The dedication of the new Law School will be in the early Fall of 2009.

■ **Lawyer Assistance Program.** Mike Larson, coordinator of the State Bar's Lawyer Assistance Program(LAP) said that the program has started a support group at the UM School of Law. Mr. Larson meets with law students and local attorneys there once a month. The LAP averages about four new clients a month statewide. A one-week intensive treatment program is being held in Lewistown for LAP clients. That program condenses a 28-day treatment program down to a one week. It is set up for professionals, mainly doctors and lawyers. Mr. Larson said he has been successful in getting a few of his clients into intensive out-patient treatment programs.

THE NEXT MEETING of the State Bar Board of Trustees will be at the Grand Union Hotel in Fort Benton on May 30-31. Agenda and minutes of Boar meetings can be found at the "Bar Groups" link at www.montanabar.org.

52 conquer the latest Montana Bar Exam

The following successfully passed the Montana Bar Exam that was given in Helena on February 25-27, 2008:

Bessette, Suzanne	Frisbie, Mark	Reader, Margaret
Betley, Jessica	Geist, Thorin	Rooney, Anna
Bourguignon, Gail	Greenwell, Jeffrey	Rupp, Sarah
Bransby, Kenneth	Grosz, Jennifer	Schumacher, Joseph
Brown, James	Hannan, McKenzie	Slocomb, Martina
Carafelli, Andrew	Jette, Mark	Snedigar, Daniel
Carroll, Eric Vince	Jones, Ty	Sonnichsen, Mathew
Casarotto, Janice	Kelly, Vanessa	Stepans, Robert
Chicken, Brent	Kenison, Amy	Stone, Jason
Coles, Leanora	Lawrence, Anne	Summers, George
Cosgrove, Matthew	Logan, Tyson	Talia, Michael
Custer, Bradley	McConnell, Nathan	Tipton, Mark
Davis, Benjamin	Mihara, Kinzo	Tranel, Adrienne
Donohoe, Colleen	Moser, Sharee	Voll, Wyatt
Dressel, Andrew	Munson, Charles	Wheat, Russell
Freeman, Hope	Nandlal, Krishna	Wheeler, Michael
	Olson, Matthew	Williamson, Bree
	Passmore, Marion	
	Ployhar, Mardell	

Upcoming CLE seminars for Montana lawyers

May 19-23 Missoula – UM School of Law

Advanced Trial Advocacy 30.75 CLE credits, including 1.0 Ethics credit. Presented by the University of Montana School of Law, (406) 243-6509. Also see the UM web site at <http://umt.edu/law> for registration form and details.

May 20 Teleconference

The Paralegal's Role in the Appeal Process 1.50 CLE credits. Presented by Lorman Education Services, (800) 678-3940

May 21 Polson – Kwa Tak Nuk Resort

Work Comp Workshop 6.0 CLE credits. Presented by Putman & Associates, (406) 257-0269

May 28 Helena – Great Northern Hotel

Foreclosure & Repossession in Montana 6.0 CLE credits. Presented by Lorman Education Services, (800) 678-3940

June 4 Missoula – Holiday Inn Parkside

Construction Lien Law in Montana 6.75 CLE credits. Presented by Lorman Education Services, Holiday Inn Parkside (800) 678-3940

June 9 Missoula – DoubleTree Hotel

Environmental Law A to Z 7.0 CLE credits, including 1.0 Ethics credit. Presented by the National Business Institute, (800) 930-6182.

June 10 Billings – Country Inn & Suites

Privacy and the Right to Know 6.50 CLE credits. Presented by the state Personnel Division, (406) 444-3985

June 11 via satellite

Workplace Regulations for Business Owners, Part I 2.75 CLE credits. Presented by Edward Jones Company, (314) 515-5848

June 13 via satellite

Employment Law Challenges & Solutions 3.0 CLE credits. Presented by Edward Jones Company, (314) 515-5848

June 17 Missoula – Hilton Garden Inn

Road & Access Law 6.0 CLE credits. Presented by the National Business Institute, (800) 930-6182

Other web & phone CLEs for Montana credit are:

■ MTLA's SeminarWeb Live! Seminars at www.seminarweblive.com/mt/index.cfm?showfullpage=1&event=showAppPage&pg=semwebCatalog&panel=browseLive

■ Lorman Education Services' teleconferences at www.lorman.com/teleconferences/

June 18 Billings – Billings Hotel & Convention Center

Labor & Employment Law Workshop 5.0 CLE credits. Presented by attorney Michael Dahlem, (808) 214-9255

June 18 Missoula – County Courthouse

Adolescent Brain/Chemical Dependency 5.75 CLE credits. Presented by Judge Larson, 4th Judicial District, (406) 258-4773

June 19 Helena – Metcalf Building, Capitol Complex

Effective Disciplinary Action 6.50 CLE credits. Presented by the state Personnel Division, (406) 444-3985

June 19 Missoula

The Law, the Guardian & the Absent Parent 1.0 CLE credit. Presented by the Missoula District Court, (406) 258-4742

June 20 Missoula – Grant Creek Inn

Understanding & Defending DUI Cases 6.0 CLE credits. Presented by Fact Finder Investigations Inc., (208) 340 - 2933

June 24 Kalispell – Flathead Valley Community College

School, Labor & Employment Law Workshop 5.0 CLE credits. Presented by attorney Michael Dahlem, (808) 214-9255 Workshop

June 24 Missoula – Ruby's Inn

Investigating Personnel Issues 6.50 CLE credits. Presented by the state Personnel Division, (406) 444-3985

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2006, 288 pages
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(MPI – MT Pattern Instructions)
1999 w/2003 Update, 400 pages
Book plus CD \$200

Criminal Jury Instructions

1999 w/2003 Update, 400 pages
Book plus CD \$105

Handbook for Guardians & Conservators

2005, 60 pages incl. 5 forms
Book plus CD \$150

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MT Family Law Form Book

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Public Discipline Under MT Rules of Professional Conduct

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Prof. Scott Burnham – Mini CLE

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Prof Andrew King-Ries – Mini CLE

Dispute Resolution

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Landlord-Tenant Disputes

Author: Klaus Sitte, director of Montana Legal Services

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New transcript policy for the federal court

In what Chief Deputy Clerk Leandra Kelleher calls “a new and radically different policy” for the electronic filing of transcripts in Montana’s federal court, the court has issued the following explanation of the new transcript filing and redaction procedure, accompanied by timeline chart on the next page:

ELECTRONIC FILING OF TRANSCRIPTS OF PROCEEDINGS AND REDACTION PROCEDURE U.S. District Court for the District of Montana

Beginning April 28, 2008, transcripts of proceedings otherwise filed are filed electronically in the District of Montana’s CM/ECF system.

In September 2007, the Judicial Conference of the U.S. Courts approved a new policy regarding the availability of transcripts in the electronic file system as follows:

1. Transcripts will be available at the clerk’s office for inspection only for a period of 90 days after filing. Anyone may review the transcript on the public monitors at each divisional office.

2. During the 90-day period, a copy of the transcript may be obtained from the court reporter or transcriber at the rate established by the Judicial Conference, and the transcript will be available for court users. Any attorney who obtains the transcript from the court reporter or transcriber will be given remote electronic access to the transcript through the CM/ECF system for purposes of creating hyperlinks to the transcript in court filings and for other purposes. If the purchasing attorney chooses to review the transcript through CM/ECF, PACER will also charge the party \$.08 per page for the entire transcript.

3. After the 90-day period has ended, the transcript will be

available to the public by downloading through PACER or by copying in the clerk’s office.

Unless otherwise ordered by the Court, counsel must review the following portions of the transcript for potential redactions:

- Opening and closing statements made on the party’s behalf;
- Statements of the party.
- The testimony of any witnesses called by the party.
- Any other portion of the transcript as ordered by the Court.

Pursuant to Federal Rule of Criminal Procedure 49.1 and Federal Rule of Civil Procedure 5.2, there are five personal identifiers which must be modified in the following ways:

1. Social Security numbers to the last four numbers.
2. Financial account numbers to the last four numbers.
3. Dates of birth to the year.
4. Names of minor children to initials.
5. Home addresses to city and state only.

Upon e-filing of the verbatim transcript, each party to the case will receive a Notice of Electronic Filing. If redactions are necessary, within 7 calendar days of the transcript filing, each party requesting redaction must inform the Court by e-filing a Notice of Intent to Request Redaction; within 21 calendar days, the party will e-file under seal a Request for Redaction, listing the requested redactions by page and line number; and within 31 calendar days, the court reporter or transcriber will prepare and e-file the redacted transcript. The unredacted transcript will be retained but remain restricted within PACER.

Redaction requests limited to the five personal identifiers require only a Request for Redaction. Counsel may move the

New Judicial Code of Conduct is posted on web for comments

The Montana Supreme Court has posted a proposed code of conduct for Montana judges for a comment period that will run through June 20.

The proposed 2008 Montana Code of Judicial Conduct is being circulated electronically by the office of the Clerk of the Supreme Court to all district court judges in Montana, and to all judges and justices of the courts of limited jurisdiction, for the 60-day comment period which began on April 23.

On June 24, 2003, the Court established a Commission on the Code of Judicial Conduct to study and consider adopting a version of the ABA Code of Judicial Conduct to replace the Canons of Judicial Ethics, which were adopted by the Court in 1963. The Commission conducted an in-depth review of the ABA Code of Judicial Conduct, as amended in 2007, and devised a version of the Code which the Commission feels best meets the needs of Montana’s

TRANSCRIPT OF PROCEEDINGS: FILING TIMELINE

FILING DATE	Within 7 calendar days	21 calendar days	31 calendar days	90 calendar days	90-day period has ended
Within 7 calendar days	If any redactions are needed: Counsel must file "Notice of Intent to Request Redaction"				
Within 21 calendar days	If redactions are needed regarding personal identifiers: <ul style="list-style-type: none"> ● Counsel must file "Request for Redaction," listing proposed redactions by page and line number. Access is restricted to court users and case participants. If redactions other than personal identifiers are requested: <ul style="list-style-type: none"> ● Counsel must file a "Motion for Redaction." Access is restricted to court users and case participants. 				
Within 31 calendar days	Court reporter/transcriber will make redactions. Redacted transcript is filed and linked to the unredacted transcript which will remain restricted.				
Within 90 calendar days	Transcript: Can be viewed at the Clerk's Office at public monitors; Copies may be purchased from court reporters/transcribers; and Access is available electronically to court users and to attorneys who have purchased.				
90-day period has ended	Transcript is available to the public through PACER				

Court for additional redactions other than personal identifiers by filing a Motion to Redact Transcript. The motion shall be put under advisement to the presiding judge immediately for ruling. There will be no response time. The transcript will not be electronically available until the Court has ruled on any

such motion, even if the 90-day restriction period has ended. An attorney serving as standby counsel appointed to assist a pro se defendant in his or her defense in a criminal case must review the same portions of the transcript as if the pro se defendant were his or her client. ○

Judicial Branch, while providing as much uniformity as possible with the national Code, the Supreme Court order said.

After the comment period is closed, the Commission will convene again to review the comments and settle upon a final version of the proposed Code to submit to the Supreme Court for approval and implementation.

The Supreme Court Clerk is also mailing a hard copy of the documents to

those judges or justices of the courts of limited jurisdiction who do not have the capability to receive electronic submissions.

A copy of the proposed 2008 Montana Code of Judicial Conduct also has been published on the website of the Judicial Branch, at:

<http://courts.mt.gov>

Court appointments

- **Commission of Self-Represented Litigants:** Ed Higgins, managing attorney of Montana Legal Services in Missoula, has been appointed to a three-year term by the Montana Supreme Court to replace Helena attorney Tara Veazey, whose term on the Commission expired at the end of April.

Alain Burrese

Turning a weak position into a strong one



It is scary facing an adversary who appears to be dominant. This is true in self-defense situations, and it is true in negotiations. Just as I teach my hapkido and self-defense students that if attacked it will most likely be by a bigger and stronger opponent, we must often enter negotiations with a distinct disadvantage.

Negotiating against someone who has a clearly dominant position is one of the greatest fears when negotiating. However, just as smaller people can learn to defend themselves against bigger and stronger attackers, we can learn to overcome a weak bargaining position to negotiate more effectively.

It is no fun entering a negotiation with a weak position. This is especially true when the opposing negotiator senses your weakness and attacks with tactics aimed at getting you to accept an unreasonable “take it or leave it” offer. Therefore, the projection of power during negotiations can increase how successful you’ll be.

Bluster, bravado, and bullying tactics are not what I mean by projecting a strong negotiation position.

Replacing facts and figures with raising your voice can often be seen as an obvious bluff. Without bravado and bullying, you should be self-confident regarding your negotiation success. If you are not confident you can succeed, you may want to reconsider negotiating in the first place. Going into a negotiation thinking and feeling that you will be slaughtered will most likely get you – slaughtered. If you think you are beaten, you will be. If you think you are not beaten, you still have a fighting chance. This is pretty much a universal principle for anything, negotiation included.

One of the most important keys to turning a weak position into a strong one when you cannot change the facts of the situation is in the projection of power. You want to project power through self-confidence and avoid projecting or showing weakness.

When discussing power, there are numerous considerations, and in fact there are many entire books on the topic. For pur-

poses here in this short column, I want to focus on the difference between *real power* and *perceived power*. Real power is the power you actually possess. Perceived power is the power others *think* you have. When we have the weaker bargaining position, it is often due to an imbalance of power. The weaker position is often due to having less real power, such as the small business owner negotiating with the large bank or the employee negotiating with his boss.

We must remember that perception is often more important than reality. Tom Peters and Bob Waterman wrote that perception is reality in their hugely popular “In Search of Excellence.” In negotiations, the perceptions of the interested parties usually have much more to do with the eventual outcome than the realities of the situation being bargained over.

A person’s perceived power may be due to many different factors. The senior partner’s secretary may have greater influence with some decision-making than associates in a firm due to her proximity to the seat of power, even if her salary and actual authority is less than the attorneys in the firm. The significance between real and perceived power in the negotiation arena is that you don’t necessarily need a strong position when you negotiate as long as you are perceived as having one. If the opposing party thinks you have a strong position, that can be just as good as actually having one.

Besides perceived power, it is also important to maximize the power you do possess. In martial arts, the term *structure*

can be used when referring to elements such as proper breath, spinal alignment, triangular positioning, posture, and axis. Sound anatomical structure is significant when faced with a deficit in terms of size and strength. By understanding and exercising sound anatomical structure, combined with techniques designed to maximize one’s strength for maximum effect, the smaller person can exploit the weak structure of an opponent and use sound structure and proper technique to compensate for

lack of size and strength.

When negotiating, strength does not always come from your positions or what you have to trade at the bargaining table. Your ability to negotiate, which includes negotiation tactics, can assist you when negotiating against someone with a clearly dominant position.

Therefore, improving your negotiation skills, through study, practice, and experience will help you negotiate when your position is not as strong as those across the table. Your opponent may have the superior position, but if he is inept at negotiating, your better skills and tactics can see you through.

One important tactic when negotiating from a point of weakness is to focus on your strengths. Even when facing seemingly insurmountable odds, we can find strengths that may have been initially overlooked. It might take more planning, preparation, and forethought, but there are usually strengths, even if small, that we can focus on to improve our

In my self-defense class, I often teach smaller people to go for the eyes if attacked by a larger person. The person you are negotiating with will have an Achilles heel that you must work to find.

situation. We must always remember that the only reason someone is negotiating with us in the first place is because we have something they want. By focusing on our strengths, our confidence increases. It was noted above why confidence and projecting power are important. Use every strength you have to its maximum advantage.

Another important tactic is to focus on your opponent's weaknesses. I often teach smaller people to go for the eyes if attacked by a larger person. Even the smallest person can cause damage to a 300-pound behemoth if he jabs his finger in the monster's eye. The person you are negotiating with will have a weakness. You need to find the opening in his armor find his Achilles Heel. Once you find this, you can work his weaknesses into your overall strategy.

Sometimes these weaknesses will be readily apparent. Other times you will need to research, probe, and explore with questions to uncover them. Regardless of how you find them, identifying and focusing on your opponent's weaknesses will have a positive effect on the outcome as you negotiate from a weaker initial position.

We must accept the fact that at times we will enter negotiations with a distinct disadvantage and have to negotiate against someone who has a clearly dominant position. Rather than roll over and accept an unreasonable "take it or leave it" offer, the disadvantaged negotiator can improve this weaker position by focusing on the strengths of the position, finding the weaknesses of the opponent, and projecting power

through self-confidence. Through study, practice, and experience, we can learn to overcome a weak bargaining position to negotiate more effectively. We need never fear the dominant adversary again.

ALAIN BURRESE is a mediator and attorney with Bennett Law Office in Missoula. He conducts mediations and settlement conferences as well as speaking and training in negotiation and mediation. He can be contacted at: [www.bennettlaw](http://www.bennettlaw.com)

Saturday

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The Low Income Taxpayer Clinic

A pro bono opportunity for tax attorneys

By **Steven Dorr**
Montana Legal Services Assn.

“My pro bono attorney saved my life and restored my hope for my future.” That was Mary’s reply when the Low Income Taxpayer Clinic spoke to her about her experience prior to contacting Montana Legal Services Association. Mary was a single mother of two children. She was devastated by the death of her fiancée, and forgot to file her taxes for 2001. Earlier in 2001, she had taken \$60,000 out of her 401k at her fiancée’s request.

By October 2005, Mary slowly began to put the pieces of her life back together – until she received an earth-shattering letter from the Internal Revenue Service. She was shocked to see that she owed the IRS more than \$55,000 in back taxes from the 2001 tax period.

Overwhelmed and not sure where to turn, Mary contacted the Montana Legal Services Association’s Low Income Taxpayer Clinic (LITC). The Clinic staff quickly stepped into action and contacted Julie A. Johnson, one of their local pro bono tax attorneys. Ms. Johnson agreed to help Mary obtain an “offer and compromise.” Ms. Johnson was able to work with the IRS to significantly reduce Mary’s debt, allowing Mary to make a monthly payment of \$25 over the next 10 years.

“I am so glad I could help her, and that I think this was my favorite pro bono experience to date,” Ms. Johnson said. She said she is very proud to have her name associated with the LITC project.

Mary said that she “has nothing but praise for Ms. Johnson and for the services that were provided to her by the Low Income Taxpayer Clinic.” She agreed to share her

story in the hope that just one person would step forward and offer a hand. Without Ms. Johnson, Mary said, she “is not sure where she would be today.”

Like Mary, many low income taxpayers are not sure what to do when they are contacted by the IRS. Driven by fear and uncertainty, these individuals do not contact the IRS, and many stop opening letters that they receive. Some individuals feel that if they ignore the IRS their problem will go away, while others feel that they cannot possibly pay off their debt within their lifetime.

They will go unnoticed by the IRS. The LITC provides an avenue for taxpayers to receive community education and assistance with their federal tax issues.

The MLSA Low Income Taxpayer Clinic has assisted 128 low income taxpayers since it began in 2005. The Low Income Taxpayer Clinic is a grant program funded by the IRS, designed to represent low income taxpayers with federal tax issues. The Low Income

Taxpayer Clinic with a staff of three MLSA employees provides services on a statewide basis from its Helena office.

The LITC provides low income taxpayers with various levels of services including general advice, referrals to the Tax Advocate Services and to pro bono attorneys like Ms. Johnson.

The Low Income Taxpayer Clinic is working with a pool of 14 attorneys’ and three certified tax preparers who are located in the Missoula and Helena areas. These individuals provide the backbone for this program, donating their time and resources in order to make a difference in their community. MLSA would like to thank them all for their continued dedication and commitment to this program. In 2008, the LITC would like to expand its pro bono panel on a statewide level. In June, the LITC will conduct its yearly pro bono campaign. The LITC hopes that you will join them in providing quality and effective services to Montanans in need.

If you have further questions or would like to assist MLSA LITC, please contact Steven Dorr, LITC Program coordinator at (406) 443-9830 ext 10, or by e-mail at sdorr@mlsa.

STEVEN DORR is a paralegal and LITC Project coordinator for Montana Legal Services.



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- honey, sweetie, dear
- little lady, young lady, young man

Terms of endearment and diminutive terms should not be applied to anyone in the courts. These terms can demean or offend, even if the speaker does not intend to do so. In the past, they have been used disproportionately to suggest that women have lower status or less power.

3. ADDRESS MIXED GROUPS OF WOMEN AND MEN WITH GENDER-NEUTRAL OR GENDER-INCLUSIVE TERMS.

- colleagues
- members of the jury
- counselors
- ladies and gentlemen

Referring to a mixed group as “brothers” or “gentlemen” implies that women are not legitimate members of the community who must be taken seriously. Avoid this or any other conversation that creates an exclusively masculine atmosphere. All persons should feel that they have access to the courts and that they are treated fairly and equally. Exclusionary expressions or terms that highlight a person’s gender undermine that goal.

4. DO NOT COMMENT ON PHYSICAL APPEARANCE.

- physical characteristics
- dress style or jewelry
- your feelings about a person’s looks
- pregnancy

Comments on physical appearance may be demeaning, putting people at a disadvantage by drawing attention to their physical traits or gender, rather than the reason for their presence in the court. Remarks appropriate in a social setting often are inappropriate in a professional setting. For example, complimenting a female attorney on her appearance or drawing attention to her pregnancy while she is conducting business, may undermine the way others perceive her.

5. REFRAIN FROM BEHAVIOR OF A SEXUAL NATURE. IT WILL NOT BE TOLERATED IN THE MONTANA COURT SYSTEM.

Everyone in the courthouse and in the legal community must protect the dignity and integrity of the court system and show respect for every other person. Sexually suggestive comments, graphics, gestures and touching, sexual advances, or jokes humiliate and intimidate people, and undermine the dignity of the court system. Power and balances in the court setting can exacerbate the offense, since individuals in less powerful positions may feel unable to put a stop to the behavior. Such acts can also constitute sexual harassment punishable by law and subject harassers to serious sanctions.

6. TREAT ALL PROFESSIONALS WITH EQUAL DIGNITY.

Surveys have shown that women lawyers are asked more often if they are attorneys than their white male counterparts are asked. At the security desk, at the counter in the Clerk of Court’s office or in the courtroom, do not ask the professional status of a woman when you would not ask the same question of a man. All participants in our legal system must be accorded equal and appropriate dignity and respect.

This booklet was adapted from a booklet prepared by the Administrative Office of the Trial Court and the Supreme Judicial Court of Massachusetts designed to address gender, racial, and ethnic equality in the courts. The Massachusetts document was finalized in February of 2004.

**Exhibit II:
Suggested Additions to the Canons
of Judicial Ethics**

A judge shall not hold membership in any organization that practices invidious discrimination on the basis of race, sex, religion, national origin, ethnicity, or sexual orientation.

A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct, manifest bias or prejudice, including, but not limited to, bias or prejudice based upon race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, or socioeconomic status, and shall require court personnel and others not to do so.

A judge shall require lawyers in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice based upon race, sex, religion, national origin, ethnicity, disability, age, sexual orientation or socioeconomic status, against parties, witnesses, counsel, or others.

**Exhibit III:
Instruction for MPI2d
1.02 General – Evidence**

INSTRUCTION NO. _____

You are the sole judges of the facts in this case. It is up to you to determine which witnesses you will believe and what weight will be given to their testimony. In doing so, you may consider, for example, such things as their demeanor, apparent bias or prejudice, motive to testify truthfully or falsely, consistency, ability and opportunity to perceive, recall and communicate, or the over-all reasonableness of their testimony in the light of all the other evidence.

At the outset, a witness is entitled to a presumption that his

or her testimony is truthful without regard to race, color, sex, culture, social origin or condition, or political or religious ideas. This presumption may be overcome, however, by any evidence tending to disprove that testimony or raising a substantial question as to the witness' credibility. A witness false in one part of his or her testimony is to be distrusted in others. However, this rule does not apply to a witness who unintentionally commits an error. If weaker and less satisfactory evidence is offered and it appears that it is within the power of the party to offer stronger and more satisfactory evidence, the evidence offered should be viewed with distrust. You should not be persuaded as to a particular fact simply because a greater number of witnesses testified to that fact if the contrary testimony of fewer witnesses is more convincing.

Where two witnesses testify directly opposite each other and are the only ones who testify on the same point, you are not bound to consider the evidence evenly balanced. You may regard all of the related evidence and give credence to one witness or the other. The evidence of any witness who you

believe is sufficient proof of any fact.

You have a right to consider all of the evidence in the light of your own general knowledge, experience and common sense. Your determination of the facts must be based on the evidence presented, regardless of which side presents it. You are not to regard arguments, statements and remarks of attorneys as evidence and you should disregard them if they are not supported by evidence properly presented and received.

No act, remark, instruction, interrogation or ruling by me is to be construed by you as being any indication whatever of any opinion I might have as to what facts you should or might find.

GIVEN: _____
District Judge

Source: MCA 26-1-303

Proposed by P (# _____), D (# _____), Ct (# _____)

Disposition G _____ R _____ W _____

Riders to bike across Montana for CASA and abused children

CASA of Montana is looking for lawyers, judges, and legal assistants to bicycle across Montana from Glacier Park to Yellowstone Park and sponsors to support the ride. The 385-mile Park-2-Park Montana bike ride will raise money and awareness of CASA (court appointed special advocates) programs across the state. It will benefit CASA of Montana and the non-profit network of 15 local CASA programs.

Six attorneys rode the P2P ride 2006 and more are wanted for this year's event. About 20 riders, from Washington State, Butte, Kalispell, Billings, Great Falls, and Helena have already registered. Only 50 slots are available. Last year 42 riders raised more than \$40,000 for CASA. This year's goal is \$50,000. Court appointed special advocates are volunteers that speak for nearly 900 children in Montana who are in the court abuse-and-neglect system through no fault of their own.

The fourth annual ride is planned for Sept. 1-5. The route will take cyclists from St. Mary – on the eastern side of Glacier National Park – through spectacular scenery down along U.S. 89 through Dupuyer, Choteau, Great Falls, White Sulphur Springs, and Livingston and conclude at Gardiner near Yellowstone National Park.

Sponsors include the Helena Bicycle Club, BlueCross BlueShield, New West Health Plans, Valley Bank, and the Neighborhood Office. St. Mary's/East Glacier KOA provides the headquarters for the beginning of the ride. Sponsors will be linked to a new website at www.park2parkmontana.org.

CASA of Montana is seeking sponsors for the ride. It is a great opportunity to showcase support for Montana's children. Sponsor levels are Platinum – \$1,000, Gold – \$500 and Silver – \$250. Businesses also can sponsor a local bike rider.

The ride cost is \$450 before July 15 and \$550 after that date. Registration includes four nights of lodging, meals and

support. Riders are expected to raise at least \$250 in pledges and a custom bike jersey is awarded to those who raise \$800 or more.

Daily ride distances are 55-100 miles. The ride begins at the St. Mary's/ East Glacier KOA campground in St. Mary. Local CASA programs, including CASA for Kids (Kalispell), Great Falls CASA CAN and 6th Judicial CASA in Livingston will provide meals, snacks, and support services for the riders as they come through their area. A celebration is planned in Gardiner on Sept. 5.

For more information, see www.Park2ParkMontana.org or www.casagal.org for more details on CASA of Montana. Call (866) 863-2272 or e-mail info@casagal.org.

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Judge Mark Painter

More legalisms to avoid



- Was arbitrated pursuant to the union's request.
- Arbitration award issued pursuant to a collective bargaining agreement.
- Matters must[,] however[,] be brought pursuant to this Grievance Procedure.
- Filed a second amended complaint pursuant to Civ.R. 15(A).

Almost all these can be changed to *under*.

Parenthetical Numericals

"There are four (4) plaintiffs and six (6) defendants, all claiming the ten thousand dollars (\$10,000). But only three (3) of the four (4) plaintiffs are entitled to recover from one (1) defendant."

The reader sounds out the numbers twice.

This irritating practice of spelling out numbers and then attaching parenthetical numericals is a habit learned when scribes used quill pens to copy documents. The real reason for this was to prevent fraud by making it difficult to alter numbers. Now, our word processors probably won't make three look much like four, so we can safely do away with this anachronism.

Any brief that states, "There were two (2) defendants and three (3) police officers present" is extremely hard to read and looks silly. Unless you are writing a brief in longhand – and unless you believe the parties will alter your numbers – skip this "noxious habit."

And/Or

And/or is a legalism almost as bad as parenthetical numericals. It not only can be ambiguous, but is usually incorrect.

As far back as 1935, the Wisconsin Supreme Court had this to say: "[W]e are confronted with the task of first construing 'and/or,' that befuddling, nameless thing, that Janus-faced verbal monstrosity, neither word nor phrase, the child of a brain of someone too lazy or too dull to express his precise meaning, or too dull to know what he did mean, now commonly used by lawyers in drafting legal documents, through carelessness or ignorance. . . ."

There is never a reason for *and/or*. Become an antiandorian – delete *and/or* from your verbal repertoire.

Pursuant To

Or even worse *in pursuance of*. *Pursuant to* can mean under or for. Actually, it has four different senses: 1) according to, 2) under, 3) authorized by, or 4) in carrying out. So say what you really mean. Instead of *pursuant to R.C. 4511.19(B)*, write *under R.C. 4511.19(B)*. Instead of *Jones was sentenced pursuant to a rape conviction*, write *Jones was sentenced for a rape conviction*, or even better, *Jones was sentenced for rape*.

Doing a Lexis search on *pursuant to* turns up 56 cases just in Ohio and just in one week. So judges are guilty too. Just in that week, I note one court had nine *pursuant to*s, including:

- Filed a grievance pursuant to the Bargaining Agreement.

Said and Such

You may use *she said*, of course. It's the way we use *said* for the, or that, or this that is infuriating. And many times we use it when no word is necessary. The *said defendants* can safely be the *defendants* without losing meaning.

Such is the same — *such complaint* translates to the *complaint*.

In the last 10 years in Ohio, I found only six times where *said defendants* was used in an appellate decision — and each time it was in a direct quote. I glean from this that lawyers rather than judges are the main culprits. And the legislature, of course. The [Ohio] Revised Code is replete with bad examples:

When any person by deed or will grants or devises property and money, or either, to trustees in perpetuity, in trust, stipulating that the principal and income, or any part of the principal and income thereof, is to be used and applied by *said* trustees and their successors in office for educational, charitable, or benevolent purposes, to be conducted in this state, and when *such* deed or will provides that the trustees shall become a body corporate to hold and invest *said* property and money and to administer *said* trust, *said* trustees upon accepting *said* trust shall file with the secretary of state articles of incorporation as provided by section 1702.04 of the Revised Code, together with a certified copy of *such* deed or will, and thereupon *said* trustees and their successors in office shall become a corporation not for profit to administer *said* trust, and *said* trustees shall forthwith become the board of trustees of *such* corporation for *such* term as is prescribed by *such* deed or will or by the code of regulations of *such* corporation.

All the *suchs* and *said*s could be changed to *the*, or eliminated entirely.

MARK PAINTER is a judge on the Ohio First District Court of Appeals and an adjunct professor at the University of Cincinnati College of Law. He is the author of five books, including "The Legal Writer 2nd ed.: 40 Rules for the Art of Legal Writing."

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Havre's Rice named Judge of the Year by CASA Association

On April 24th, Michael Piraino, CEO of the National CASA Association, recognized the people who work for abused and neglected children in district courts around Montana.

Piraino has represented children as a guardian ad litem and speaks internationally on representing children in neglect and abuse cases. He recently lent a hand to Texas CASA as the program dealt with the more than 400 children removed from a polygamist compound.

At the annual Prevent Child Abuse & Neglect Conference in Missoula, Mr. Piraino presented awards to the CASA judge, directors, and volunteer advocate of the year for 2008. An independent committee of three reviewers selected the honorees based on their significant contributions to CASA through their work with children and families.

The first award of the day went to Havre District Judge David G. Rice, a supporter of CASA in the Havre area



CASA Award winners pose with CASA of Montana Director, Ellen Bush (right) at the annual Prevent Child Abuse and Neglect Conference in Missoula. From left they are Program Director Jamie Campbell, Volunteer Joni Stormo, and Program Director Bill Collins. District Judge David G. Rice was recognized as CASA Judge of the Year, but was unable to attend the conference.

since 2003. Friends and coworkers emphasized Judge Rice's dedication to protecting children's rights. During his time with the court system, Judge Rice formed a Child Abuse & Neglect Committee made up of representatives from various agencies, which meets to determine how community agencies can work together to protect the rights and

well-being of children.

Next, Mr. Piraino, along with CASA of Montana Executive Director Ellen Bush, recognized the work of two program directors: Jamie Campbell, director of CASA for Kids in Flathead County's 11th Judicial District, and Helena CASA Program Director Bill Collins.

The final award went to the CASA Volunteer of the Year. Four qualified individuals were nominated, including Ann Gilkey of the Helena CASA Advocates for Kids program, Linda Mettam of Great Falls CASA-CAN, Rita Ricker of Yellowstone CASA and Joni Stormo of Missoula.

The award winner, Joni Stormo, has been a volunteer for CASA of Missoula since 1997. Within the world of child abuse and neglect prevention, she is regarded not only as a volunteer but also as a respected friend and mentor. She coordinates meetings with social workers, therapists, attorneys and prosecutors to allow them to talk through any issues that may arise.

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Allan Karell, Mary Scrim Dyre and **Nathan S. Haney**, partners at Crowley, Haughey, Hanson, Toole & Dietrich have announced the formation of the commercial law firm, **Karell Dyre Haney PLLP**. The firm is located in Suite 1303 of The Wells Fargo Center, 175 N. 27th Street in Billings, and its telephone number is (406) 294-8484. Allan Karell is a 1976 graduate of the University of Montana Law School and practices in real estate, finance, business law, mergers and acquisitions, and corporate law. Mary Scrim Dyre is a 1984 graduate of the University of Oregon Law School and practices in the areas of real estate, banking and finance, consumer credit and business law. Nate Haney received his law degree in 1999 from the University of Montana Law School and an LL.M. in Taxation in 2000 from New York University. He served as attorney-advisor to the Hon. Herbert L. Cabot, U.S. Tax Court from 2000-2002. Mr. Haney practices in the areas of taxation, probate and trust, business law, mergers and acquisitions, and corporate law.



C. Mark Fowler of Helena has accepted an invitation to participate in the National Association of Attorneys General Supreme Court Fellowship Program. Fowler's three-month fellowship begins in Spring 2009. Mr. Fowler has been an assistant attorney general in the Montana Department of Justice since 1994, working in the Legal Services Divisions' Appellate Bureau and in the Gambling Control Division. From late 1990 to 1994, he was an assistant attorney general in Tennessee, specializing in capital litigation, criminal appeals

and peace officer standards and training. Mr. Fowler has had more than 100 oral arguments in various state intermediate courts of appeal, supreme courts and federal circuit courts of appeal. He has been a member of the capital litigation teams in both Montana and Tennessee. He holds an undergraduate degree from Jacksonville University. He earned his law degree from the University of Florida College of Law in 1989, and was the editor-in-chief of the university's *Journal of Law & Public Policy*. Mr. Fowler, 45, is a past president of the Montana Shares Council and he is the secretary of the TangoHelena board.

Kathleen Cullen-Mielnik has been awarded diplomate status in the American Psychotherapy Association. This is awarded on the basis of knowledge, skill, education training, and experience in the therapeutic process. Ms. Cullen Mielnik is a 1982 graduate of Gonzaga Law School and a licensed clinical professional counselor. She is in a private, multidisciplinary practice in Bozeman. She offers individual, family and marital counseling and works extensively with mood disorders. She does parenting evaluations and serves as a guardian ad litem in contentious dissolutions. She can be reached at (406) 587-6290 or kmielnik@imt.net.

Debra Thatcher Gilcrest has joined the litigation practice of Connell Law Firm in Missoula. Ms. Gilcrest is a graduate of Dartmouth College and the University of Montana School of Law, from which she received a juris doctor degree with high honors in 1990. She has 18 years of experience in civil and criminal litigation. Her practice will emphasize personal injury and commercial litigation and criminal defense.

DEATHS

Popular legal salesman for Montana killed in Iraq

Stuart "Stu" Wolfer, a Thomson West legal-research sales representative from Boise, who was well known to many Montana attorneys, was killed in April while serving in Iraq.

The State Bar of Montana has posthumously awarded Mr. Wolfer a State Bar Distinguished Service Award, which was sent to Idaho for his April 29 memorial service.

Wolfer, a major in the Army Reserves, died in April while working out in a gym in the Green Zone in Baghdad that was hit by a rocket attack.

Wolfer, assigned to the 11th Battalion, 104th Division based in Boise, would have turned 37 on April 23. He was on his second tour of duty (the first in Kuwait). He was stationed at the Phoenix Base in Baghdad as a logistics officer. He also was a volunteer with the newly established Boy Scouts International Association in Bagdad.

Mr. Wolfer joined Thomson West as territory manager in 2004. His manager at Thomson West, Allan Milloy, who received an e-mail message from him just an hour before the attack, described Mr. Wolfer as "150 percent committed, 150 percent engaged." Several Montana lawyers told *The Montana*



Stuart Wolfer

Lawyer that Mr. Wolfer was well liked along his western Montana sales route.

Mr. Wolfer held a law degree from Loyola Law School in Los Angeles, but was not a member of the State Bar of Montana. Outside of work, he enjoyed working on his 80-acre ranch in Emmett, Idaho. He leaves behind a wife, Lee, and three small daughters.

Mr. Wolfer was born in Miami, Fla. His family moved to Dix Hills, N.Y., where they helped create the Dix Hills

Jewish Center, when he was a child. Shortly after Mr. Wolfer's bar mitzvah, his family moved back to Florida with him and his sister. He joined the Army ROTC program while attending school at Washington University in St. Louis, and was commissioned as a 2nd lieutenant when he graduated in May 1993.

On his last Mideast tour, he was a pen pal to students at the Mirochnick Religious School of B'Nai Torah Congregation in Boca Raton, Fla. and would share with them his experience of

celebrating Hanukkah overseas.

Mr. Wolfer was buried in Iowa, where his wife's family lives.

Eddy McClure, Helena attorney

Montana Legislative Services staff attorney Eddy McClure, 58, of Helena, died on May 8.

Ms. McClure was born in Houston, Texas, spent her formative years in Texas and graduated from Sam Rayburn High School in Pasadena, Texas, in 1968. She attended Stephen F. Austin State University in Nacogdoches, Texas, earning degrees in Political Science and Physical Education. She participated in basketball, softball, and track. She was named the outstanding physical-education freshman and she received the Lucille Norton academic scholarship in her junior year. In 1973, Ms. McClure accepted a job as the first women's basketball coach and volleyball coach at Creighton University in Omaha, Neb. She was also a physical-education instructor.

Ms. McClure remained at Creighton until 1976, when she moved to Missoula to become an instructor and coach for the Lady Griz. In 1978, she left coaching profession to pursue her education, earning a master's degree in Kinesiology from the University of Wisconsin and a bachelor's degree with honors in Radio-TV from the University of Montana. In 1983, she enrolled at the Northwestern School of Law at Lewis & Clark

College in Portland, Ore., and in 1986 she received her JD with a certificate in environmental and natural-resources law. Ms. McClure attended the University of Montana School of Law for her final year of school under an exchange program. She became a staff attorney for the Montana Legislative Services Division, where she remained until her death.

During her employment, Ms. McClure focused her talents on education law and state-tribal relations. She was a co-founder of the Indian Law Section of the State Bar of Montana.

William Joseph Moran, tribal chief justice

William Joseph Moran, 65, the chief justice of the Confederated Salish & Kootenai Tribes Appellate Court, died from cancer at his home near Arlee on March 12.

Judge Moran also was chief judge of Salish & Kootenai tribal court, tribal judge for the Blackfoot Nation, and a former councilman of the Salish & Kootenai Tribes.

Judge Moran was a 1986 graduate of University of Montana School of Law. After graduation, he served in the hospital administration field before returning to Law. He served in the U.S. Navy in Vietnam and was a councilman representing Arlee. He also served as a Tribal Judge for the Blackfoot Nation.

COMMENTARY

Justices' ruling doesn't end the need for a better death-penalty process

By **William H. Neukom**, president
American Bar Association

The United States Supreme Court ruled recently on one aspect of the death penalty – the constitutionality of lethal injection as a means of execution. What the Court did not address, and what remains a serious problem with the death penalty in the United States, is the lack of due process in capital cases in many states. This problem is so severe and so widespread that for the Court's recent ruling to open the floodgates to executions would be a tragic mistake.

Although the American Bar Association takes no position on the death penalty itself, we have urged since 1997 a temporary halt to executions until each jurisdiction can ensure that its pro-

cedures meet standards of due process and fairness. No state has yet been able to demonstrate that its system "gets it right" by providing fair and unbiased procedures and making sure each capital defendant receives due process. Rather, we have seen a persistent pattern across the country of death row inmates exonerated of the crimes for which they were convicted and sentenced. And, while the reasons for those wrongful convictions vary from case to case, the ABA has documented that shortcomings among the states are disturbingly common.

In assessments of eight death penalty systems, teams of legal experts from within each affected state found that their own systems came up short. Elected judges presiding over capital trials were susceptible to political pressure. Serious problems were found with crime

laboratories, preservation of evidence and with identification and interrogation by law enforcement agencies. Jurors too often receive confusing or misleading instructions about how to perform their duties.

In addition, racial disparities in charging and sentencing were found in each of the states reviewed. And all of the states failed to adequately fund systems to train lawyers to defend indigent defendants and death row prisoners competently, a failure that has more to do with inaccurate results and unfair trials than any other single factor.

On this basis, the ABA renewed its call for a moratorium on executions last October, and again in recent testimony before the U.S. Senate Judiciary Committee. In light of the Supreme Court's ruling, we can only repeat and amplify that call in order that justice will be done. If the American justice system is to employ capital punishment we must ensure that this ultimate punishment is applied fairly, without bias and only after a strenuous examination of the law and the facts in each case. These are the principles upon which our nation was built. ○

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ATTORNEY POSITIONS

ATTORNEY: The Crist Law Firm LLC is seeking an associate with 1-3 years experience, strong academic record, solid research and writing skills, and willingness to drink beer with partners and listen to their stories. Practice is primarily the defense of businesses in commercial litigation matters, with emphasis on employment law. All applications will be kept strictly confidential. Please e-mail letter of application, resume and transcript to resume@crislaw.com.

WATER MASTER: The Montana Water Court is accepting applications for a water master. Successful applicant must have a JD and will assist the Court in the adjudication of water rights. Duties include legal research and writing; case management; conducting status, scheduling, settlement conferences, and eventually hearings; and other assigned tasks. The ability to work well with a variety of individuals including attorneys, water users, and natural resources staff is essential. Closing date is May 28, 2008. For complete job descriptions, job announcements, and application procedure, see the Court website at www.montanacourts.org/employment.asp or contact the Human Resources Office of the Supreme Court Administrator's Office.

DEPUTY COUNTY ATTORNEY:

Immediate vacancy. Full-time permanent deputy county attorney position with the Custer County Attorney's Office, Miles City. Juris doctor degree from accredited law school, licensed to practice in Montana. Salary up to \$60,616.32 based on 40-hour work week, dependent on experience. Experience preferred. Excellent benefits. For job description and application form please contact Cindy Fuhrman at Job Service in Miles City at (406) 232-8349. Applications accepted until position filled. Request accommodation from Custer County Attorney's Office, 1010 Main Street, (406) 874-3310 or fax (406) 874-3450.

CAUCUS COUNSEL: The Washington State Senate Republican Caucus is seeking qualified candidates to fill two positions for staff counsel. These are permanent, full-time positions in Olympia, Wash. Salary depends on qualifications. Interested parties should log on to the Washington Legislature website for full job description and qualifications. www.leg.wa.gov/Senate/Administration/employment.htm

ASSOCIATE: Great Falls firm seeks full-time associate attorney interested in civil litigation practice. Prior experience preferred. All applications will be kept confidential. Please submit cover letter, resume, writing sample and transcript to Stephanie Hollar at Smith, Walsh, Clarke & Gregoire PLLP, PO Box 2227, Great Falls MT 59403.

PUBLIC DEFENDER ATTORNEY,

Office of the State Public Defender. \$40,000 to \$50,000 plus state benefits. Locations may include Missoula, Kalispell, Helena, Billings, Butte, Great Falls, Bozeman and other rural areas. Perform public defender work for indigent clients. Contact Barb Kain, Human Resource Officer, bkain@mt.gov for further information and application requirements.

ASSOCIATE: Sullivan Tabaracci &

Rhoades PC seeks an associate attorney with no less than five years experience to primarily assist in its litigation practice. We focus upon commercial, real estate, and business law. We provide associates with excellent opportunities to expand their legal practice. In our effort to exceed our client's expectations, we hire only exceptional attorneys and staff. Situated in centrally-located Missoula, the firm's offices offer a spacious, technologically advanced and pleasant work environment. Successful applicants must be licensed to practice law in the State of Montana and demonstrate an exceptional academic background as well as superior research, analytical, verbal, and writing capabilities. All applications will be held in confidence. Please submit your cover letter and resume to: Sullivan, Tabaracci & Rhoades PC, Attn: Office Administrator, 1821 South Avenue West, 3rd Floor, Missoula MT 59801; www.montanalawyer.com; info@montanalawyer.com

ATTORNEY SPECIALIST, CIVIL

LITIGATION: Montana Department of Administration, Risk Management & Tort Defense. Located in Helena, #61166246, \$52,070 to \$65,088. Position is open until filled, applicants are encouraged to apply by May 28, 2008 at 5 p.m. RMTD is responsible for defending all state employees and agencies when claims for money damages are brought against them. The goal is to investigate, evaluate and resolve claims that have merit and to prepare remaining claims for summary judgment or trial. The attorney in this position is responsible for preparing and trying to juries tort and section 1983 civil rights cases filed against the State of Montana and its employees. The attorney evaluates and prepares cases for jury trial. The attorney is involved in all aspects of litigation, including appeal following trial in district court. The attorney must formulate, or assist in the formulation of, the state's theories and strategies of defense, prepare pleading and discovery documents, evaluate liability and damages, depose selected witnesses, negoti-

ate settlements, and try cases before juries. For a complete vacancy announcement describing required competencies for the position and application instructions visit our website at http://statejobs.mt.gov/pls/mjs/MJS0110W.QueryView?P_EMPR_ID_SEQ=48576&P_JORD_APPL_SEQ=331

CONTRACT ATTORNEY: We are a national Social Security disability law firm dedicated to treating our clients with dignity and respect and to helping them get the benefits they deserve. We are seeking attorneys, on a contract basis, to argue claims at the hearing level on our behalf. We schedule hearings in and around Billings, Havre, Helena, Butte, and Great Falls. This is a great opportunity for an attorney wishing to supplement an already existing practice. Please forward resumes to rbrown@disabilitygroup.com

ATTORNEY POSITIONS SOUGHT

THE BRIEF WRITER: 1998 University of Washington School of Law graduate with seven years experience performing investigation, legal research and writing. Pleadings experience in federal, state, and administrative court proceedings. Sample writing and references available. Westlaw and State law library access. For competitive rates, contact Genet McCann at (406) 443-8107 or thebriefwriter@gmail.com.

BUSY PRACTICE? I can help. Former MSC law clerk and UM Law honors graduate with 5-plus years legal experience available for all types of contract work, including legal/factual research, brief writing, court/depo appearances, pre/post trial jury investigations, and document review. For more information, visit <http://www.meguirelaw.com>; e-mail robin@meguirelaw.com; or call (406) 442-8317.

NEED LITIGATION ASSISTANCE in Idaho or Eastern Washington Courts? We are available for referrals or to serve as co-counsel in civil and criminal litigation in Idaho and Eastern Washington. Over 40 years combined experience. We have represented a variety of commercial and professional associations and insureds. Christensen

& Doman PC, 907 Main Ave., St. Maries ID 83861; (208) 245-9155; rsc@christdom.net.

LEGAL ASSISTANTS & OTHER PROFESSIONALS

EXECUTIVE DIRECTOR: The Oregon State Bar regulates the practice of law in Oregon and provides a variety of services to its members and the public. We are looking for a leader to join our dynamic team, serve as the chief executive officer for the Bar, and assume responsibility for day to day administration. Compensation package commensurate with education, skills, and experience. Excellent benefits. PERS employer. For full job details & requirements, see OSB Job Opportunities at www.osbar.org

LEGAL RESEARCH & PARALEGAL SERVICES

PROCESS SERVER: Ace in the Hole Process Service for all your service needs in and around Gallatin County. We are licensed and bonded. We are accurate and efficient and in most cases can serve documents the same day that we receive the information. Boxes in Gallatin County justice and district courts. Please call 556-8100 for more information.

CONSULTANTS & EXPERTS

NATURAL RESOURCES EXPERT: Co-counsel and/or associate counsel: oil & gas - water - environmental - tribal. 25 years federal and state litigation in seven western states. Top academic credentials. Dan Israel, (303) 246-9027; adamatronics@comcast.net.

WATER RIGHTS LITIGATION SUPPORT: Surface & groundwater evaluations, expert witness testimony, modeling and permitting. Geomatrix Consultants. Contact: Cam Stringer PG, (406) 542-0129 (Missoula Office); or Larry Brown, Hydrologist, (406) 442-0860 (Helena Office). www.geomatrix.com

FORENSIC ARCHITECT – EXPERT WITNESS: On-site investigation, document review, written reports, expert testimony for matters involving construction failures, water infiltration, construction disputes, and personal injuries occurring in the built environment. Recognized as expert in various courts in New York, New Jersey and Pennsylvania. Forensic/expert services are based on over 30 years as a principal in a general architectural practice involving almost every building type. The services offered also include litigation support, review of issues, standards of care and code review. Testimony can include demonstrations, models and graphics, as required. For case review call Ira Berliner, A.I.A. (406) 690-0036. Located in Billings.

CERTIFIED LEGAL NURSE CONSULTANT: Professional, affordable assistance with medical lawsuits. Certified Legal Nurse Consultant, Registered Nurse, 20-plus years' experience. Specialties: screen cases for merit, assess causation/damages, interpret medical records, facilitate communication. Accept cases involving health, illness, injury, worker's compensation, general negligence, defendant or plaintiff. Marni Allen, RN, CLNC. (406) 690-4314; www.medicallegalprofessional.com.

INTERPRETING & TRANSLATIONS SERVICE: English into Spanish or Spanish into English. Over 15 years of experience. Simultaneous, consecutive, interpreting and translations of documents, in the legal and medical fields, workers' comp or any miscellaneous documents. References upon request. Call: (406) 370-6049 or (406) 777-2802. See web site: www.spanishinterpretingservice.com.

FORENSIC DOCUMENT EXAMINER: Trained by the U.S. Secret Service and U.S. Postal Inspection Crime Lab. Retired from the Eugene, Ore., P.D. Qualified in state and federal courts. Certified by the American Board of forensic Document Examiners. Full-service laboratory for handwriting, ink and paper comparisons. Contact Jim Green, Eugene, Ore.; (888) 485-0832. Web site at www.documentexaminer.info.

FORENSIC DOCUMENT EXAMINER: Specialization: Identification / elimination through examination and comparison of handwriting, typewriters, photocopiers, printing processes, paper and inks. Forensic document apprenticeship through the Colorado Bureau of Investigation. Plum Creek Forensic Laboratory LLC, Darla McCarley-Celentano, PO Box 21, Castle Rock CO 80104-0021; phone / fax (303) 663-2450; e-mail rdacelentano@att.net.

INSURANCE CONSULTANT / EXPERT WITNESS - BAD FAITH: 20 years multi-line claims experience, including Montana claims. JD & CPCU credentials. (425) 776-7386, www.expertwitness.com/huss.

COMPUTER FORENSICS & DATA RECOVERY: Retrieval and examination of computer and electronically stored evidence by certified computer examiner. Expert testimony on findings. Practice limited to civil and administrative matters. No charge for preliminary review. Contact Jimmy Weg, CFCE, Weg Computer Forensics LLC, 512 S. Roberts, Helena MT 59601. (406) 449-0565 (evenings); jimmyweg@yahoo.com. Web site at www.wegcomputerforensics.com.

MEDIATION

SARAH H. SEILER, LCSW, LAC: Specializing in family dispute resolution, child-centered divorce mediation, guardian ad litem representation and custody investigations. Contact Resolution Consultants Inc., PO Box 604, Townsend MT 59644; (406) 980-1615 or 266-5475; sseiler@wildblue.net

J. MICHAEL YOUNG: Experienced mediator specializing in personal injury, construction claims, and commercial litigation for 35 years. Mediation facilities available at our Great Falls office. Willing to travel statewide upon reasonable notice. Contact at (406) 761-4800 or P.O. Box 3169, Great Falls MT 59403, or michael.young@ablawmt.com

STEVEN J. SHAPIRO: Mediator for individuals and organizations in conflict. Trial court and appellate court mediations. Attorney with 28 years experience in general practice of law.

Public and private sector experience. Will travel. Steven J. Shapiro PC, 9 Friendship Lane, Suite 100, Montana City MT 59634. Phone (406) 449-1200. E-mail StevenShapiro@montanacitylaw.com.

THOMAS J. GAFFNEY: Attorney (MT., NV.) with 19 years of civil litigation, business, commercial, real property and family law experience. Certified arbitrator handling multiple cases in excess of 10 years while practicing in Nevada. Flexible fee schedule; will travel. PO Box 183, Medicine Lake MT 59247; (406) 480-2762; tjgaffney@hotmail.com.

ALLEN CHRONISTER: Attorney with over 25 years of experience in civil litigation and in mediating a wide variety of disputes, available for mediations. Reasonable rates, will travel. Allen Chronister, PO Box 1152, Helena MT 59624; (406) 449-3691; almonth@mt.net

MICHAEL H. KEEDY: As a former district court judge, I bring 12 years valuable experience to bear in settling your case. In addition, I have over 30 years' experience in a variety of other legal pursuits. Conference rooms are available at our Kalispell offices. Please call me at (406) 752-7122 or 888-865-8144.

INVESTIGATORS

INVESTIGATIONS & IMMIGRATION CONSULTING: 34 years investigative experience with the U.S. Immigration Service, INTERPOL, and as a private investigator. President of the Montana P.I. Association. Criminal, fraud, background, loss prevention, domestic, workers' compensation, discrimination and sexual harassment, asset location, real estate, surveillance, record searches, and immigration consulting. Donald M. Whitney, Orion International Corp., PO Box 9658, Helena MT 59604. (406) 458-8796 / 7.

FBI NATIONAL ACADEMY GRADUATE: Discreet, professional, reasonably priced private detective agency led by 26-year Great Falls Police lieutenant Bryan Lockerby. Surveillance, investigations, interviews, dram shop, civil, locates, fraud, worker's compensation, etc. (No criminal defense cases.)

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EVICCTIONS LAWYER: We do hundreds of evictions statewide. Send your landlord clients to us. We'll respect your "ownership" of their other business. Most evictions cost about \$216 including all fees and costs. Call for a price list. Hess-Homeier Law Firm, (406) 549-9611, thesshomeier@msn.com

MISCELLANEOUS

BOOKS FOR SALE: Pacific Reporter 2d Series: #347-480; American Jurisprudence: 2d #1-41; American Jurisprudence: #30-45; American Jurisprudence Legal Forms: #1-12; 13A-14A; 22A-29A. Call (406) 782-9267.

DOMAIN NAMES: Montana law domain names for sale, including: MontanaLawDirectory.com, AttorneyBigSky.com, AttorneyMissoula.com, LawBigSky.com. View all 15 at www.BigSkyLegal.com. E-mail: BigSkyLegal@gmail.com

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