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■ The trouble with money in judicial elections



Tweeting a major trial



UM's

student

Grace Case

Project changes

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Chopping down the backlog

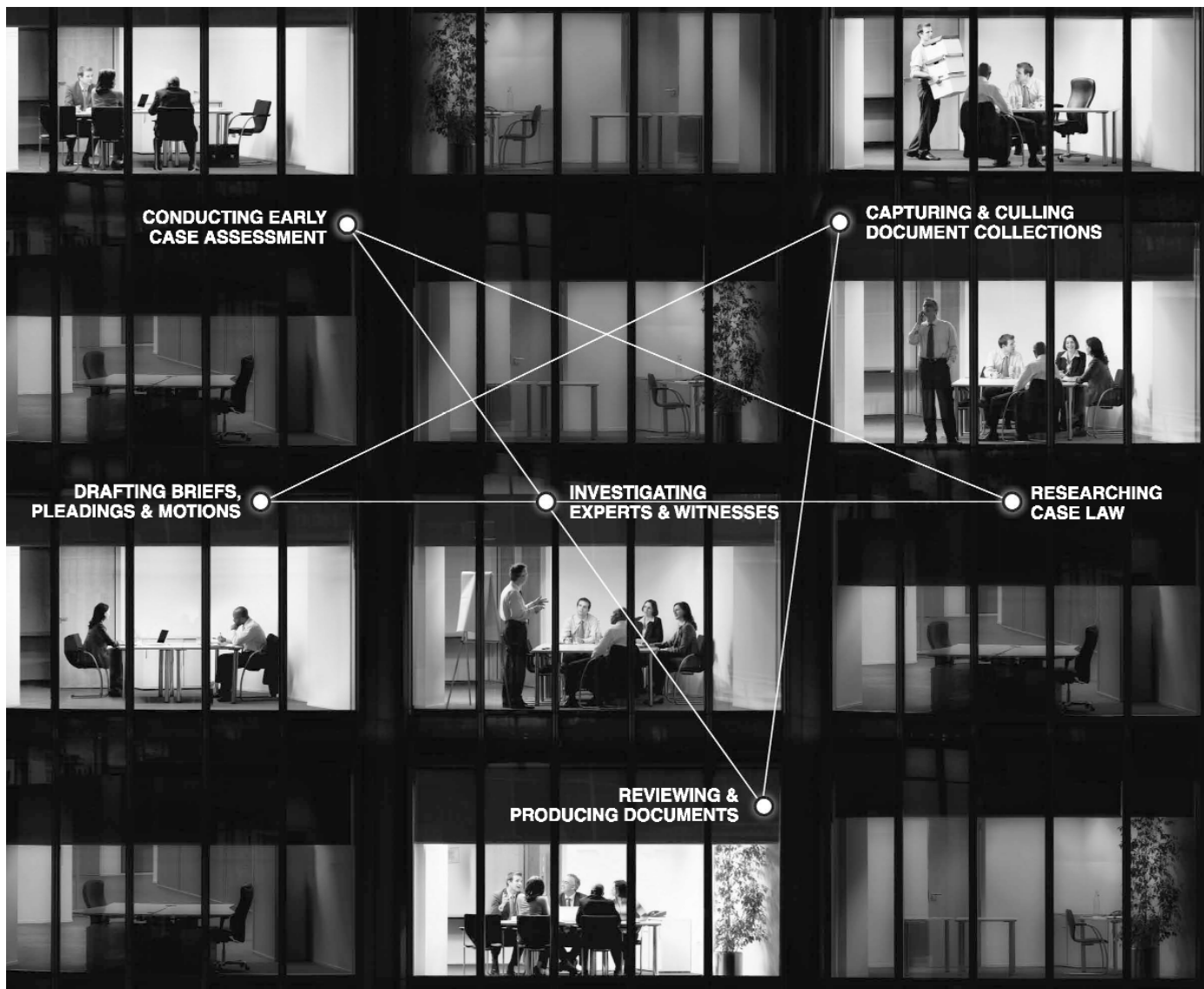
Changes in procedures at the Supreme Court



cuts the deficit
in the caseload



**Ethics opinion
on the new
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PRESIDENT'S MESSAGE

Montana's unsung lawyer heroes

The trifecta: community service, pro bono & politics

Cynthia Smith

A few weeks ago I had the pleasure of joining a panel of Missoula attorneys who were speaking to some university law students about pro bono and community service. I know the other lawyers who spoke on the panel are well known for their service to the indigent and to their community. I'm not sure why I was invited to speak, other than the fact that "I'm Just a Girl Who Can't Say No."

Joking aside, I'm sure I was asked because of my current and past service to my state and local bar associations. I certainly don't have the history of selfless service to the indigent that the other panelists have, but I'm working on it.

The panel was part of a series of lunch-time programs the State Bar of Montana has sponsored at the law school throughout the past few years. The State Bar invites the speakers and provides the students and speakers with pizza for lunch.

A wide variety of students attend, and they are without fail respectful of and interested in what the State Bar members have to say. The students who attend those programs make it clear to me that the future of our profession is in good hands. I'm grateful for that.

WHAT WAS REALLY WONDERFUL about this set of panelists and the students who came to hear them speak, though, was their obvious devotion to service. It reminded me of what a privilege it is to practice law, and what a responsibility we have to make sure that we use our education and experience to enhance access to justice for all.

The program on pro bono and community service made me think about how many other lawyers are out there whose service to our profession and the public goes largely unnoticed. For example, as we all know, our bar has suffered the loss of many lawyers to suicide over the past several years. Those losses are unquestionably tragic for our profession, our communities, and most importantly the lawyers' families. Also, recently

there have been lawyers who have left their practices, either through intentional abandonment or through no fault of their own because of debilitating illnesses. Without fail, though, in each case there have been one or more lawyers in the community who have stepped up, without pay or recognition, to address the inevitable quagmire left behind when a lawyer suddenly disappears from his or her practice.

That type of selfless service deserves our recognition and thanks, but we often are unaware of the service because these lawyers respect the confidentiality of the abandoned clients and the privacy of the fallen lawyers and their families.

I have profound respect and admiration for those lawyers who are willing to step in and pick up the pieces for the attorneys who for whatever reason have lost their way.

FINALLY, THE PROGRAM on pro bono and community service made me think about another type of community service that is provided by lawyers and non-lawyers alike, another type of sacrifice that we don't always appreciate or recognize. I have always thought that anyone who runs for public office provides an incredible public service, just by agreeing to put his or her name on the ballot. We are all so lucky, year after year, that there are fellow citizens who are willing to give us a choice when we vote.

I salute all the candidates who put themselves out there for public scrutiny, give their time to go out and meet the public, and invest their own money in the electoral process, even if it is just paying an often substantial filing fee. I thank each candidate who runs for office, for the public service of giving voters a choice.

So to all these unsung heroes, I say thank you for serving all of us.

○

Justices winning battle with their backlog

Supreme Court is handling its big caseload more efficiently

By **Charles Wood**
The Montana Lawyer

By making changes in its procedures, the Montana Supreme Court over the past year has wiped out its long bemoaned backlog of cases.

The Court also is bringing new cases to final disposition quicker than ever before, according to the Court's 2009 Case-Processing Report.

Last year, with changes enacted by the new chief justice, Mike McGrath, more than 150 cases brought before the Court were cleared within five months. At year's end, 160 percent of the Court's annual backlog – which includes 2009's cases (100 percent) plus the 387 cases carried over from the previous year – were brought to final disposition. "We didn't think we'd be caught up in a year, but we were," said McGrath, the former Montana attorney general who took the chief justice's office in January 2009.

"We now have zero cases that are over a year old," he said.

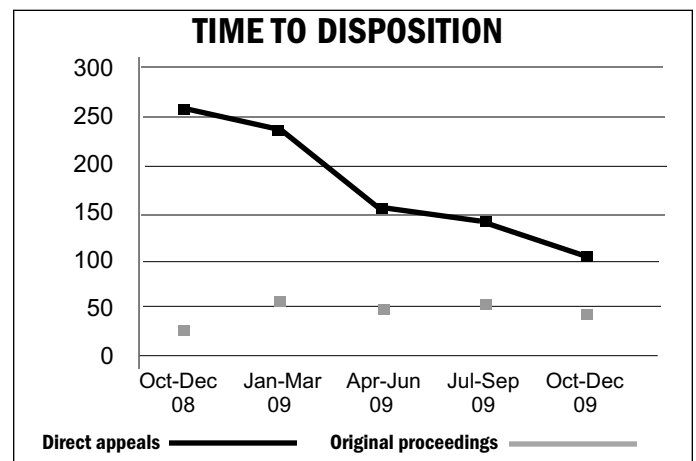
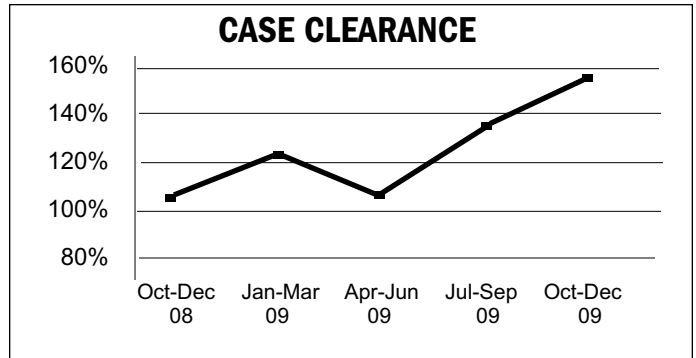
Justice McGrath's hope for a near-zero backlog to be carried over into 2011 stands in stark contrast to the Court's highest backlog of cases, nearly 700 in 2007.

The time to disposition of direct-appeal cases, from the moment it is assigned to one of the seven justices, dropped from about 260 days at the end of 2008 to about 120 days at the end of 2009. "We'd like to get pretty close to 100 days average," Justice McGrath told *The Montana Lawyer*.

The improvements stem from a Court caseload study enacted in 2007-2008 under former Chief Justice Karla Gray. Justice McGrath, in looking at the large backload of cases and the long time for cases to be cleared, felt what was needed was more "court discipline." He does not subscribe to the theory that the major problem was with slow casework by attorneys who file appeals. "Attorneys are doing fine," he said. "Primarily [the solution] was a matter of Court process. The Court just needed to be more disciplined."

Justice McGrath explained some of the changes occurring in the past 14 months:

- An increasing number of short memorandum opinions are being written under the McGrath regime, at the expense of longer majority opinions. In the last quarter of 2008, there were 32 memorandum or non-cite opinions written vs. 92 published majority opinions. In the last quarter of 2009, there were 65 memorandum opinions vs. 70 published opinions. Memorandum opinions take a justice a much shorter time to write than full-blown opinions.



Court rules say that memorandum opinions cannot be cited in future Montana court cases, which has caused controversy among attorneys in Montana who often look to Supreme Court decisions for precedence.

"We try to be discerning in our use of memorandum opinions," Justice McGrath said. Appeals cases, especially those with no constitutional issues, "lend themselves to memorandum opinions" because they have no precedence value, he said. Cases originating in the Supreme Court, such as matters involving the state, almost always receive the longer opinions.

- The way the Supreme Court staff operates has been changed. "When I came, we had sufficient staff, so we didn't have to add anyone," Justice McGrath said. "But we reorganized the way we do things." For example, new cases will be handled by one staff member on their way to assignment to justices, instead of bouncing around among several staff. "That gives us control over timing," Justice McGrath said.

- The chief justice now writes more opinions than his predecessors — three times as many (110 last year), Justice

More BACKLOG, Page 21

UM's Grace Case Project

*Experiment in live trial coverage
keeps the faith in justice*

By **Nadia White**, journalism professor
University of Montana

The heart of the defendants' argument to dismiss the case easily fit Twitter's 140-character limit. From the back of the courtroom, a University of Montana student sent a Tweet from her laptop:

"“There was perjury after perjury after perjury from a man whose text was groomed from beginning to end,” Bernick said.”¹

Two months into the criminal trial of *U.S. v. W.R. Grace* and it had come to this: Lead defense attorney David Bernick was moving to have the trial dismissed on grounds of prosecutorial misconduct.²

Robert Locke, portrayed by Grace as a disgruntled and self-important former global vice president for the company, appeared to have perjured himself. A key witness for the prosecution, Locke testified to details of a meeting he had earlier sworn had never taken place. The ensuing search for documents that supported the new version of Locke's truth led to the discovery of a host of e-mails between him and a federal agent – e-mails that should have been turned over to the defense much earlier.³

The undisclosed e-mails rose to prominence in the defense's argument for dismissal.⁴ The issue of what jogged Locke's

memory about the meeting receded.⁵

The trial was not dismissed, though Judge Donald Molloy, outside the presence of the jury, branded Locke a liar⁶ and told the jury to disregard much of his testimony. Grace and the three remaining defendants were acquitted. The reporters rolled up their power cords and moved on.

The question of what jogged Locke's perjurious memory, however, endured. The defense argued – and apparently, Judge Donald Molloy believed – that Locke's previously undisclosed recollections were restored only after he read online trial coverage describing the testimony of witnesses on the stand before him. The Internet, it was argued, proved irresistible to Locke⁷ in a way that other news reports did not. Judge Molloy admonished the prosecution to keep its witnesses away from online docket materials and online trial coverage, a restriction not customarily applied to other media.⁸

A year later, the Montana federal court is considering a district-wide rule restricting the use of new media tools in courtrooms and courthouses. A rule prohibiting blogging and tweeting from the courtroom could be trivialized as merely a boon to a beleaguered media looking to build audience however it can. It is much more serious than that, however; failure to accommodate the public's evolving expectations of access to public process threatens the court's ability not only to secure justice, but also to satisfy the appearance of justice.⁹ The way people receive information is undergoing one of the greatest transformations in the history of information technology.¹⁰ In

today's media climate, an open courtroom not only means letting people into the building, but letting information out as well.

ABOUT THE AUTHOR

Assistant Professor Nadia White teaches public affairs reporting at the University of Montana School of Journalism. She is a graduate of the Columbia University School of Journalism. She coordinated coverage of the W.R. Grace trial with Andrew King-Ries and Beth Brennan of UM's School of Law. She and King-Ries are currently working on a new joint project called Et al, Environmental Trials & Law News, Coverage & Commentary (etalnews.org).



UM project expands access to long-awaited trial

The online coverage Robert Locke admitted to reading was an experiment in live trial coverage by law and journalism students from the University of Montana.¹¹ He wasn't alone in being

glued to his screen. Defense attorneys had UM's Grace project site on their computers in the courtroom. Journalists around the country watched the trial on the site. People in Libby read the site to see how their stories were told in court. In the course of the 11-week trial, almost 10,000 unique viewers found their way to UM's experiment in blanket coverage, according to Google blog-traffic analytics.

The Grace trial may have been the most immediately covered federal criminal trial ever.¹² The UM project used the Internet to explain the trial in a narrative that was both broad and deep. The goal was to make it easy to understand the trial for as large and diverse an audience as possible.

UM's Grace Case class assembled the largest team ever dedicated to covering a federal trial using new media tools. Thirty-one students worked in two-hour shifts of two to provide regular news and legal analysis. They sent a steady stream of coverage about the trial using the social networking tool Twitter. (Twitter packages short bursts of information into 140-character messages – called tweets – and sends them to a network of people who follow the sender or search the topic. Trial observers could receive the Grace Case tweets on their phones, at *Twitter.com*, or watch them roll in on the *UMGraceCase* website.) The students posted news and legal analyses of the trial to a blog site every two hours or so. They explained how trials work and posted profiles of the main characters.

More than half of the students were second- and third-year law students charged with explaining the legal strategies and nuances as the trial unfolded. Their audience were lay readers and lawyers alike. The balance of the students were journalism students, all but two of whom were undergraduates. Journalism students described the story the jury was hearing as it was told in the courtroom, and sent the Twitter updates.

Traditional radio, TV and newspaper coverage continued, but commentators agreed that the online coverage was a novel and engaging glimpse into the future of large trial coverage.¹³ Several media outfits used Twitter to report the course of events from the trial, but no single reporter could match the student's prolific pace.

In 35 days in court, the students logged 4,561 tweets. They also published 312 blog posts and 140 pages of original background material, plus links to other coverage, court documents and more.

A story challenging to tell

At the heart of the trial was the asbestos contamination in Libby, Mont., the site of a former W.R. Grace vermiculite



Photo by Dan Doherty

ANDREW SCHNEIDER, JOURNALIST and author of "An Air That Kills," discusses the criminal prosecution of W.R. Grace Co. and several executives with University of Montana law and journalism students in March, 2009.

mine. That story was difficult for the government to tell, though, as the detail and scope of evidence was limited by pre-trial rulings on the statute of limitations (determined to be Nov. 3, 1999) and the meaning of "release" under the Clean Air Act.

The prosecution alleged that W.R. Grace Co. and several executives conspired to keep secret the deadly nature of the mine dust that settled over the town. The dust contained asbestos as a byproduct of the mine's vermiculite ore. When public health officials eventually investigated the extent of the problem in Libby, they found that rates of asbestosis, a disease associated with asbestos exposure, ran 40 to 80 percent higher than expected in the 1980s and '90s. Deaths from lung cancer were 20 to 30 percent higher than expected. An estimated 18 percent of Libby residents who were x-rayed showed signs of asbestos in their lungs.¹⁴

It was an intensely litigated trial involving issues of first impression, narrow evidentiary timelines, hard science and an abundance of finger pointing. In short, it was a news story that was both compelling and challenging for the Grace Case students to tell accurately.

UM's live trial coverage was conceived as a public service. Libby is a four-hour drive from Missoula; many people affected by contamination from the Grace mine could not make the drive on a regular basis. Others had moved or lived in communities across the country that had once housed Grace expansion plants, where worker exposure to asbestos was often higher than at the Libby mine itself.

For Libby residents such as Gayla Benefield, a whistle blower who brought national attention to the contamination, the abundance of coverage spared both the drive to Missoula, and the discomfort of sitting in on the trial.

"It was just too painful to listen to them drag these people through the mud day after day," she said, referring to the defense examination of witnesses from Libby. "I was happy to read the blog to keep up and not have to sit in the same room while that was going on."¹⁵

When Judge Molloy agreed to give the students a seat in the press section of the gallery, he knew they intended to cover the trial as an online team venture. In admitting them, he gambled that more coverage would translate to increased accuracy, transparency, and public trust in the system. The judge declined to say on the record whether he believes that gamble paid off. But many readers indicated that for them, it had.

A woman from Libby, whose miner father died of an asbestos-related disease as the trial was beginning, wrote a letter of thanks to the students:

"For those of us who have been unable to attend, your reporting has helped us to follow the events in the moment, get a sense of personalities involved in the trial, and understand – though not often agree with – the decisions of Judge Molloy," she wrote.¹⁶

Despite such successes, the chaos Robert Locke's transgressions wreaked on the trial may distract from the public good served by reporting tools that actively promote a broader understanding of justice.

A meeting, a warning, a memory: chaos

The broad, green Kootenai River rolls past the site where W.R. Grace's old screening plant once sat, right at the base of the haul road for the Libby mine. It's a gorgeous location; Lerah and Mel Parker felt they bought it for a song in 1993.

When Alan Stringer, the general manager of the Libby mine, heard the Parkers needed room to expand their nursery and mushroom-growing operation, he showed them the land and they became friends.

On March 4, 2009, Lerah Parker took the witness stand. She and Mel both have asbestos-related diseases. Her story was gut-wrenching. The land had been laden with asbestos. She and her family had worked the soil there and her grandchildren had played in the dirt. Little did they know at the time, she said, but the property proved to have the most asbestos contamination of any sites sampled around the mine or the town.¹⁷

Stringer, she said, had walked them into a deadly purchase.

When she learned that Grace knew of the contamination, she asked for a meeting with Stringer. On the witness stand, her voice shaking, she recalled asking him over coffee: "As my friend, when selling us this property, did you know this was going to happen to us?"

Stringer, she said, just set down his coffee and left.

The defense strongly countered the Parkers' claims that they were unaware of health risks on the land when they bought it,¹⁸ but it was Lerah Parker's testimony that the defense believed jogged Locke's memory of a meeting about the sale of the land.

Locke testified that he remembered discussing the sale of the screening plant site with his boss, Robert Bettacchi.¹⁹ He said he had been concerned that it was too contaminated to risk selling. During the meeting in question, Locke testified

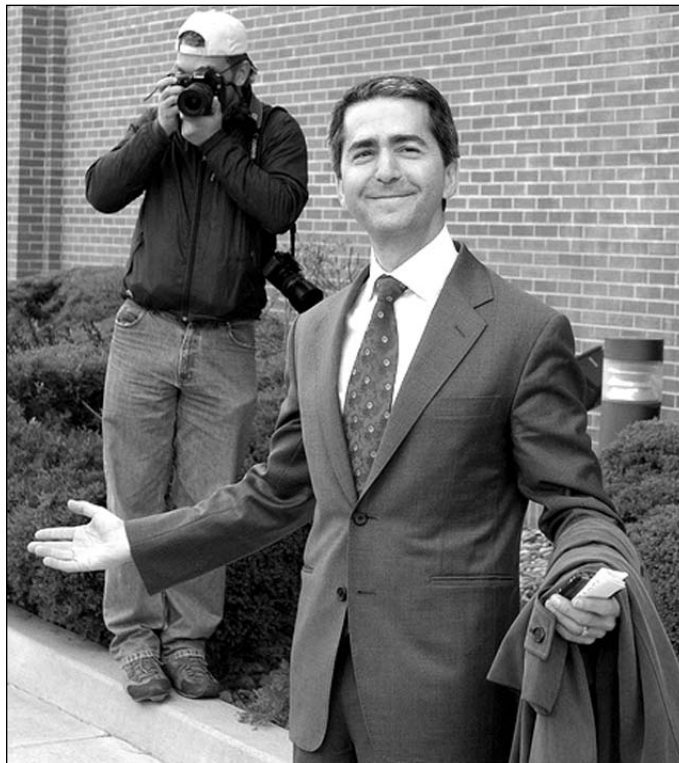


Photo by Michael Gallacher of the *Missoulian*

DAVID BERNICK, LEAD COUNSEL for W.R. Grace & Co., stands outside the Russell Smith federal courthouse in Missoula moments after the jury unanimously acquitted the company and three former executives. This photo was posted on a *Missoulian* reporter's "Cops and Courts" criminal-justice blog.

that Bettacchi, had callously responded to Locke's concerns, saying caveat emptor.²⁰

That testimony contradicted Locke's earlier testimony presented to the grand jury. In that testimony, Locke said he had never discussed real estate sales with Bettacchi.²¹

Robert Locke didn't like his former boss, this much the jury knew. He had spent 10 years in litigation against the company. Bettacchi was charged with conspiracy to pollute and defraud as well as knowing endangerment. His attorney, Thomas Frongillo, told the jury that Locke had read about Lerah Parker's testimony on the students' blog and changed his testimony to more closely match hers.²²

Locke admitted reading the blog, although he said he found it to be "not very fulfilling."

Frongillo said Locke's admission that he had read the blog was "one of those Perry Mason moments. It was one more nail in his coffin of credibility."²³ The prosecution, Frongillo said, had set Locke up to be its key witness knowing he was driven by his frustration with Bettacchi and his anger at Grace.

From this point, the government struggled to keep its footing. Attorneys for Grace and Bettacchi accused the prosecution of withholding key evidence and pursuing testimony it knew to be false. Locke slid from being an asset for the prosecution to being a liability.

Attorneys continued to disagree about Locke's memory shift long after the verdict was in. Frongillo remains convinced Locke read the students' blog and changed his testimony to include information he could not have known without reading the Parkers' testimony.²⁴

"That whole caveat emptor story was a complete fabrication," Frongillo said in an interview last summer. "I believe Bob Locke followed the case every step of the way."

The risk of tainted witnesses, Frongillo said, is his primary concern about live online trial coverage. The only cure, he said, might be to sequester witnesses in criminal trials. In contrast, Assistant U.S. Attorney Kris McLean wonders whether the medium of the message should matter in the eyes of the court.

New concern caught prosecutor off-guard

During the trial, after Locke confirmed that he had read the blog, Judge Molloy made it clear that he expected the government to be sure its witnesses were not reading testimony from the trial, a demand that caught the government's lead prosecutor off guard.

Although witnesses are routinely told not to talk about their testimony or read transcripts of testimony that comes before they take the stand, mass media is not usually part of the witness exclusion rule.

"It's never been part of that rule that witnesses shouldn't read news coverage, not in the 23 years and couple of hundred trials I've worked," McLean said. "What is the difference from a legal perspective between reading a newspaper the next morning and reading Twitter immediately? What's the difference?"²⁵

The media is certainly not magic. Covering a trial live, online, does not necessarily attract an audience eager to know more about how the justice system works. But when a trial captures the public's attention, intensive online coverage offers readers the opportunity for a richer appreciation for the American court system.

In August 2005, *Billings Gazette* police reporter Greg Tuttle provided live blog coverage of the state court trial of Sabine Bieber, before Judge Gregory Todd. It was the *Gazette's* first run at live trial coverage and the paper called it a success.

The trial of the Laurel daycare operator focused on a hot-button issue – child safety. The defendant was accused of routinely using a common cold and allergy medicine to sedate children and she was found guilty of negligent homicide when that practice led to the death of a 1-year-old boy. The live coverage was popular and the *Gazette* saw a spike in traffic to its website.²⁶

"It was a national story," *Gazette* editor Steve Prosinski said. "Nancy Grace of CNN fame picked up on it. Greg was on TV once or twice. It had lots of traffic on the website."

Based on the popularity of the Bieber trial, the *Gazette* decided to try live trial coverage again a year later, focusing on the murder trial of Richard Nava.

The Nava trial was also in state district court, this time before Judge G. Todd Baugh. The case focused on the honor killing of 24-year-old Levi Minard at a house party. Minard, it

seemed, had disrespected Nava's younger brother.

Tuttle, the *Gazette's* veteran state courts reporter, provided coverage again. Although the trial focused on a prominent Billings family, it lacked the national draw of the Bieber trial and failed to attract a significant audience.

"It was a dud," Prosinski said.

The *Gazette* has not pressed for live-trial coverage in federal district court because, Prosinski said, he expects Judge Richard Cebull would deny the request to allow blogging from his courtroom. But Prosinski also said he believes live trial coverage is a distraction for reporters. The *Gazette's* philosophy now is that updating its website regularly is better for the news operation as a whole than live trial coverage, he said.²⁷

Across the state at the *Missoulian*, crime reporter Tristan Scott has tested the waters in both state and federal courts. A few weeks before the Grace trial opened, Scott used an array of new media reporting tools to cover the murder trial of Anthony St. Dennis in state district court. It was an especially good candidate for online trial coverage.

Forrest Salcido, a homeless veteran, was killed in Missoula but the trial was moved to Havre due to concerns about pre-trial publicity. The distance between the affected community and the trial presented a barrier to access that the online coverage helped to bridge.

From the courtroom, Scott filed short updates on Twitter and longer updates on his blog, *copsandcourts.com*.²⁸ He continued using new media reporting tools once he left the courtroom: He filmed reports on the day's testimony outside the courthouse and posted them to the *Missoulian's* website; posted photos admitted as evidence to the online site Flickr and linked to them from his blog report; and uploaded audio of a jailhouse conversation that was admitted as evidence.

Scott's audience was mostly local, including friends and relatives of both the victim and the defendant. Reading the comments section of the blog, it is clear that witnesses, apparently after they had testified, also read the blog and even commented on the trial coverage.

The Havre trial gave the *Missoulian* a glimpse of the compelling storytelling that could be done using new media technology from inside the courtroom.

"As we did it, it pulled in people who may not have been interested in (trial) coverage," said Tim Ackimoff, the *Missoulian's* digital manager.

Two weeks later, Scott was back in the courtroom using Twitter and his blog to cover pretrial arguments about what science would be allowed in the fast approaching Grace trial.

Justice in the Last Best Place need not be done in the dark

Living in the Last Best Place doesn't mean Montanans are the last to know. Montanans, like people around the world, are becoming accustomed to having the news arrive literally in their pockets, or at least on their computers. We are part of a tremendous cultural shift that emphasizes distributed news systems such as cable TV, blogs, targeted topical news sites and the hyped-up word-of-mouth world created by social networking. Fewer and fewer people turn exclusively to the old centralized news systems – such as national network news and

newspapers – for their news.²⁹

This shift challenges the legal system: How can people understand the course of justice if they are less and less likely to look for it in conventional places? The Grace Case experience demonstrates the power of digital media to light the corners where justice is done, corners that have become dim as public reliance on traditional media wanes.³⁰

The average reader of a local newspaper's website spends eight to 12 minutes reading the news there each month, which amounts to a minute worth of reading every few days.³¹ The average visitor to the Grace Project site spent almost six minutes on the site per visit. They stuck around. People came to the site because they wanted news about that trial; they wanted to understand how justice was being served.

As the Montana federal court contemplates a rule governing digital access to federal courtrooms in Montana, accommodating new-media journalists might go a long way toward helping Montanans understand how justice is served. Although Federal Rule 53 prohibits broadcasting, and has been used by some courts to ban blogging and tweeting from the courtroom (see Twitter Crackdown in Baltimore Circuit Court, *Baltimore Sun* Feb. 9, 2010, available at http://weblogs.baltimoresun.com/news/opinion/2010/02/twitter_crackdown_in_baltimore.html), it can be argued that blogging and tweeting do not fall within the ambit of the rule, as no images are transmitted and no voices are recorded.³²

People are eager to follow the intricacies of the justice system for certain newsworthy trials. When their hunger to feel instantly in the know is met, they understand the underlying process well enough to accept even a verdict with which they disagree..

The potential exists for new media in the courtroom to provide people with news they want, when they want it. It is an opportunity to keep a trust in justice that, since before the Norman Conquest, has been achieved by keeping the promise of public access to trials.³³ Customs and cultures change and so have trials. What better way to let people see what justice looks like than to open the door when they knock?

NOTES

1. Flandro, Carly reporting live via Twitter #GraceCase 9:50 AM April 27th, 2009 from web.

2. Defendants' Joint Motion to Dismiss the Indictment Due to the Government's Repeated and Intentional Misconduct, filed April 23, 2009 by W.R. Grace, available at <http://www.umt.edu/gracecase/legal-issues-trial/government-case/prosecutorial-misconduct/index.html>

3. Government's Consolidates Opposition to Defendants' Motions for Dismissal Due to Prosecutorial Misconduct, CR 05-07-M-DWM, p. 14, April 25, 2009.

4. Defendants' Joint Motion to Dismiss the Indictment Due to the Government's Repeated and Intentional Misconduct, filed April 23, 2009 by W.R. Grace. p. 42.

5. Hegyi, Nate, "Locke accused of perjury and theft," UM Grace Case, March 26, 2009, available at www.umt.edu/gracecase/2009/03/26/locke-accused-of-perjury-and-theft/index.html in combination with Tweet (#GraceCase Frongillo mentions UMGraceCase blog, points at reporter. -nh 4:50 PM Mar 26th, 2009 from web,) and (#GraceCase McLean soon notified the witness to not read the blog in light of Molloy's condemnation of Locke after he admitted to reading it. 4:53 PM Apr 9th from web.)

6. April 17, 2009 Tr. at 241 (THE COURT: "[T]his guy is a liar.").

7. Tweet #GraceCase McLean soon notified the witness to not read the blog in light of Molloy's condemnation of Locke after he admitted to reading it. 4:53 PM Apr 9th from web.

8. McLean, Kris, interview with author, July 22, 2009.

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11. UM Grace Case: A Joint Project of the School of Law & the School of Journalism. www.umt.edu/gracecase/. Prof. Nadia White supervised the journalism students and served as managing editor of the website. Law professors Andrew King-Ries and Beth Brennan supervised the law students and edited their contributions.

12. Doyle, Michael, "Suits and Sentences," Feb. 27, 2009, available at: <http://washingtonbureau.typepad.com/law/2009/02/covering-grace.html>

13. <http://blogs.mcclatchydc.com/law/2009/02/covering-grace.html> and Cooper, Glinda S.; Brown, Rebecca C. "The Ghost of Public Health Journalism: Past, Present, and Future," *Epidemiology*. 21(2):263-266, April 2010.

14. GAO, 2003, "Hazardous Materials. EPA's Cleanup of Asbestos in Libby, Montana, and Related Actions to Address Asbestos-Contaminated Materials," available at <http://tinyurl.com/ya343co>.

15. Center for Asbestos Related Disease Clinic Web site, available at www.libbyasbestos.org/libby/nation.cfm

16. Personal interview with author, Libby, Mont., summer, 2009.

17. Comment on UM Grace Case blog, submitted May 7, 2009.

18. Harrison, Janet, "Lerah Parker Takes the Stand," UM Grace Case, March 4, 2009, available at www.umt.edu/gracecase/2009/03/04/lerah-parker-takes-the-stand/index.html, quoting a letter entered as evidence but sealed from W.R. Grace to the Montana Department of Mines dated Nov. 22, 1992, and signed by Alan Stringer reading in pertinent part: "Average exposure at Highway 37 was the highest of all the sampling points"

19. Mazurek, Kathryn, "Frongillo to Parker: Liar, Plagiarizer," UM Grace Case, May 5, 2009, available at www.umt.edu/gracecase/2009/05/05/frongillo-to-parker-liar-plagiarizer-greedy/index.html.

20. (Tr. 4046:16-25; 47:1-17; Defendant Robert J. Bettacchi's motion for dismissal with prejudice on the grounds of prosecutorial misconduct, filed April 23, 2009.)

21. (Tr. 4491:17-25; 4492:1-7; Defendant Robert J. Bettacchi's motion for dismissal with prejudice on the grounds of prosecutorial misconduct, filed April 23, 2009.)

22. Doherty, Daniel, UM Grace Case, "Week 6: Locke testimony ends in perjury allegation," March 29, 2009, available at www.umt.edu/gracecase/2009/03/29/week-6-locke-testimony-ends-in-perjury-allegation/index.html

23. (Tr. 4491:17-25; 4492:1-7; Defendant Robert J. Bettacchi's motion for dismissal with prejudice on the grounds of prosecutorial misconduct, filed April 23, 2009.)

24. Frongillo, Thomas. Interview with author, July 13, 2009.

25. Frongillo, Thomas, Interview with author, July 13, 2009.

26. McLean, Kris. Interview with author, July 22, 2009.

27. www.BillingsGazette.com

The Supreme Court's docket goes online

Attorneys, public can now track case actions and case documents

After a year of development, a new online "public view" docket for Montana Supreme Court cases has been created, announced Clerk of the Montana Supreme Court Ed Smith.

For the first time, an attorney or interested party can view online the register of actions of any case before the Montana Supreme Court and also view images of the documents filed in a case. Confidential documents will not be available for viewing. The online docket is refreshed every seven minutes, so the information presented is virtually "real time."

"We're very excited about the public-view docket," Smith stated. "This is a first for any state court in Montana. Not only will this service allow attorneys to conveniently track their cases and view images of the submitted pleadings, but it also enhances public access to court records, which is something I'm committed to. Montana is a state which promotes open government and the public's right to know, and this new feature facilitates both ideals."

In addition to benefiting appellate counsel – who will be able to view images of docketed pleadings immediately rather than waiting for the mail to deliver the paper copy – Smith also anticipates the public view docket will reduce the amount of time his staff now devotes to answering telephone calls regarding the status of cases before the high court. "I believe the public view is going to be a terrific tool for anyone involved in our state's appellate process," Smith stated, "I encourage everyone to get online and check it out."

To access the public view docket, an interested person can go to the Judicial Branch website at www.courts.mt.gov and

choose the "Docket" tab from the banner at the top of the web page. Once in the public view screen, one can find both pending and closed supreme court cases by searching either the case number, a name of one of the parties, or by attorney associated with the case. The database of cases available for viewing goes back to cases that were pending as of 2006, when Smith's office obtained and deployed C-Track, a state-of-the-art case management system which is a web-browser based application written using open systems architecture similar to Amazon.com and eBay.

The public view docket is the latest in a series of technological enhancements Smith has advanced in recent years. Since deploying C-Track in 2006, Smith's office has developed an electronic notification service by which supreme court orders,

opinions, and notices are sent via e-mail to those appellate counsel who sign up for the service. With this feature, attorneys may choose an unlimited number of e-mail addresses through which to receive an electronic version of court documents, which are delivered at the time the

TO SIGN UP for electronic notification, fill out and send in the "E Notification" letter from the "Forms" section on the Judicial Branch website at www.courts.mt.gov/clerk/filing/forms.mcp.

docket entry is made greatly expediting the distribution process. To sign up for electronic notification, just fill out and send in, the "E Notification" letter from the "Forms" section on the Judicial Branch website at www.courts.mt.gov/clerk/filing/forms.mcp.

"Although I am pleased with our recent efforts, I am continuing to look for ways to improve the appellate process through the use of technology," said Smith. "Shortly, all supreme court orders will be viewable on a daily basis from the "Order" tab on the branch website. We are continuing to work towards general e-filing for all state courts," added Smith.

If you have any questions about the public view docket, contact the Office of the Clerk of the Supreme Court at (406) 444-3858.

○

28. Prosinkski, Steve. Interview with the author, February, 2010.

29. www.copsandcourts.com

30. Failure to Inform: Is There A Looming Media Crisis in Montana? Burton K. Wheeler Center For Public Policy conference, Missoula, Mont., Sept. 30-Oct. 1, 2009 (summary available at www.wheelercenter.org/pub/presentations/Media%20Conference%20Summary%20'09.doc)

31. *Richmond Newspapers, Inc. v. Virginia* 448 U. S. 567 (1980)

32. Doctor, Ken. "The Newsconomics of time-on-site," Neiman Journalism Lab, The Neiman Foundation for Journalism at Harvard, March 4, 2010.

33. Federal Rule of Criminal Procedure 53

Lawyers have choice about notary-rule compliance

The following State Bar ethics opinion was delivered by the State Bar's Ethics Committee in March:

Ethics Opinion 100310

Facts

Section 1-5-416(1)(g), MCA provides that all Montana notaries "keep and maintain an official notary journal recording the details of each notarial act performed" including the date, the type of notarial act, the type and date of the document, name, address and signature of the individual and type of identification used, among other information. Section 1-5-419, MCA mandates transfer of a notary's journal to the county clerk and recorder upon a notary's expiration, resignation, death or removal.

Question presented

Does 1-5-416(1)(g) require attorneys who are notaries or notaries who work for attorneys to make public disclosures which violate their duty to maintain the confidences of their clients?

Short answer

Yes, but attorneys may choose to exercise their responsibilities under the Rules of Professional Conduct and may choose to not file the journal with the clerk and recorder as required by the statute.

Discussion

The issue presented pits the obligations and responsibilities of lawyers, who are constitutionally authorized officers of the court, opposite notaries, who are statutorily mandated witnesses of executed documents. It is this Committee's opinion that the Montana Rule of Professional Conduct on confidentiality, adopted pursuant to the judiciary's inherent constitutional power to define, regulate and control the practice of law, overrides a legislatively enacted general statute regulating the witnessing of documents.

Much of the mandated information in a law office's notary journal is considered confidential information. As explained by the requesting attorney, clients have little interest in having the required journal information filed in the public arena:

"Within the last several weeks, as I have notarized clients' signatures, I have asked a number of clients about delivering to the local clerk and recorder their names, addresses, signatures, and a description of the document notarized. Without exception, each client responded with "no" or a stronger, earthier variation of "no" which I will refrain from putting in this letter."

Rule 1.6 of the Montana Rules of Professional Conduct provides, in relevant part:

(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).

(b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary (emphasis supplied).

(4) to comply with other law or a court order.

In short, the rule provides that a lawyer may reveal confidential information to comply with other law. The rule does not contain a mandate, it contains permission. The lawyer has a choice.

The Montana Supreme Court possesses original and exclusive jurisdiction in the enforcement of professional ethics and conduct of the members of the Unified Bar of Montana, as provided in the Montana Constitution, Art. VII, section 2, and the Montana Rules of Professional Conduct. It is not within the purview of this Committee to address the statute's constitutionality. The Rules of Professional Conduct provide ample protection for information contained in the notary journals. The legislature intended by the statute to protect the information contained in the journal by having it filed with the clerk and recorder. The information contained in an attorney's or attorney's staff's notary journal is protected by the confidentiality rule and protocols lawyers have in place for the orderly transition of their files in the event their practice is closed. Lawyers may choose, as a matter of comity, to follow the direction provided by the legislature. However, lawyers may also choose, as contemplated by the permissive language of Rule 1.6 (b), to not comply with the legislative direction and protect their client's confidential information in accord with their office's protocols.

This statute, 1-5-416(1)(g), MCA, is taken from a much larger model act which addresses the attorney confidentiality issues. While the attorney confidentiality issue was briefly raised in the legislative hearing on the Montana statute, it is clear the full extent of the impact of the statute on attorney notaries and attorneys who employ notaries within their offices was not fully understood or appreciated. The Committee also understands this statute may be amended in future legislative sessions. At least one state utilizing the model act, Arizona, has specifically provided that the journal containing entries subject to attorney client confidentiality is the property of the employer of the notary and the journal is retained by the

employer at termination of employment.¹

The Committee also proffers a number of suggestions to address the concerns about violations.² But these suggestions do not address the issue presented: Does a general regulatory statute trump the Montana Rules of Profession Conduct? We believe attorney core rules of professional conduct, most specifically the rule on confidentiality, override this particular general legislative regulatory mechanism.

THIS OPINION IS ADVISORY ONLY

NOTES

1. Arizona Revised Statutes 41-317, 41-319. Section 41-319 (E) provides: If one or more entries in a notary public's journal are not public records, the notary public may keep one journal that contains entries that are not public records and one journal that contains entries that are public records. A notary public's journal that contains entries that are not public records is the property of the employer of that notary public and shall be retained by that employer if the notary public leaves that employment. A notary public's journal that contains only public records is the property of the notary public without regard to whether the notary public's employer purchased the journal or provided the fees for the commissioning of the notary public.

2. In summary, alternatives available to safeguard confidential information contained in notary journals of notaries who resign, die, are removed or whose term expire include: 1. Request that the journal be sealed by the District Court, with language specifying that access to the journal is only via Court ordered access to a particular page of the document: "In re Sealing the Notary Journal of [the notary]." 2. The Secretary's Office also agreed that one signature per page in the journal is acceptable, as long as the page reflects that the other entries were left intentionally blank. It is not appropriate to keep two journals. 3. Not all documents require notarization. Confirm the necessity prior to recording otherwise confidential information. 4. Prior to notarizing a document, distinguish whether the lawyer is performing the service as a witness or as a lawyer. The witness/lawyer rule potentially preempts future representation. 5. In the journal, use general terms of art. Instead of writing "Prenuptial Agreement" write "contract" or "agreement." Those seeking additional information about Montana's current notary statutes can visit the Secretary of State's website at <http://sos.mt.gov/Notary/Changes.asp>.

Missoula conference focus to be on mediation practice

The State Bar of Montana's Dispute Resolution Committee will co-sponsor a conference titled "Horizons of Mediation Practice" on April 29-May 1 in Missoula.

Among the conference's highlights will be a presentation by leading mediation scholar Josh Stulberg, the John W. Bricker professor of law at the Ohio State University Moritz College of Law. Prof. Stulberg will speak on "The Promise – and Dangers – of Mediation."

Panels and workshops will be held at the conference on:

- Using child-development theories in parenting plan mediations.
- Informed consent in landlord-and-tenant mediations.
- Building restorative justice programs.
- Workplace, elder, faith-based, cross- and inter-cultural, real estate, family, environmental, and public policy mediation.
- Basic mediation skills.

The conference also is sponsored by the University of Montana School of Law, Montana Mediation Association, Community Dispute Resolution Center of Missoula, and others.

Watch www.montanabar.org, or call (406) 243-2007, for more details.



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A CLE-reporting reminder: Beginning this year, CLE-reporting affidavits are being mailed to Bar members separately from the dues statements. Dues statements were mailed by April 1, and CLE affidavits will be mailed April 15

– after the CLE reporting period has ended. The reporting year still runs from April 1 to March 31, but attorneys can attend and report CLEs up until May 15 without penalty if they have not earned enough credits to meet the requirement for the reporting year.

Lawyers needed to help military personnel

The Legal Assistance for Military Personnel (LAMP) program was initiated nationwide to provide legal assistance to active duty military and their families.

In Montana, the State Bar's Lawyer Referral & Information Service Committee met in 2002 to discuss the implementation of LAMP'S Military Discount Program. A lawyer's participation in the Military Discount Program requires a discount in normal legal fees of at least 10 percent; however, any assistance provided to military personnel on a pro bono basis would be greatly appreciated.

Shortly afterwards, attorneys were

encouraged to volunteer for referrals from the LAMP program. At this time, there are only six attorneys on the State Bar's (LAMP) list. The Bar is especially seeking attorneys who have completed the Veterans Benefits Advocacy program or who have experience with or knowledge of veterans' affairs. But that is required only in cases involving veterans' benefits. Lawyers who have not taken the Advocacy program are also needed to provide services in other legal categories (family law is the largest category involving service members).

When a soldier faces activation and receives his or her orders, he can expect

to receive a simple will and some guidance under the Soldiers & Sailors Relief Act. But activated soldiers may face many issues upon deployment: family law matters, guardianship for single parent family personnel, business issues for self-employed reservists, and estate and trust matters that are too complex for typical Judge Advocate (JAG) attorneys to handle in the short time-frame prior to actual deployment.

Recently, the State Bar received two calls in one day from soldiers needing help because they are undergoing divorce proceedings.

Attorneys are often not familiar with the Soldiers & Sailors Relief Act, as it is fairly unique. Activated military personnel are entitled to have pending court matters stayed, consumer debt reduced to 6 percent and re-employment rights after their return from active duty.

The LAMP program is limited to civil law, and is limited to the areas of practice and locations of attorneys who have agreed to accept those cases. Having only six attorneys in the Montana program leaves much of the state uncovered.

A referral to a LAMP attorney is provided to a



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Registration: \$405 (by 4/2/10); \$425 (after 4/2/10). For a complete schedule and brochure, please visit www.osbarcle.org or call the OSB CLE Service Center at (503) 431-6413.

Special rates at the Davenport Hotel start at \$165 single or double occupancy and are available through 3/23/10. Call (800) 899-1482 and request the Oregon State Bar Northwest Bankruptcy Institute rate.

State Bar assists attorneys with local Law Day events

By **Brendan Kelley**
State Bar VISTA member

In celebration of the 53rd annual Law Day, the State Bar of Montana and the Law-Related Education Committee encourage attorneys from across the state to participate in local Law Day activities.

Law Day is celebrated nationally on May 1, but statewide activities – mainly lawyers and judges making presentations to school classes and other groups – will take place that whole week.

In 1958, President Dwight Eisenhower established Law Day as “a day of national dedication to the principle of government under law.” Commemorated annually since that date, Law Day programs are conducted throughout the country by bar associations, courts, schools, and civic groups.

The theme this year is “Law in the 21st Century: Enduring Traditions, Emerging Challenges.” This allows for attorneys to speak on a wide variety of topics ranging from globalization and law, the challenge and benefits of new technology and law, and the new face of: human rights, criminal justice, intellectual property, business transactions, dispute resolution, human migration, and environmental regulation.

To volunteer for Law Day activities in your area, contact someone in your local area on the list below:

- Helena – Chris Tweeten, Attorney General’s Office, (406) 444-1380.
- Missoula -Bob Campbell, (406) 543-5276.
- Billings – Ron Youde – (406) 252-5400.
- Great Falls – Jason Holden, (406) 452-6500.

If you are not in one of these areas and you need help setting up a presentation, call Brendan Kelley at the State Bar, (406) 447-2213.

To see what your area has planned and get involved, contact your local bar association. You can also go to www.lawday.org to view lesson guides created by the American Bar Association to help with your Law Day presentation. ○

STATE BAR CALENDAR

April 1

Bar dues payment deadline

April 6

Family Law Phone CLE, noon

April 8

HIPPA Phone CLE, Part I: Changes to the HITECH Act

April 10

News and advertising content deadline for May issue of *The Montana Lawyer* magazine

April 12

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

Equal Justice Task Force meeting, 10 a.m., office of Disability Rights Montana, 1022 Chestnut, Helena

April 15

State Bar Executive Committee meeting, 3 p.m., Missoula

CLE affidavits sent to attorneys by State Bar

April 16

State Bar Board of Trustees meeting,, 9:30 a.m., Room 215, UM School of Law, Missoula

April 21

Privacy Rules Update CLE, time and place to be announced

April 22

HIPPA Phone CLE, Part II: Business Associates Agreement under HITECH Act, noon

May 7

Technology Committee meeting, 10 a.m., State Bar offices, Helena

May 12

News and advertising content deadline for June issue of *The Montana Lawyer* magazine

May 15

CLE affidavits due back at State Bar

May 21

State Bar Executive Committee meeting, 8 a.m., Gallatin Gateway Inn

May 21-22

State Bar Board of Trustees strategic planning meeting, 10 a.m., Gallatin Gateway Inn

June 3-5

Jackrabbit Bar Conference, Fargo, N.D.

July 26-28

Bar Exam, Missoula

Upcoming CLE seminars for Montana lawyers

CLEs with Ethics & SAMI* credits

**Substance Abuse / Mental Impairment*

5.0 Ethics credits required every 3 years – 1.0 of them must be a SAMI credit. See www.montanabar.org for SAMI updates.

April 20 Teleconference at noon

Guidance & Sanctions for Ethical Behavior Movement

1.50 CLE credits, including 1.50 Ethics (no SAMI) credits.

Presented by Cannon, (800) 775-7654

May 6 Missoula – Location to be announced

Residential Landlord-Tenant Law: Beyond the Basics 6.75

CLE credits, including 1.0 Ethics (no SAMI) credit. Presented by Sterling Education Services, (715) 855-0495

May 10 Billings – Hampton Inn

Evidence & Expert Testimony 6.0 CLE credits, including 1.0

Ethics (no SAMI) credit. Presented by the National Business Institute, (800) 930-6182

May 21-22 Helena – Location to be announced

Understanding, Attacking & Winning DUI Cases 12.0 CLE

credits, including 1.0 Ethics (no SAMI) credit. Presented by Fact Finder Investigations, (208) 340-2933

All other CLEs

April 6 Telephone CLE at noon

Montana Family Law Phone CLE, Part. 4: Using Discovery in

Family Law 1.0 CLE credit. Presented by the CLE Institute of State Bar of Montana, (406) 447-2206

April 6-7 Helena, MT – State Capitol building

Montana Environmental Policy Act (MEPA) Training 11.75

CLE credits. Presented by the state Legislative Services Division, (406) 444-3747

April 8 Telephone CLE at noon

The HIPPA HITECH Act, Part I: An Overview 1.00 CLE credit.

Presented by the Health Care Law Section of the State Bar of Montana, (406) 447-2206

April 10 Helena – Carroll College

End of Life Choices 1.0 CLE credit. Presented by the

Montana ACLU, (406) 443-8590

April 16 Missoula – Boone Karlberg Law Office

Child Support Guidelines Training 3.0 CLE credits.

Presented by the Missoula Family Law Self-Help Center, (406) 258-3428

Other web & phone CLEs for Montana credit are:

■ For the State Bar of Montana's approved online CLEs, go to www.montanabar.org and click CLE / Online CLE Courses

■ 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/

■ The National Business Institute's live teleconferences at www.nbi-sems.com/Default.aspx/?NavigationDataSource1=N:304

April 16 Missoula – Missoula County Courthouse

The Law, the Guardian & Child Support 1.0 CLE credit.

Presented by the 4th Judicial District Court, (406) 258-3461

April 16 Teleconference

Paralegal Seminar: Post-Filing Considerations and Corporate

Recordkeeping for Paralegals 1.0 CLE credit. Presented by the Institute for Paralegal Education, (800) 793-5274

April 22 Telephone CLE at noon

The HIPPA HITECH Act , Part II: Business Associates

Agreements, 1.00 CLE credit. Presented by the Health Care Law Section of the State Bar of Montana, (406) 447-2206

April 26 Missoula – Ruby's Inn

Water Rights: What You Need to Know 7.5 CLE credits.

Presented by Montana Watercourse and the state Department of Natural Resources & Conservation, (406) 994-6671 or www.mtwatercourse.org

May 25 Teleconference

The Use of Wealth to Modify Behavior 1.50 CLE credits.

Present by Cannon, (800) 775-7654

May 26 Helena – Holiday Inn Downtown

Montana Water Laws & Regulations 6.0 CLE credits.

Presented by HalfMoon LLC, (715) 835-5900

May 26 Teleconference & webcast

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Bucking Horse CLE

New Privacy Rules; Unrepresented Opposing Parties; Americans With Disabilities; Business Law Update; Lawyer's Assistance Program; Legislative Update

Civil Litigation

Hardware, Software & Guidelines for Evidence & Argument in Court; Insurance; Safe Place to Work Claims; Litigation Dangers; Litigation Pitfalls

CLE & Ski

Land Use; Case Update; New Canons of Judicial Ethics; Technology; Employment Law; Business Law; Post Courtal Separation Anxieties; Ethics

Easements

Our Lady of the Rockies v. Peterson Oral Arguments & Decision; *Blazer v. Wall*; Ownership & Access Across Public Land & Waterways

Family Law

Prenuptial Agreements; Teachers' Retirement Accounts; State Retirement Accounts; Discovery; New Public Access Rules; Ethics in Working with Unrepresented Opposing Party

Law Office Management

Closing, Retaining & Destroying Client Files; Workers' Compensation; Intellectual Property; Privacy in Family Law; Attorney-Paralegal Ethics

Malpractice Prevention

Malpractice Traps; Electronic Ethics; Risk Evaluation; Lawyers' Assistance Program; Your Client Turns on You

Oil, Gas & Wind Leasing in Montana

Wind Leases & Options; Federal Oil & Gas Leasing & Operation; When You Find a New Natural Gas Field; CO2 Sequestration; Title Problems; Coal Bed Methane; Appearing Before the Oil & Gas Board

On the Water Front

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CLE materials from 2008

Administrative Law & Procedure

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Annual Meeting CLEs

Professionalism; Technology; Federal Tax Update; Family Law Update; Stress & Depression; Law Practice Business; MTLA Update; Land Use; Judicial Conduct Rules; MDTLA Update; Depositions; Rules of Appellate Procedure; Criminal

Law Update; Federal Court Rules

Bankruptcy

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Bench-Bar

Motions; Limited Representation & 'Unbundled' Legal Services; Stress

CLE & SKI

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Comment period set for revisions to the Rules of Civil Procedure

The Montana Supreme Court will accept public comment through May on the proposed revisions to the Montana Rules of Civil Procedure.

The Court's Advisory Commission on Rules of Civil & Appellate Procedure has worked to overhaul civil procedure in Montana in line with revisions that have been made to the Federal Rules of Civil Procedure. In a March 3 order, the Court announced that Advisory Commission had submitted its rule-change proposals. According to the Advisory Commission, the revisions are largely stylistic, and make the rules better organized, more readable, and more workable. The most substantive changes are in Rules 4(t), 5.1 and 5.2, 11, 23, 26, 28(c), 58(e), and 62.

The proposed revisions can be found at http://courts.mt.gov/supreme/proposed_rules/civil-procedure.mcp.x. The proposed revisions, which are voluminous, show the present rules on the left and the corresponding recommended rules on the right, with the Commission's notes following each rule.

File any comments you have about the proposed revisions to the Office of the Clerk of the Montana Supreme Court.

Public meeting to examine proposed lawyer-discipline rule changes

The Montana Supreme Court has announced that a public meeting will be held on April 20 to consider proposed changes to the Rules For Lawyer Disciplinary Enforcement.

Specifically, the Court will consider the proposed rules that were submitted by Helena attorney Mike Meloy, who is counsel for the Montana Press Association.

The Tuesday, April 20, meeting will be at 9:30 a.m. in the Attorney's Lounge, 4th Floor, Justice Building, 215 North Sanders in Helena.

Mr. Meloy and the Press Association are part of a task force put together by the Court to examine the possibility for more public transparency in lawyer-discipline cases. The group was formed after the Court ruled on challenges to the Disciplinary Rules by the *Billings Gazette*.

Appointments by the Supreme Court

● **Commission on Technology:** Justice Jim Nelson, Judge Joe Hegel, State Sen. Jim Shockley, and State Bar Executive Director Chris Manos were reappointed to new 3-year terms.

● **Commission on Rules of Evidence:** Billings attorney Guy Rogers was appointed to a 4-year term, replacing Michael McMahon. UM Law Professor Peggy Tonon and Kristen LaCroix were reappointed to new terms.

ORAL ARGUMENTS

The following oral arguments will be heard by the Montana Supreme Court:

April

■ Case No. DA 09-0429 – CHRISTIAN C. HOHENLOHE and NORA R. HOHENLOHE, Petitioner and Appellee, v. STATE OF MONTANA, DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION, Respondent and Appellant.

Oral Argument is set for Wednesday, April 7, at 9:30 a.m. in the courtroom of the Montana Supreme Court, Helena.

■ Case No. DA 09-0389 – BRET McKENNEY and NORTH STAR AMUSEMENTS, INC., Plaintiffs and Appellants, v. COOPER POWER SYSTEMS, Defendant and Appellee.

Oral argument is set for Wednesday, April 7, at 1:30 p.m. in the courtroom of the Montana Supreme Court, Helena.

■ Case No. DA 09-0489 – MATTHEW SUMMERS and HEIDI AMES, Plaintiffs and Appellants, v. CRESTVIEW APARTMENTS, LH RESIDENTIAL, LLC, and SCOTT HACKER, Defendants, Appellees, and Cross-Appellants.

Oral argument is set for Friday, April 9, at 10 a.m. in the University Theater, University of Montana, Missoula, with introduction beginning at 9:30 a.m..

■ Case No. DA 09-0500 LON PETERSON, Plaintiff and Appellant, v. ST. PAUL FIRE AND MARINE, INSURANCE COMPANY, Defendant, Appellee and Cross-Appellant.

Oral argument is set for Wednesday, April 21, at 9:30 a.m. in the courtroom of the Montana Supreme Court, Helena.

■ Case No. DA 09-0280 STATE OF MONTANA, Plaintiff and Appellee, v. VAUGHN DAVID JAMES, Defendant and Appellant.

ORAL ARGUMENT is set for Friday, April 30, at 10:30 a.m. at the Mother Lode Theater in Butte, with an introduction to the oral argument beginning at 10 a.m.

May

■ Case No. DA 09-0091 STATE OF MONTANA, Plaintiff and Appellee, v. BRIAN HAYDEN ALLEN, Defendant and Appellant.

Oral argument is set for Monday, May 3, at 10 a.m. in Ballroom A of the Strand Union Building, Montana State University, Bozeman, with introduction beginning at 9:30 a.m.

TO VIEW BRIEFS containing details on each case, go to <http://courts.mt.gov/library>, click on "Cases" in the top navigation bar, and search for the case by names or case number.

Court has changed to 'date-last' format for citations

The Montana Supreme Court issued the following order on Feb. 25:

On December 16, 1997, this Court entered an order adopting a public domain and neutral-format citation form for its Opinions, to be used with all Opinions issued after January 1, 1998. As part of that order, the Court gave examples of proper citation format for Montana cases decided before January 1, 1998, in which, as was the Court's practice at that time, the year of the opinion appeared immediately after the case title.

We continue to use the public domain and neutral format citation form we adopted in 1997 for our cases today, and our December 16, 1997 order remains in full force and effect in that regard. Several years ago, however, the Court internally

adopted the generally-used format for citations of cases from other courts and pre-1998 Montana cases, in which the year of publication of a case appears at the end of the citation. For example:

Doe v. Roe, 284 Mont. 301, 989 P.2d 472 (1997)

We have never formally announced that our December 16, 1997 Order is superseded in that regard. We do so now.

IT IS ORDERED that we encourage the use of the above "date-last" format for citations to pre-1998 Opinions issued by this Court, and for Opinions issued by all other courts, in all briefs, memoranda, and other documents filed in this Court.

○

LAMP, from Page 14

service member upon request. The service member needs to verify that he or she is active duty military and then the State Bar provides a referral to an attorney based on the service member's legal needs. Attorneys agree to accept the cases on a reduced fee or pro bono basis, but the State Bar does not have a formal fee scale for the program.

Attorneys who wish to sign up to provide services under the LAMP program should call Marie Connolly, the program coordinator for the State Bar, at 447-2204. Or e-mail her at mconnolly@montanabar.org.

To date, the State Bar has only referred attorneys directly to service members, but the Bar office has been contacted by JAG officers to request assistance for military personnel.

In Montana, the current military contact for legal issues is the office of the Reserve JAG at the Malmstrom Legal Office; e-mail: 341SWJA@malmstrom.af.mil.

For more information about LAMP, see <http://veteranslaw-project.org/home/> or the ABA's LAMP website at www.abanet.org/legalservices/lamp/.

○

BACKLOG, from Page 5

McGrath said. That's on top of the court management the chief justice must perform.

■ The bad economy is helping keep down the caseload. Although the total new case filings in 2009 (677) were higher than in 2008 (649), the number of new filings began to drop off in the last two months of 2009. "Fewer people have the money right now to file civil cases," Justice McGrath said.

Justice McGrath had high praise for the Supreme Court's staff and for his fellow justices. Being the chief justice "is a gratifying job for me," he said. "Everyone here is working hard, they're very committed."

He said he is looking forward to having the case backlog "gone" at the end of every year, with the final case disposition (following assignment to a justice) occurring within three to six months. ○

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Money flooding into campaigns for state judgeships

Justices Ginsburg, O'Connor say fundraising could corrupt System, reform is needed

By **Matthew Mosk**
ABC News

In rare public remarks [in early March], U.S. Supreme Court Justice Ruth Bader Ginsburg said the money involved in electing judges remains one of the most pressing concerns facing the American court system. And she joined her former colleague, Sandra Day O'Connor, in calling for reform.

"If there's a reform I would make, it would be that," Ginsburg said when asked about the issue at the National Association of Women Judges on March 11.

Yet money has continued to pour into the campaign accounts of state judges around the country, and ABC News has obtained an advanced copy of a study showing the amounts involved are unprecedented.

In the past decade, candidates for state judgeships raised more than \$206 million, more than double the \$83 million

judges raised in the 1990s, according to the soon-to-be released study by the Brennan Center for Justice at NYU School of Law and the nonpartisan group Justice at Stake, which advocates for reforming the judicial selection process.

Three of the last five state Supreme Court election cycles topped \$45 million. And judges shattered fundraising records in all but two of the 21 states with contested Supreme Court elections in the last 10 years, the report found.

"State judicial elections have been transformed," the report says, and the money involved has created "a grave and growing challenge to the impartiality of our nation's courts."

Concerns about the expanding role of money in judicial elections achieved widespread attention two years ago when ABC News and other outlets documented contributions from West Virginia mining executive Don Blankenship to fund an advertising campaign for a candidate for that state's high court. The CEO of the country's fourth largest coal company helped raise more than \$3.5 million for ads aimed at getting a new judge elected, all while his company was appealing to the State supreme court a \$70 million judgment against it.

That case led the U.S. Supreme Court to cry foul, saying a justice should step aside from a case if one of the parties has given so much money that the probability of bias would not be "constitutionally tolerable."

Electing judges is a common practice in the U.S., with nearly 90 percent of all judges in 39 states [including Montana] facing at least some form of election during their tenure. Some advocates for expanding judicial elections say the contests serve a valuable purpose. Jim Bopp, an Indiana lawyer who has been pushing for more states to elect their judges, said many conservatives view the elections as "a way to keep judges within the proper bounds. A way to keep them judges rather than judicial activists."


But others see the Blankenship controversy as a proverbial canary in the coal mine for what top judicial scholars, including Justice O'Connor, are now calling an alarming political trend. The amount of money flowing into these contests, O'Connor told a group of Georgetown Law students in February, has become "a threat to judicial independence."

"If both sides unleash their campaign spending without restrictions," O'Connor said, it will "erode the impartiality of the judiciary."

More expensive battles are coming. Thirty-eight state court justices will be on state ballots this year, and in many of the races, the fundraising has already begun.

Last week, on the same day Ginsburg was calling for reform, top Alabama appellate lawyers were flowing into the Ruth's Chris Steak House in downtown Birmingham for a reception honoring Alabama Supreme Court Justice Michael F. Bolin, according to an invitation to the event. The requested contribution was \$250.

Bolin is seeking reelection to the bench after first being



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elected in 2004 with more than \$1 million in financial support from business groups, according to the National Institute on Money in State Politics. Alabama campaigns have been exceptionally contentious in recent years, as business interests and trial lawyers have squared off behind opposing candidates for the state supreme court. A 2003 study by the Institute found that out of 1,424 court cases they examined, 904 of them – or 63 percent – involved a party or attorney who had made a contribution to a supreme court justice before that justice ruled on the contributor's case.

Bopp said there's a reason Bolin and other business-backed judges won seats on the court. They were elected, Bopp said, to help reverse a trend of rulings that favored trial lawyers. For years, Bopp said, "Democrat judges in Alabama created tort hell."

"What was happening was, the trial lawyers had seized control of the state supreme court and their rulings were very favorable to the trial lawyers," he said. "There became very substantial opposition to these judicial activists and they were defeated."

Similar battles fueled by business groups on one side and trial lawyers on the other have been erupting all around the country. In many cases, the involvement of local interest groups serves to hide the role of the national money in the contests.

In Washington State in 2004, for instance, a pro-business group called the Voters Education Committee poured \$1.4 million into attack ads in an attorney general's race. After the group refused to identify its investors, the state launched an investigation that uncovered one major source of its funds – the U.S. Chamber of Commerce, the powerful pro-business lobby in Washington. Chamber officials declined to comment for this report.

Another flashpoint has been Wisconsin, where a business group made up of utilities, insurance carriers, investment houses, and others began supporting candidates in judicial elections. Wisconsin Manufacturers & Commerce spent \$4 million on ads that blanketed the airwaves in recent contests for two seats on the Wisconsin State Supreme Court, according to research by the Wisconsin Democracy Campaign, a nonpartisan group that tracks political giving in the state. The most controversial ad in the 2008 campaign was produced by the business-backed challenger to Justice Louis Butler. The ad accused Butler of setting a child molester free to rape again, and showed a photo of Butler, who is black, next to the mug shot of the rapist, who is also black.

"Louis Butler worked to put criminals on the street, like Ruben Lee Mitchell, who raped an 11-year-old girl with learning disabilities," the ad said ominously. "Butler found a loophole and Mitchell went on to molest another child. Can Wisconsin families feel safe with Louis Butler on the Supreme Court?"

The Wisconsin Judicial Commission called the ad misleading and the ad's sponsor, Michael Gableman, later conceded in a public statement that he made his case to voters "imperfectly and in shorthand, a necessity in judicial campaigns." Gableman narrowly won the election anyway and now sits on the court.

Lawyers for the Wisconsin business group have told

reporters that their involvement in judicial elections is a matter of free speech, and that judges they help elect should be free to hear cases even when Wisconsin Manufacturers & Commerce is itself a party. "Individuals and organizations spend money to help elect a judicial candidate precisely because they want that candidate to be a judge that is, to preside over cases, including their own," one of the group's attorneys, Mike Wittenwyler said in a petition to the court. "There is nothing corrupt about that. That is democracy."

After Wisconsin Manufacturers & Commerce spent \$2.2 million to help elect conservative candidate Annette Ziegler in 2007, its lawyers filed a friend-of-the-court brief on a major corporate tax case. Ziegler authored a 4-3 decision in the case that ruled in the group's favor.

Notoriety from that episode, along with fallout from the U.S. Supreme Court ruling in the West Virginia case, helped prompt the court to consider new rules spelling out when campaign donations create conflicts of interest. What emerged were new guidelines saying justices do not have to sit out a case just because one of the parties involved donated to them.

At a contentious meeting where the justices debated the new guidelines, Gableman said forcing a justice to step aside would lend credence to the incorrect assumption that "judges, by receiving lawful campaign contributions, are somehow suspect or are going to be swayed or persuaded or more inclined to vote for one party or the other."

"The electorate has the right to support the judicial candidates that they feel are the best," he said.

But Wisconsin Justice Ann Walsh Bradley, one of the three dissenters to the new policy, said she was "dumbfounded" by the decision to let sitting justices solicit donations from parties with pending cases before them. She said if she described that policy to her friends back home, she knew how they would respond. "Are you crazy?" would be their reaction, she told her colleagues. "Are you kidding?"

The new recusal rules, the majority acknowledged, were taken nearly word-for-word from a proposal drafted by the Wisconsin Manufacturers & Commerce.

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In court, Alback details his newest theft from clients

By Clair Johnson
of the Billings Gazette

A former Billings lawyer with a felony record of stealing from clients admitted [in court on Feb. 23] that he again stole from clients.

Appearing in federal court, Marvin Earl "Toby" Alback, 62, pleaded guilty to wire fraud and bankruptcy fraud for misappropriating money from clients for his own personal use.

In December, the Montana Supreme Court ordered disciplinary action against Alback, who resigned his license in September amid misconduct allegations.

In his first appearance on federal allegations, Alback admitted to charges in an information and waived his right to a grand jury indictment. He appeared before U.S. Magistrate Judge Carolyn Ostby, who will recommend his guilty plea be accepted by Chief U.S. District Judge Richard Cebull.

Assistant U.S. Attorney Ryan Archer said that in the bankruptcy fraud, Alback was hired by a family in March 2008 to represent them in a bankruptcy case. When the family had trouble making their mortgage payment, Alback told them to write their settlement and mortgage payments to him and he would deposit the money with the bank.

Alback deposited the money into his trust account and never made the payments on the mortgage. Although he eventually paid back the money, he caused significant back payments and late fees to avoid foreclosure, Archer said.

The investigation also found that Alback obtained the family's \$557 tax refund check for 2008 and deposited it into his

business account. He used the money for personal expenses. The refund check belonged to the bankruptcy estate, Archer said.

In the wire fraud, Alback represented another client in a lawsuit that was settled for \$12,500 in August 2009 and a check was written to his client. While Alback was entitled to a share of the settlement, he forged his client's name without her knowledge, deposited the \$12,500 into his account and used it for his personal benefit. The client received a check for her settlement in October 2009, but it bounced and she has not received any money that was paid to settle the suit.

Alback faces a maximum 20 years in prison and a maximum \$250,000 fine on the wire fraud.

Under the terms of a plea agreement, the government will not pursue additional charges and will not seek sentencing enhancements for using sophisticated means or there being vulnerable victims. Alback also waived his right to appeal his conviction and sentence as long as the sentence is within the guideline range. The judge will determine the guideline range at sentencing. A sentencing date has not yet been set.

Ostby continued Alback's release.

In 1987, Alback was sentenced to 16 years at Montana State Prison with 13 years suspended for felony theft. Alback, who worked in Bozeman at the time, admitted stealing more than \$95,000 from two clients. He was disbarred and his license was reinstated in 2000.

More recently, Alback was accused of violating attorney rules of conduct by failing to properly represent a Billings woman in a Yellowstone County Justice Court case filed in 2007. He also was being investigated for at least one other complaint. Even though Alback resigned his license in September, the Montana Supreme Court said that did not prevent it from imposing sanctions on him for misconduct.

Ex-county attorney Eddleman disbarred

The Montana Supreme Court has disbarred former Carbon County attorney Robert Eddleman following Eddleman's drug conviction last year in federal court.

Eddleman was sentenced July 16 to 2-1/2 years in prison by a federal judge after he pleaded guilty to a felony charge of conspiracy to maintain drug-involved premises.

On Aug. 5, the Montana Supreme Court suspended Eddleman from the practice of law as a result of the conviction. He had resigned earlier from the

Carbon County attorney position.

On Jan. 25, the Commission on Practice recommended the disbarment of Eddleman – under Rule 23 of the Montana Rules for Lawyer Disciplinary Enforcement, which calls for disbarment when an attorney is convicted of a criminal offense. No objections to the recommendation were filed.

The Commission pointed out that during part of the time Eddleman was allowing cocaine to be distributed from his home, he was the Carbon County attorney. Eddleman, 51, and co-defen-

dant, Terri Jabs Kurth, 43, were charged with conspiracy to maintain premises for the distribution and use of cocaine, two counts of maintaining drug-related premises, and cocaine distribution.

Prosecutors say Eddleman and Kurth associated with a cocaine trafficker and stored and used the drug at their homes in Billings and Red Lodge from January 2004 until this Sept. 11, 2008.

Eddleman and Kurth hosted parties at which they used cocaine and allowed their guests to use it, the indictment said.

Eddleman was a Montana Supreme Court candidate in 2002.

A nation of do-it-yourself lawyers

By State Chief Justices **John T. Broderick Jr.**
and **Ronald M. George**
An op-ed in the New York Times

America's courts are built on a system of rules and procedures that assume that almost everyone who comes to court has a lawyer. Unfortunately, the reality is quite different. An increasing number of civil cases go forward without lawyers. Litigants who cannot afford a lawyer, and either do not qualify for legal aid or are unable to have a lawyer assigned to them because of dwindling budgets, are on their own — pro se. What's more, they're often on their own in cases involving life-altering situations like divorce, child custody and loss of shelter.

As the economy has worsened, the ranks of the self-represented poor have expanded. In a recent informal study conducted by the Self-Represented Litigation Network, about half the judges who responded reported a greater number of pro se litigants as a result of the economic crisis. Unrepresented litigants now also include many in the middle class and small-business owners who unexpectedly find themselves in distress and without sufficient resources to pay for the legal assistance they need.

As judges, we believe more needs to be done to meet this growing challenge: an inaccessible, overburdened justice system serves none of us well. California took a major step forward in October when it became the first state to recognize as a goal the right to counsel in certain civil cases. (The state also committed to a pilot project, financed by court fees, to provide lawyers for low-income citizens in cases where basic human needs are at stake.)

But this is only a beginning. It is essential that we promote other efforts to close the "justice gap."

One such effort involves the "unbundling" of legal services. Forty-one states, including California and New Hampshire, have adopted a model rule drafted by the American Bar Association, or similar provisions, which allow lawyers to unbundle their services and take only part of a case, a cost-saving practice known as "limited-

scope representation" that, with proper ethical safeguards, is responsive to new realities.

Traditionally, lawyers have been required to stay with a case from beginning to end, unless a court has excused them from this obligation. Now, in those states that explicitly or implicitly allow unbundling, people or businesses can hire a lawyer on a limited basis to help them fill out forms, to prepare documents, to coach them on how to present in court or to appear in court for one or two hearings.

For example, a lawyer could advise a client in a divorce proceeding about legal principles governing the division of marital assets or provide assistance in calculating child-support obligations. A lawyer might also draft pleadings or legal memos or provide representation at a hearing to obtain a domestic-violence restraining order.

What could be wrong with this? Well, some lawyers have expressed concern that limited legal representation will encourage litigants to dissect their cases in an effort to save money, sacrificing quality representation that the litigant might otherwise be able to afford. We have also heard the argument that by offering too much assistance to self-represented litigants, the courts themselves are undermining the value of lawyers and the legal profession. Apparently, some are concerned that the court system will become so user-friendly that there will be no need for lawyers.

We respectfully disagree. Litigants who can afford the services of a lawyer will continue to use one until a case or

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problem is resolved. Lawyers make a difference and clients know that. But for those whose only option is to go it alone, at least some limited, affordable time with a lawyer is a valuable option we should all encourage.

In fact, we believe that limited-scope-representation rules

will allow lawyers – especially sole practitioners – to service people who might otherwise have never sought legal assistance. We also believe that carefully drafted ethical rules allowing lawyers to handle part of a case give the legal profession an opportunity to help the courts address the ever-growing number of litigants who cross our thresholds. This cause has special relevance now as state courts are faced with serious cutbacks in financing, forcing some to close their doors one day a week or a month, lay off front-line staff members and delay jury trials. None of this bodes well for the judicial system or for those seeking to vindicate their rights through the courts, whether they have a lawyer or not.

We need members of the legal profession to join with us, as many have done, in meeting this challenge by making unbundled legal services and other innovative solutions – like self-help websites, online assistance programs and court self-help centers – work for all who need them. If we are to maintain public trust and confidence in the courts, we must keep faith with our founding principles and our core belief in equal justice under the law.

JOHN T. BRODERICK JR. is the chief justice of New Hampshire. **RONALD M. GEORGE** is the chief justice of California.

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NEWS ABOUT MEMBERS

Rick Anderson has opened his law firm, Anderson Law, at its new location 600 Dewey Blvd., Suite B, at the corner of Dewey and Lexington in Butte. Mr. Anderson has been in private practice for 29 years, and was a former partner with Poore, Roth & Robinson for the past 18 years. He also practiced with Mick McKeon in the firm of McKeon & Anderson representing individuals in personal injury and insurance bad faith litigation. Mr. Anderson is a 1976 graduate of the University of Montana School of Law. Prior to going into private practice he was a clerk for the Montana Supreme Court (for the late Justice Paul G Hatfield), an assistant attorney general for Montana, and an assistant U.S. attorney for Montana under then U.S. Attorney Robert O'Leary. Mr. Anderson will continue to conduct a plaintiff's practice representing individuals in areas of personal injury, workers compensation, and insurance claims.

Secretary of State Linda McCulloch announced on March 14 that she has hired Helena attorney **Hilary Oitzinger** as special projects director, according to the *Helena Independent Record*. Ms. Oitzinger will organize election-night reporting of results and other election projects and assist the staff with legal issues, spearhead its legislative effort and work on civic engagement projects. Ms. Oitzinger previously worked as associate attorney at the Crowley Fleck Law Firm and as a law clerk for former Supreme Court Justice John Warner. A Helena native, Ms. Oitzinger received a law degree from the




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University of Montana. She also has a master's in public administration and dual bachelor's degrees from UM in print journalism and psychology, with an emphasis on criminology.

Zachary K. Strong has joined the Bozeman law firm of Goetz, Gallik & Baldwin as an associate attorney. Mr. Strong is a native of Great Falls and graduated in 2005 with a B A from Dartmouth College. He was co-editor-in-chief of the *Montana Law Review* at the UM School of Law, where he received his J D degree in 2009. Mr. Strong can be contacted at Goetz, Gallik & Baldwin, 35 N. Grand, Bozeman MT 59715; (406) 587-0618.

John H. (Buzz) Tarlow, of the Bozeman law firm of Tarlow Stonecipher & Steele, has been elected as a fellow of the American College of Construction Lawyers at the 21st Annual Meeting of the College held in San Diego, Calif. The College, founded in 1990, is comprised of the top one percent of the

construction bar in the U.S. and also includes lawyers and judges from Canada, Britain and France. Mr. Tarlow is the only member of the College from the state of Montana.

Greg Gould has returned to the practice of law at Luxan & Murfitt in Helena. He worked six years as associate general Counsel at Blue Cross & Blue Shield of Montana and previously practiced law for six years at Luxan & Murfitt. He also has 11 years of prior experience as in-house counsel at the Montana Departments of Public Health & Human Services and Social & Rehabilitation Services. Mr.

Gould is a 1983 graduate of the University of Montana School of Law. His practice will focus on litigation, health care, insurance, employment and employee benefits, real property, and administrative law.



DEATHS

Scott Fisk, Helena lawyer

Helena attorney Scott Alan Fisk, 50, died March 22 at the University of Washington Medical Center from complications of a bone-marrow transplant for treatment of leukemia.

Mr. Fisk was born and raised in Washington state. He graduated from Western Washington University with a BA in Journalism, obtained a master's in Creative Writing from the University of Arizona. He graduated with honors from the University of Montana School of Law in 1999.

Mr. Fisk clerked for Justice James C. Nelson of the Montana Supreme Court for two years. He was a partner in the litigation department at Crowley Fleck in the Helena office.

He is survived by his son.

Ron Hansell, attorney in Missoula and Ravalli County

Missoula and Ravalli County lawyer Ronald Stephen Hansell died on Feb. 20.

Mr. Hansell was born in LaFayette, Ind. He served in the Peace Corps and later enlisted in the Marine Corps, where he served in Vietnam under Lt. (now U. S. Sen.) James H. Webb. He remained close to his Delta 1/5 brothers, his obituary said.

He and his wife, Rosemarie Neimeyer, raised their daughter, Sarah Hansell Paluso, in Indianapolis. He

earned his BSCE and MSCE from Purdue University and his juris doctorate from Indiana University, Indianapolis School of Law, and practiced law in Indianapolis.

Mr. Hansell was active in the Indianapolis Symphonic Choir. He played guitar, cornet, trumpet, hammered dulcimer, and harmonica.

He moved to Montana in December 2001 and married attorney Carolyn J. Stevens in January 2002. He passed the Montana Bar Exam and opened a solo practice in Missoula and Ravalli counties. He taught seminars across the country, was active in the ABA, the State Bar of Montana, and the local bar associations in Missoula and Ravalli counties.

Mr. Hansell sang with the Missoula Symphonic Chorale, Habitat for Humanity's Messiah, Musikanten in Helena and Missoula, the Florence-Carlton Community Church choir, and any other organization that needed a tenor on short notice. He played in the Missoula Concert Band, the Wednesday Bonner Park City Band concerts, and the Tuba Christmas.

He is survived by his wife Carolyn, his daughter and two stepchildren.

Carl White, Havre attorney

Carl Shanley White, 49, a Havre attorney, died of undetermined natural causes Feb. 18 at a Havre hospital.

Mr. White was born in Missoula and

later moved to Fort Benton. He attended the University of Montana, where he attained a bachelor's degree in Business and went on to achieve his juris doctorate. He clerked for former Montana Supreme Court Justice John Warner.

Mr. White built a successful law practice based in Havre, serving the entire state of Montana. His obituary said he was "A force to be reckoned with, Havre's own Atticus Finch, champion of the underdog, and advocate for justice."

Mr. White is survived by his wife Laura and one son.

William Mufich, former Helena and Butte attorney

William P. Mufich, 90, who had practiced law in Helena and Butte for many years, died suddenly of natural causes on Feb. 10 at his residence in Kalispell.

Mr. Mufich was born in Butte. He worked in the mines with his father and brother during school breaks. An outstanding high school athlete, he graduated from Butte High School in 1938. A member of the 1937 Butte Bulldog championship football team, he went to the University of Montana on a football scholarship and played for the Grizzlies.

Following his graduation in 1942, Mr. Mufich joined the Navy, entered flight training and, in 1944, was assigned to the USS Intrepid as a Hellcat pilot with fighter squadron VF-18. He saw action throughout the Pacific in World War II,

including Formosa, Luzon, and Mindanao. He fought in one of the most significant battles of the Pacific – the Battle of Leyte Gulf. During his service in combat, he downed four enemy aircraft, earning two Distinguished Flying Crosses, an Air Medal, and a Philippine Liberation Ribbon.

It was during his service that he met his wife, Thelma, a Wisconsin woman who was stationed as a WAVE at the Naval Air Station in Coronado, Calif. Following their release from active duty, they married in Missoula, where Mr. Murfich attended law school.

When he wasn't studying, Mr. Murfich was on the football field as an assistant coach for the Grizzlies. Upon graduation, he left Montana for a short time to join the FBI, where he served the agency in Charlotte, N.C., and New York City.

In 1949, Mr. Murfich and his wife moved to Helena. During their 21 years there, he worked as an attorney for state and local government, as legislative assistant, assistant city attorney, and had his own private practice. He was admitted to practice to the U.S. Supreme Court and to the Montana Supreme Court.

In 1970, Mr. Murfich joined the Anaconda Company Legal Department, and he and his family moved to Butte.

Upon his retirement from the Anaconda Company, then Arco, he practiced law in Butte until his retirement. His wife of 53 years, Thelma, died in 1999.

Mr. Murfich was inducted into the Butte Sports Hall of Fame in 1993. He was also a longtime member of the University of Montana MClub and a lifetime member of the UM alumni association. He was a pilot in the Montana Air National Guard, retiring with the rank of major after having served more than 20 years. He was also a member of the Civil Air Patrol in Helena. In Butte he served on the St. James Hospital and Butte Country Club boards.

In 2009, Mr. Murfich moved to Kalispell to be near his daughter and son-in-law. He spent many happy winters in Florida with family, but his heart was always in Montana. Mr. Murfich is survived by his daughter.

Susan Youngstrom, former Great Falls attorney

Susan Linda Youngstrom, a former assistant city attorney in Great Falls, died from health complications on Feb. 11 in Portland, Ore. She was 57.

Ms. Youngstrom was born in Great Falls and graduated in 1970 from Great Falls High School. She graduated from Lewis & Clark College with majors in

History and Political Science. After graduation she embarked on a tour of Europe.

Ms. Youngstrom graduated from University of Oregon Law School in 1979 and returned to Great Falls after her father's death that same year. She was assistant city attorney in Great Falls from 1980 to 1983.

She married Phillip Peterson in Great Falls in 1984. She then joined him in Albuquerque, N.M., where she started working for All State Insurance. In 1988 she and he husband moved back to the Portland area, near Aurora, where they raised Morgan horses and kept a small herd of cats. The couple were decades-long members of the Ethnic Food Group and Oregon Wine Tasters Guild. Ms. Youngstrom was also the founding member of her Red Hat Society. She and Mr. Peterson hosted exchange students for many years.

She is survived by her husband.

Herbert George, Helena attorney

Longtime Helena resident and attorney, Herbert Hadley George, 98, died March 1 at his home in Helena.

Mr. George was born in rural Missouri. His love for Virginia – where his forebears had settled as planters outside Richmond in 1679 – endured

throughout his life. He maintained a membership in a Virginia chapter of the Sons of the American Revolution and was a member of the Bar of the Commonwealth of Virginia.

After a long career in the legal profession, he discovered the "treasure house of liberal arts" that is Carroll College, said his obituary, which has few details about his legal career. "He explored [Carroll College] in all its width and depth for the final 25 years of his life." Mr. George received an honorary doctor of humane letters degree from Carroll in 2001.

Mr. George is survived by his wife Margaret and a daughter.



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