

Lawyer

THE STATE BAR OF MONTANA

Technology & the law

*How to collect
crucial evidence
from cell phones*

*Great resources from
the State Bar's
Technology Committee*



Disturbing
new trend:
Google,
Twitter &
Wikipedia
are ruining
trials

The Olympian lawyer

Helena attorney is world-champion
rower, and two-time competitor
in the Olympics



Annual Meeting program inside

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AUGUST/SEPTEMBER INDEX

PLEASE NOTE: *There will be no separate issue of The Montana Lawyer in September this year. The issues will resume in October.*

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PRESIDENT-ELECT'S MESSAGE

My goals for the State Bar

Let's keep the access and diversity fires burning

Cynthia Smith

In what has now become a tradition, I am writing the President's Message this month, even though I won't be State Bar president until September. The hardest thing about being (almost) Bar president so far is writing this message. It is the thing I have dreaded about the job for as long as the job has been on my horizon. Frankly, I can't imagine anyone being very interested in what I have to say. I considered writing two pages of "blah, blah, blah," just to see whether anybody really does read the President's Message.

The second hardest thing so far was having my photograph taken for the President's Message page. When I ran for Bar president I didn't stop to think that there is only so much Photoshop can do.

Okay, enough self-flagellation. I want to use this month's column to talk about what I would like to do as Bar president. Over the next year, I would like all of us to have a conversation about two interrelated issues: Access to justice – and the barriers that prevent full access – and the lack of diversity in our profession.

I hope that we will examine what we can do to improve access to justice for all Montanans. As lawyers, we hold the keys to the courthouse. We have a duty as professionals to use our skills and knowledge to benefit all of society, not just the clients who can afford to hire us.

THIS PAST MAY, the Board of Trustees held its annual Long-Range Strategic Planning Meeting at the Double Arrow Lodge in Seeley Lake. (Lest you think that was a wasteful use of the Bar's limited resources, please consider that we did that within a very tight budget and pared it down by one day from past years' meetings, all thanks to the wizardry and masterful negotiating skills of Bar Membership Coordinator Jill Diveley). At the meeting, the trustees heard from a panel of speakers who have experienced several of the barriers to access to justice, either personally or through representing clients. Each of them identified areas where substantial barriers to justice still exist.

■ **Income:** This is the most obvious barrier. Montana Legal Services serves clients who are up to 200 percent of the federal poverty level. At the meeting, Montana Legal Services Director Klaus Sitte discussed the interrelated issues of poverty, race and access to justice. In Montana, 9 percent of the population is non-white. MLS' clientele, however, is 36 percent non-white. The bulk of MLS' clientele is minority and female. Unfortunately, MLS has lost a substantial amount of funding and has had to eliminate 11 attorney positions around the state in the past year.

Because of this loss, it is more important than ever for attorneys to honor their pro bono obligations. As Klaus points out, pro bono is not charity. Everyone can donate to charity. Only attorneys can provide pro bono legal representation. Pro bono is more than charity – it is a core value of our profession.

■ **Race:** Ryan Rusche is a member of the State Bar's Board of Trustees. He is a Native American and the county attorney for Roosevelt County. Ryan talked about the barriers present for Native Americans, which could be improved with better access to positions of power and better communication with those who are already in power. Ryan also sees a need to increase efforts to recruit minorities into our profession, which starts with recruitment at the law school.

■ **Mental Health:** Ryan Rusche also spoke about mental health as a barrier to accessing justice. Ryan has served on the Human Rights Commission for many years and has been its chair for the past two years. Ryan sees mental health issues in many of the discrimination cases brought before the commission. The mental health issues are seldom raised, however, often because the mentally ill individuals are not represented by counsel. One barrier for mentally ill individuals is the inability to understand their rights, or the lack thereof, a problem that could be

Also, I want to welcome UM Law School's new dean, Irma Russell, and say thanks to Dean Eck.

More *PRESIDENT-ELECT*, Page 19

The State Bar's Technology Committee has invited the ABA to bring its famous ABA Tech Show, usually held in Chicago, to a road version in Montana this fall.

An ABA Tech Show CLE will be held in Bozeman at the Holiday Inn on Oct. 22 and in Billings at the Billings Hotel & Convention Center on Oct. 23. The Show, titled "Practice Management: Faster, Better, Easier," will teach lawyers how to use technology to improve the management of their law practices. Each year, the ABA Tech Show brings the latest in

State Bar, ABA to bring Tech Show to Montana

hardware and software for computers and communication devices to the legal community. Several State Bar of Montana members have attended the giant Chicago show.

For the Montana technology CLE, ABA technology experts will discuss

topics including: Software to Manage Your Practice, Affordable IT Support for Small Practices, Getting to Paperless – A Step-by-Step Guide, The Greatest Hidden Windows and Office Tricks for Lawyers, and more.

At the conclusion of the CLE in Billings, there will be "Dinner Out with A Techie" – a special sign-up-in-advance option where you can ask questions of experts over a meal.

Presenters on behalf of the ABA are Adriana Linares, president of LawTech Partners, and Debbie Foster, founder and president of InTouch Legal.

Cell phone forensics

This article first appeared in the Nebraska Lawyer

By **Don Kohtz**
and **Matt Churchill**

The new evidentiary gold mine

There are approximately 3 billion cell phones in use world-wide. When we leave our home, most of us take 3 items: keys, money, and our cell phone. Cell phones have become an integral part of our lives and can contain large amounts of personal and business information. Every time we use our cell phones, we leave a digital trail of information for someone to follow.

What we as litigation attorneys often overlook is the fact that cell phones, personal digital assistants (PDAs), and smart phones (hereinafter, the three items are referred to as "cell phones" for purposes of this article), also happen to store electronic or digital information.

Electronically stored information (ESI) came to the forefront for legal professionals on Dec. 1, 2006, when Amendments to the Federal Rules of Civil Procedure were enacted regarding ESI and what is commonly known as E-Discovery.¹ ESI has traditionally been found on desktop computers, laptops, and servers.

What should not be overlooked or forgotten is that ESI may also be harvested from cell phones. This oversight can prove costly. It may lead to claims of spoliation or failure to comply with the ESI requirements.² Failure to consider cell phone ESI may also leave evidence undisclosed. Generally, time is of the essence with cell phones. Continued use of a cell phone can modify, alter or delete potential ESI.

Most cell phones have a basic set of comparable features and capabilities. They house a microprocessor, read only memory (ROM), and

random access memory (RAM). The operating system (OS) of the device is held in ROM, which with the proper tools typically can be erased and electronically reprogrammed.³

Digital data is fragile, short-lived and can be overwritten. Cell phone forensics can be complex – data storage is proprietary and unique based on manufacturer, model and system.

Cell phones with advanced technology and capabilities are referred to as smart phones. Generally, these come equipped with considerable memory capacity, QWERTY keyboards, touch-screen functionality, very high-speed data transfer, WiFi capabilities, and MS Office software. They may also have built-in Mini Secure Digital cards (MiniSD) (these are the size of a postage stamp which can store 4 GB or more), or other types of card slots that support removable memory cards. This memory storage is a target-rich environment for evidentiary material.

Most, if not all cell phones support voice and text messaging, a set of basic Personal Information Management (PIM) applications that includes phonebook and calendar functionality, and a means to synchronize PIM data with a desktop computer.

Best practices for collecting forensic evidence from a cell phone include:⁴

■ Before handling, consider what other types of evidence, such as DNA or fingerprints are needed from the phone and follow the appropriate handling procedures.



■ Turn the phone off to prevent the loss of data as the battery may expire or network activity may occur.

■ If the phone remains on, it should be kept charged and not tampered with. It should be turned off before transport.

■ While the phone is on, make all efforts to remove the phone from the network; this includes putting it into airplane mode or wrapping it in several layers of aluminum foil to prevent alteration or deletion of data.

■ The cell phone should be placed into an evidence bag, sealed to restrict access, and the labeling procedures completed for the exhibit to maintain a chain of custody.

This model and evidentiary principles contain important points that should be considered when dealing with cell phones. Because each investigation has its own unique set of circumstances, a single definitive procedural approach is difficult to prescribe. One size does not always fit all.

“The Electronic Crime Scene Investigation – A Guide for First Responders,” produced by the U.S. Department of Justice, offers the following suggestions when approaching a digital crime scene:⁵

■ **Securing and Evaluating the Scene** – Steps should be taken to ensure the safety of individuals and to identify and protect the integrity of potential evidence.

■ **Documenting the Scene** – Create a permanent record of the scene, accurately recording both digital-related and conventional evidence.

■ **Evidence Collection** – Collect traditional and digital evidence in a manner that preserves their evidentiary value.

■ **Packaging, Transportation, and Storage** – Take adequate precautions when packaging, transporting, and storing evidence, maintaining chain of custody.

Because cell phones today can quickly become a one-stop multimedia evidence kit, best practices should be adhered to when collecting forensic evidence from a cell phone.

Chain of custody

Chain of custody refers to a written account of individuals who had sole physical custody of a piece of evidence from the time it was “collected” until final disposition. This includes without limitation describing:

- What is it?
- Who or where it was taken from?
- How was it collected?
- Reason for transfer of possession?
- Who is taking possession and why?
- How it was stored?
- How was it protected in storage?
- Who took it out of storage?

■ Why was it taken out of storage?

Evidence should be collected in a manner that is suitable for admissibility in a court of law. It may not be obvious when an investigation is initiated that court action may subsequently follow. For example, when a computer security incident is first detected, the first instinct might be solve to the problem and not take evidence collection into consideration. As a word of caution, if you don’t follow this principle, important evidence might be overlooked, improperly handled, or accidentally destroyed before the seriousness of the incident is realized.⁶

A gold mine of evidence

Cell phone data may answer the: who, what, where, how, and why. First and foremost, the first nugget of gold is the phone itself. Using state of the art digital software, you may be able to acquire the following ESI from a cell phone:

- Calls made (date, time, duration)
- Calls received (date, time, duration)
- Last dialed number (LDN)
- Contact list (personal phone book)
- Text messages
- Photographs
- Video clips
- Calendar
- E-mails
- Customized ring tones (a distinctive ring-tone may be remembered by a witness to place someone at a location)
- Location (establish people’s physical location or direction of travel)

The second nugget of gold is the SIM card (subscriber identity module). The SIM card is simply a smart card containing a processor and non-volatile memory. In cell phones, the SIM card is used as a storage device for subscriber related data.⁷ A forensic examiner may find the following useful pieces of information on the SIM card:⁸

■ **Location Area Identifier** – This identifies where the cell phone is currently located. This value is retained by the SIM card when the phone is turned off. This is useful for determining in which location area the cell phone was last used when it was operating.

■ **Serial Number** – This number can be retrieved without providing the PIN (personal identification number) and will therefore identify the SIM itself.

■ **Customer Number** – is referred to the IMSI (international mobile subscriber identity) which is the customer identification number which will allow you, with the aid of the net-

More CELL PHONE, Page 24

See the State Bar Technology Committee’s website for a gold mine of legal technology information. Find the site at www.montanabar, click Bar Groups at the top navigation bar, and then click Technology Committee. You can find a News & Discussion section, Tech CLEs, resources and reference material, searches for legal information, software and hardware deals, and even tech humor.

Mistrial by iPhone

By John Schwartz
of the New York Times

Juries' web research upends trials

A juror on a lunch or bathroom break can find out many details about a case.

Wikipedia can help explain

Recently, a juror in a big federal drug trial in Florida admitted to the judge that he had been doing research on the case on the Internet, directly violating the judge's instructions and centuries of legal rules. But when the judge questioned the rest of the jury, he got an even bigger shock.

Eight other jurors had been doing the same thing. The federal judge, William J. Loch, had no choice but to declare a mistrial, wasting eight weeks of work by federal prosecutors and defense lawyers.

"We were stunned," said the defense lawyer, Peter Raben, who was told by the jury that he was on the verge of winning the case. "It's the first time modern technology struck us in that fashion, and it hit us right over the head."

It might be called a Google mistrial. The use of BlackBerrys and iPhones by jurors gathering and sending out information about cases is wreaking havoc on trials around the country, upending deliberations and infuriating judges.

Recently, a building products company asked an Arkansas court to overturn a \$12.6 million judgment against it after a juror used Twitter to send updates during the civil trial. And defense lawyers in the federal corruption trial of a former Pennsylvania state senator, Vincent J. Fumo, demanded that the judge declare a mistrial after a juror posted updates on the case on Twitter and Facebook. The juror even told his readers that a "big announcement" was coming on a specific day. But the judge decided to let the trial continue, and the jury found Mr. Fumo guilty. His lawyers plan to use the Internet postings as grounds for appeal.

JURORS ARE NOT supposed to seek information outside of the courtroom. They are required to reach a verdict based only on the facts that the judge has decided are admissible, and they are not supposed to see evidence that has been excluded as prejudicial. But now, using their cellphones, they can look up the name of a defendant on the web, or examine an intersection using Google Maps, violating the legal system's complex rules of evidence. They can also tell their friends what is happening in the jury room, though they are supposed to keep their opinions and deliberations secret.

the technology underlying a patent claim or medical condition, Google Maps can show how long it might take to drive from point A to point B, and news sites can write about a criminal defendant, his lawyers or expert witnesses.

"It's really impossible to control it," said Douglas L. Keene, president of the American Society of Trial Consultants.

Judges have long amended their habitual warning about seek-

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subscribers monthly. The latest Tech Briefs include such items as:

- How to save 20 percent when buying the "2009 Solo & Small Firm Legal Technology Guide."
- Ten Travel Technology Tips for Road Warriors, to help minimize travel traumas.
- Strong Passwords: How to Create & Use Them.
- How to Manage E-mail using Microsoft Rules.

The latest Tech Briefs tell Windows XP users how to get rid of such constant, annoying message balloons as "There are unused icons on your desktop."

Subscribe to the e-mail Tech Briefs by contacting Jill Diveley at jdiveley@montanabar.org.

ing outside information during trials to include Internet searches. But with the Internet now as close as the juror's pocket, the risk has grown more immediate — and instinctual. Attorneys have begun to routinely check the blogs and web sites of prospective jurors.

MR. KEENE SAID jurors might think they were helping, not hurting, by digging deeper. "There are people who feel they can't serve justice if they don't find the answers to certain questions," he said.

But the rules of evidence, developed over hundreds of years of jurisprudence, are there to ensure that the facts that go before a jury have been subjected to scrutiny and challenge from both sides, said Olin Guy Wellborn III, a law professor at the University of Texas.

"That's the beauty of the adversary system," Professor Wellborn, co-author of a handbook on evidence law, said. "You lose all that when the jurors go out on their own."

In the Florida case that resulted in a mistrial, Mr. Raben spent nearly eight weeks fighting charges that his client had

More on IPHONE MISTRIAL, Page 24

Montana's top document

The following is a speech delivered at the June unveiling of a plaque in the Montana Capitol that honors the members of the 1972 Constitutional Convention. Many of the ConCon members attended the ceremony.

By **Fritz Snyder**, professor
University of Montana School of Law

The creation of a state's fundamental law – its Constitution – is a defining moment in the history of state. However, it is not easy, and it was not easy for you, the Montana Constitutional Convention delegates – who I and we honor today. Governor Busbee of Georgia said it well:

Constitutional revision is not for the faint of heart. It is not a Sunday drive in the mountains. It is an incredibly difficult, sometimes tedious, sometimes exhausting, always challenging undertaking requiring the cooperation of all.

But you Con Con delegates pulled it off! We salute you! The *Missoulian* newspaper published a list of the 100 most influential Montanans of the 20th Century. The paper listed Mike Mansfield as number one. They listed you, the 100 Con Con delegates, as number two. I couldn't agree more!

Only Rhode Island, Georgia, and Louisiana have constitutions newer than Montana's. Between 1965 and 1974, voters rejected nine proposed constitutions and approved seven. Montana's Constitution is the seventh shortest of all state constitutions. Brevity can be a good thing! Since its passage in 1972, there have been 30 amendments to it (out of 54 proposed). This is the sixth lowest number of amendments of all state constitutions – again, a sign of its basic soundness.

Many are struck by its beautiful preamble:

We the people of Montana grateful to God for the quiet beauty of our state, the grandeur of our mountains, the vastness of our rolling plains, and desiring to improve the quality of life, equality of opportunity, and to secure the blessings of liberty for this and future generations, do ordain and establish this constitution.

The preamble states four of humanity's most uplifting aspirations: an attachment to the land, a guarantee of freedom, a commitment to continue striving toward an improved quality of life, and the promise of equality of opportunity.

Its transition into the 21st Century

Delegate James Garlington summarized the ConCon in truly memorable words:

Composed of people from every walk of life, amateurs one and all in basic constitutional doctrine, the delegates have become soundly expert in applying proper principles with perceptive judgment. We ConCon delegates have been transformed from willing volunteers to dedicated and competent students of government. Where we were partisan, we are nonpartisan. Where we were inflexible, we are flexible. Where we were hesitant we are confident. Our

debates have never been marred by angry exchange or sarcastic derision. Suspicion of none, our Constitution expects the best of us all. I think our Constitution is the finest gift to the young people of Montana that it is within our power to give. We are giving them the gift of participation in their present and the management of their future.



Professor Fritz Snyder

ConCon delegates, remember those Montana Constitutional Convention Studies with the blue and white covers that the ConCon staffers put together? The ones cov-

ering Bill of Rights, Suffrage and Elections, the Legislature, the Executive, the Judiciary, Taxation and Finance, Local Governments, and Education? They are still in use! Alabama is gearing up for a ConCon, and they requested copies from our UM Law Library, which were pleased to send them.

ConCon wisdom

I think, in particular, of your wisdom in opening the convention proceedings to the public and advance notice of your committee hearings. This – a precursor to the Right to Know provision – probably helped secure a favorable vote of the Constitution itself. I also commend you on having the three controversial issues – the unicameral legislature, the death penalty, and gambling – voted on as side issues. Ironically, you yourself met as a unicameral body which is characterized by a certain fluidity. Sometimes votes on ConCon issues flip-flopped within a few days – and even on the same day. This happens in unicameral bodies. Of course the villain in a bicameral legislature (a House and a Senate) is the conference committee with so much power invested in so few individuals.

You educated the voters, you were open, and you sent a voter education newspaper to all the voters in the state. Yet any voter, unhappy about any provision of the proposed constitution, simply had to vote against the whole thing. That's why the vote was so close – why the Constitution was only

Idaho was not so fortunate. It didn't follow its only laws exactly and had a 15-member commission complete a proposed constitution. There were public hearings at which about 1,400 people appeared and made comments. The Idaho Legislature then revised their proposed constitution which passed the Legislature by a two-thirds vote. But, much more than in Montana, there was suspicion and distrust of all government, and in 1970 the Idaho voters rejected the proposed constitution by 70,000 votes.

One very important feature of the Montana Constitution is the beautifully printed seven volumes of ConCon committee reports and the verbatim transcripts. All this is a gold mine for researchers. 145 Montana Supreme Court cases have cited to these committee reports and transcripts. I have used them many times myself.

■ **The Right of Participation** in our state government (only one other state constitutional has this provision).

You also gave us the Right of Privacy, the Rights of Children, the Right to a clean and healthy environment, and the Right to Dignity, among others. “The dignity of the human being is inviolable.” How impressive! Noting the cultural diversity of our state, our Constitution also notes the “distinct and unique heritage of the American Indian” and the need for “preservation of Indians’ cultural integrity.

The educational provision is extremely important: “To establish a system of education which will develop the full educational potential of each person,” and a “system of free quality public education” under which a 2005 Montana Supreme Court case noted that school funding across the state was constitutionally deficient.

Missoula was often hidden from view by the stinking, vel-

Now Montanans have the fundamental right to a clean and healthful environment – your words, ConCon delegates!

You also called for referral to the voters every 20 years the question of whether to hold another constitutional convention. The last such referral was in 1990 when it was handily rejected. So next year (2010) it comes up again. The vote could be much closer this time. To those of us who support our wonderful state constitution, we must be wary of the one-issue opponents who want to jettison the whole thing because of a single issue. History, however, seems to be on our side. Since 1970, 25 referenda in various states have called for constitutional conventions but only four have produced conventions, and none since 1984. Legislators generally are the natural

enemies of a positive vote to call a constitutional convention – particularly in Montana where sitting legislators cannot be ConCon delegates. Once a Con Con convenes, it's a Pandora's box because of the inability to limit a convention's agenda.

There has been an increased reliance by state courts on state declarations of rights to provide greater protections than are available under the Federal

Constitution. Thus, in addition to the Montana Supreme Court's helpful interpretations of the right to a clean and healthy environment and

the right to a quality education with adequate funding, we have benefitted from court interpretation of our right to privacy, which only four other state constitutions have. This could allow limits on electronic surveillance. It also means the right to be let alone, the right to keep one's conversation private, and the right to make decisions about health care, moral and religious values, and personal and intimate relationships.

Finally there is the dignity clause to protect us against degrading treatment not elsewhere covered in the Montana Constitution's Declaration of Rights. Though not as yet fleshed out by court decisions, this could cover the right to die and the humane treatment of persons under state supervision. It could also prevent discrimination against persons with disabilities and discrimination against homosexuals.

So, ConCon delegates you did a wonderful job! You gave us a marvelous document! We wait with anticipation to see how it and the 21st Century may move our State forward! ○



The new Capitol plaque honoring Constitution Convention delegates

Program for the 2009 Annual Meeting

The State Bar Annual Meeting will be held Sept. 17-18 in Missoula, featuring more than nine hours of CLEs, a celebration of the UM Law School, and the dedication of the new Law School building. The meeting will be at the Holiday Inn Downtown at the Park, unless otherwise noted below.

Brochures with a registration form has been mailed to members, or you can register online (see box at right).

The following is the Annual Meeting program:

WEDNESDAY, SEPTEMBER 16

- 1 p.m. Board of Trustees meeting. Bar members are invited to attend. Location to be announced.
- 1:30 p.m. Joint meeting of Equal Justice Task Force, Commission on Self-Represented Litigants, and State Bar's Access to Justice Committee. Location to be announced.
- 3:30 p.m. Resolutions Committee meeting – The Committee meets annually to review proposed resolutions and make recommendations at the annual business meeting on Thursday.
- 5:30-7 p.m. Local Bar reception – Honoring retired Western Montana judges and attorneys. At the Missoula Art Museum, 335 N. Pattee St.

THURSDAY, SEPTEMBER 17

- 8 a.m. Annual Meeting registration desk opens
- 8:30 a.m.-noon **Hot Topics CLE** (3.25 CLE credits)
- 8:30-9 Tax Law – *Martin Burke*
- 9-9:20 Collections & Fair Debt Collection Practices Act – *John Heenan*
- 9:20-9:50 A Brief Introduction to Federal Indian Law – *Maylinn Smith*
- 9:50-10:20 Ethics. Details to be announced.
- 10:20-10:30 Break
- 10:30-10:50 Substance Abuse/Mental

Register online at www.montanabar.org

You can register for the 2009 Annual Meeting by credit card by going to the State Bar website at www.montanabar.org and logging in with your membership log-in (the log-in link is located at top of the home page). Call the State Bar at (406) 442-7600 if you have problems.

You can register with a check by using the registration form in the Annual Meeting brochure that was mailed to Bar members in mid-July.

Retired judges, attorneys from 5 counties invited to reception, where they'll be honored

On Wednesday, Sept. 16, the Western Montana Bar Association and the State Bar will host a reception at the Missoula Art Museum, in conjunction with the Annual Meeting. The reception is in honor of retired Western Montana attorneys and judges (in Missoula, Ravalli, Mineral, Lake, and Sanders counties).

All retired judges and attorneys who either practiced or currently reside in the counties mentioned are invited to attend the reception, which starts at 5:30 pm.

- 10:50-11 Impairment (SAMI) – *Mike Larson*
- 11-11:30 Montana Trial Lawyers Association Update – *Immediate Past President Sydney "Syd" McKenna*
- 11:30-noon Criminal Law Update – *Andrew King-Reis*
- 11:30-noon Energy Law in Today's World – *University of Montana School of Law Dean Irma Russell*
- Noon-1:45 p.m. **Luncheon & State Bar's Annual Business Meeting** – Resolutions considered and voted upon by Bar members who attend.
- 2 p.m. Montana Justice Foundation meeting. Location to be announced.
- 2 p.m.-5 p.m. **Hot Topics CLE** (2.75 CLE credits)

2-2:20	IP Audits: Uncovering the Dirty Little Secrets – <i>Antoinette “Toni” Tease</i>	9 a.m.-noon	Hot Topics CLE (3.0 CLE credits)
2:20-2:55	Business Law – <i>Eric Nord</i>	8:30- 9	Family Law Update – <i>Missoula District Court Judge John Larson</i>
2:55-3:15	Substance Abuse/Mental Impairment (SAMI) – <i>Peggy Probasco</i>	9-9:20	Conversation with <i>Supreme Court Chief Justice Mike McGrath</i>
3:15- 3:25	Break	9:20-9:50	Reflections on the Legislature – <i>Greg Petesch</i>
3:25-3:55	Employment Discrimination – <i>Tim Kelly</i>	9:50-10	Montana Defense Trial Lawyers – <i>President Guy Rogers</i>
3:55-4:25	Ethics: Balancing Client Confidentiality Against the Duty to Disclose – <i>Gonzaga University School of Law Dean Earl Martin</i>	10-10:10	Break
4:25-5	Montana Supreme Court Update – <i>Justice Patricia Cotter</i>	10:10-10:30	Substance Abuse/Mental Impairment (SAMI) – <i>Joe Hardgrave</i>
5:30 p.m.	President's Reception – <i>President Chris Tweeten</i>	10:30-11	Ethics: Elder Law – <i>Dan McLean</i>
6:30 p.m.	Annual State Bar Banquet – A tribute to the University of Montana School of Law, with presentation of Law School grads' stories by Missoula District Judge Douglas Harkin. The Jameson Award will be presented. Entertainment by the Celtic Dragon Pipe Band of Missoula. We will honor the recipients of the Bar's 50-year membership pins.	11-11:30	Insurance Law – <i>Professor Greg Munro</i>
9 p.m.	New Lawyers' Section meeting	11:30-noon	Real Property Update – <i>Colleen Dowdell</i>
FRIDAY, SEPTEMBER 18		Noon-1:30 p.m.	Annual Awards Luncheon – The State Bar will present the George Bousliman Professionalism Awards, Frank Haswell Award, Distinguished Service Awards and Neil Haight Pro Bono Award. Also presented will be the Karla M. Gray Equal Justice Award. The gavel will be handed off from outgoing State Bar President Chris Tweeten to incoming President Cynthia Smith.
8 a.m.	Annual Meeting registration desk opens	1:30 p.m.	Annual Meeting adjourns
		2 p.m.	Dedication of the new University of Montana School of Law building
		5:30 p.m.	Paralegal Section dinner

SAMI: Understanding the new CLE requirement

Rule 4A of the Montana Supreme Court Rules for Continuing Legal Education:

Of the five (5) credit hours in ethics, one hour must be satisfied by a program on the relationship between a lawyer's professional responsibilities and substance abuse, chemical dependency, or debilitating mental conditions.

The SAMI requirement was added to

the rules in 2006 in response to the increasing impact of substance abuse, chemical dependency, clinical depression and other debilitating mental conditions on the legal profession in Montana.

The rule does not add to the total credit requirement, but stipulates that one of the 5 ethics credits required every three years address this issue.

Most Montana attorneys will be required to obtain 1 SAMI credit by March 31, 2010. That is the earliest date

by which this requirement will be enforced. Check your CLE affidavit to determine the end of your 3-year CLE cycle. (Newer attorneys whose 3-year ethics reporting cycle ends this year, 2009, will be required to meet the SAMI requirement at the end of their next 3-year cycle: March 31, 2012.)

To obtain the SAMI credit:

- Check the Annual Meeting program above for the three SAMI presentations on Sept. 17-18. The three pre-

sentations will provide a total of 1 SAMI credit.

- Currently, 1 SAMI credit is included in the 2007 Ethics CLE materials which are available for purchase (\$35) in the Bookstore on the State Bar of Montana website at www.montanabar.org (select "Ethics CLE Materials - 2007")

- It may also be obtained by watching the DVD recording of the State Bar's 2007 Ethics CLE which is available for rental (\$75 + \$25 refundable deposit) on our website at www.montanabar.org (select "Ethics CLE Rental - 2007").

- We honor the approval of all other

CLE jurisdictions so any substance abuse program that is available through another state bar association will be accepted in Montana.

NOTE: If you have attended a presentation by Mike Larson of the State Bar's Lawyer Assistance Program anytime in the past 2 years, you have already met your SAMI requirement for the current 3-year period. Please indicate this on your CLE affidavit by checking the box near the top of the form. Mr. Larson has been a speaker at several State Bar sponsored CLEs, all of the Road Shows and several local bar meetings. Betsy Brandborg has also presented on SAMI at various CLE programs.

Women's Law CLE set

Make your reservations now for the Women's Law Section CLE to be held at Chico Hot Springs on Oct. 15-16. It will be co-sponsored by the Women's Law Section and the Bar's CLE Institute

Thursday night, Oct. 15, will be a no-host gathering and silent auction.

Speakers on Friday Oct. 16 will address professionalism, diversity, Section 1983 actions, school law, substance abuse and mental illness issues, among other topics.

Make your room reservations now by calling Chico Hot Springs at 1-800-468-9232 or (406) 333-4933. Ask for the State Bar room block.

Help, please! Go online to volunteer for Bar's committees

Member participation in the organization and management of the State Bar of Montana is essential to its success as a professional association. The most effective way lawyers and legal assistants can participate is through volunteer service on the many committees that compose the Bar.

Committees meet two to six times per year, usually in Helena, although many meetings are via confer-

ence call. Expenses associated with attending meetings are reimbursed by the State Bar. Every effort is made to assign volunteers according to their choices of committees.

Find the downloadable sign-up form, with a list of committees in need of new members, at the home page of www.montanabar.org; or contact Jill Diveley at jdiveley@montanabar.org.

Kalispell woman ordered to cease illegal practice of law as 'paralegal'

The Flathead County District Court and the U.S. Bankruptcy Court for Montana have come down hard – with cease-and-desist orders and threats of major fines – against a Kalispell woman who was providing legal services illegally.

The District Court has ordered Connie Monroe to stop using the words "legal" and "independent paralegal" in her advertising of her typing services to consumers.

A June consent order, was signed by Ms. Monroe and Lincoln County District Judge Michael Prezeau, who was brought in to handle the case because all the Flathead county judges were too familiar with Ms. Monroe practicing in their courtrooms. Judge Prezeau ruled that Ms. Monroe's "advertising or representing that she can assist with, provide legal advice regarding, or typing

legal documents pertaining to family law matters, wills, child custody, adoptions, divorces, or self-help bankruptcies" are "unfair and deceptive" practices.

The judge's order said that Ms. Monroe was giving legal advice to customers, which is illegal for a paralegal or any other nonlawyer to do when not under an attorney's supervision.

A complaint was filed in 2007 by the state Office of Consumer Protection in response to requests by the State Bar, said Kelley L. Hubbard, assistant attorney general with the Office of Consumer Protection.

Ms. Monroe, who did business both as "Paralegal Services of Kalispell" and "Connie Monroe Independent Paralegal," was ordered to forfeit the phone numbers advertised in the Yellow Pages. According to the consent judg-

ment, she also must stop:

- Advising clients regarding legal matters.
- Advising clients on how to fill out legal forms and documents.
- Preparing, providing, or typing legal documents or documents to be filed in any court.
- Accepting payment for any of the above practices.

The judge said Ms. Monroe will be fined \$10,000 for any future violation of the order.

IN A SEPARATE CASE, the U.S. Bankruptcy Court for Montana also ordered in June that Ms. Monroe forfeit \$600 in fees to a couple who were her customers in a bankruptcy proceeding, and ordered her to pay \$2,000 in damages to them.

The Bankruptcy Court, which also found Ms. Monroe in contempt for violating a 1997 court order, topped off its punishment with the threat of a \$30,000 fine – plus forfeiture of fees and \$2,000 in damages per customer – for any

IMPORTANT UPDATES*

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*Updates are in .PDF format and will be
available and distributed after July 13th. If
you are unsure whether or not you have
already purchased a copy, or for more
information, call (406) 442-7660.

Upcoming CLE seminars for Montana lawyers

August 5 Billings – Rocky Mountain College

The Parenting Plan A - Z 7.50 CLE credits, including 1.50 Ethics credits. Presented by Montana Mediators, (406) 839-3323

August 6 Teleconference

Paralegal Seminar on Pleadings & Motions 1.0 CLE credit. Presented by the Institute for Paralegal Education, (800) 793-5274

August 6 Teleconference

Paralegal Seminar on Ethics for Litigation 1.0 CLE credit, including 1.0 Ethics credit. Presented by the Institute for Paralegal Education, (800) 793-5274

August 11 Helena – Metcalf Building, Capitol Complex

Preventing Harassment 3.0 CLE credits. Presented by the state Personnel Division, (406) 444-3985

August 13 Helena – Metcalf Building, Capitol Complex

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

August 18-19 Billings – Rocky Mountain College

Comprehensive Negotiation Workshop 15.0 CLE credits, including 3.0 Ethics credits. Presented by Montana Mediators, (406) 839-2223. See ad on Page 18.

August 19 Miles City – Guest House Inn

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

August 20 Miles City – Guest House Inn

State Ethics Law 3.0 CLE credits, including 3.0 Ethics credits. Presented by the state Personnel Division, (406) 444-3985

August 20 Whitefish – Grouse Mountain Lodge

Boardsmanship Workshop 5.0 CLE credits. Presented by Michael Dahlem Esq., (406) 862-2430

August 21 Missoula – DoubleTree Hotel

Family Law Litigation 6.0 CLE credits, including 1.0 Ethics credit. Presented by the National Business Institute, (800) 930-6182

August 21 Whitefish – Grouse Mountain Lodge

Labor & Employment Law Workshop 5.0 CLE credits. Presented by Michael Mike Dahlem Esq., (406) 862-2430

August 25 Teleconference

Conflicts Between Federal & State Laws-Unfriendly Encounters 1.50 CLE credits. Presented by Cannon, (706) 353-3346

August 27 Helena – Metcalf Building, Capitol Complex

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

Writing Administrative Rules of Montana 10.0 CLE credits. Presented by the state Personnel Division, (406) 444-3985

September 5 Missoula – Holiday Inn Downtown

Copyright Law I & II 5.50 CLE credits. Presented by the Pacific Northwest Library Assn., (406) 275-4874

September 14-16 Billings – Rocky Mountain College

Fundamentals of Mediation 22.50 CLE credits, including 2.50 Ethics credits. Presented by Montana Mediators, (406) 839-3323. See ad on Page 18.

September 17-18 Billings – Rocky Mountain College

Divorce Mediation 15.0 CLE credits, including 1.50 Ethics credits. Presented by Montana Mediators, (406) 839-3323

September 17 – Teleconference

Paralegal Seminar on Power-Point 1.0 CLE credit. Presented by the Institute for Paralegal Education, (800) 793-5274

September 17-18 Missoula – Holiday Inn Downtown

State Bar Annual Meeting CLEs – 'Hot Topics' 9.25 CLE credits, including 2.5 Ethics credits (meets Substance Abuse/Mental Impairment (SAMI) requirements for this cycle. Presented by the State Bar, (406) 447-2206. Details and registration being mailed to members and available at www.montanabar.org

September 23 Helena – Metcalf Building, Capitol Complex

Montana's Wrongful Discharge Act 3.0 CLE credits. Presented by the state Personnel Division, (406) 444-3985

September 25 – Bozeman

Construction Law Presented by the State Bar and its CLE Institute, (406) 447-2206. Details and registration to be mailed to members and available at www.montanabar.org

STATE BAR CALENDAR

August 14

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

August 20

Equal Justice Task Force meeting, 9 a.m., State Law Library

September 7

Labor Day, State Bar offices, closed

September 14

Board of Bar Examiners pass-fail grading meeting for July Bar Exam, 10 a.m., State Bar offices, Helena

September 16

State Bar Board of Trustees meeting, 1:30 p.m., Missoula

Joint meeting of Equal Justice Task Force, Commission on Self-Represented Litigants, and Access to Justice Committee, 1 p.m., Missoula.

Resolutions Committee meeting, 3 p.m., Holiday Inn Downtown, Missoula

Reception honoring Western Montana retired judges and attorneys, by Western Montana Bar Association, 5:30 p.m., Missoula Art Museum, Missoula

September 17-18

State Bar Annual Meeting, Holiday Inn Downtown at the Park. (See program on Page 10)

September 18

Dedication of new Law School building, 2 p.m., UM campus, Missoula

Paralegal Section dinner, 5:30 p.m., Holiday Inn Downtown, Missoula

September 25

Construction Law CLE, Bozeman

September 25 Helena – Metcalf Building, Capitol Complex
State Ethics Law 3.0 CLE credits, including 3.0 Ethics credit. Presented by the state Personnel Division, (406) 444-3985

October 1 Helena – Great Northern Hotel
Montana Water Law 10.75 CLE credits, including 1.0 Ethics credit. Presented by The Seminar Group, (206) 463-4400

October 1 Missoula – Ruby's Inn
Landlord-Tenant Law Update 6.75 CLE credits, including 1.0 Ethics credit. Presented by Sterling Education Services, (715) 855-0495

October 8 Billings – Clocktower Inn
Probate Practice 6.50 CLE credits, including 1.0 Ethics credit. Presented by the National Business Institute, (800) 930-6182

October 9 – Great Falls
Dispute Resolution Presented by the State Bar, (406) 447-2206. Details and registration being mailed to members and available at www.montanabar.org

October 15-16 Chico Hot Springs
Women's Law Presented by State Bar Women's Law Section and the Bar's CLE Institute. Details to be mailed to Bar members and available at www.montanabar.org.

October 20-21 Billings – Rocky Mountain College
Comprehensive Negotiation Workshop 15.0 CLE credits, including 3.0 Ethics credits. Presented by Montana Mediators, (406) 839-2223

October 20 Teleconference
Directed Trusts – Understanding the Risks & Avoiding the Liability 1.50 CLE credits. Presented by Cannon, (706) 353-3346

October 22 Bozeman
ABA Tech CLE Comes to Montana Presented by the State Bar's Tech Committee and the Bar's CLE Institute. Details to be mailed to Bar members and available at www.montanabar.org.

October 22 Billings
ABA Tech CLE Comes to Montana Presented by the State Bar's Tech Committee and the Bar's CLE Institute. Details to be mailed to Bar members and available at www.montanabar.org.

October 27 Billings – Rocky Mountain College
The Parenting Plan A - Z 7.50 CLE credits, including 1.50 Ethics credits. Presented by Montana Mediators, (406) 839-3323

October 29-30 – Great Falls
Bankruptcy Presented by the State Bar CLE Institute. Details to be mailed to Bar members and available at www.montanabar.org.

October 30 – Helena
State Bar Rookie Camp and Road Show Details to be mailed to Bar members and available at www.montanabar.org.

State Bar of Montana Bookstore

These Montana legal manuals and videos are for sale or rent via this mail-order catalog. Other Montana Bar-produced video seminars, are available for download to your computer on the Online CLE catalog at www.montanabar.org.

LEGAL PUBLICATIONS

2008 Guide to Montana's Local and County Community Foundations

2008, 54 pages
Print only, free

Montana Students' Guide to Turning 18

2008, 22 pages, CD \$10
Free download at www.montanabar.org

Montana Probate Forms

2006, 288 pages
Book plus CD \$150

Civil Jury Instructions

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

Criminal Jury Instructions

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

Handbook for Guardians & Conservators

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

2009 Lawyers' Deskbook & Directory

Available now, book \$40
Mid-year update CD (July) \$20

MT Family Law Form Book

2005, 93 pages incl. 26 forms
Book and CD \$150

Public Discipline Under MT Rules of Professional Conduct

2006, 115 pages annotated
Book \$35

Public Information Flyers

tri-fold brochures, \$10/bundle of 100
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Dispute Resolution
Divorce in Montana
How Lawyers Set Their Fees
Purchasing Your Home
Renting a House or Apartment
Small Claims Court
After an Auto Accident
When You Need a Lawyer
Wills & Probate

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2007 Montana Ethics CLE, Butte

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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

Stream Setback; New Historical Consumptive Use Formula; Water Quality; Adjudication; Water Right Fundamentals; Ditch Easements; Water Commissioners & Enforcement

CLE materials from 2008

Administrative Law & Procedure

Judicial Review of Agency Cases; Contested Case Procedures Before Dept. of Labor & Industry; Social Security Administrative Procedures; Ethics; Federal Tort Claims; Administrative Tax Appeal

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

Litigating Consumer Claims; Risk Management;

Best Practices; Chapter 13 Update; Judges Panel; Means Testing; Case Update

Bench-Bar

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

CLE & SKI

Effective Mediation Techniques; 2007 Supreme Court Update; Montana Stream Access; Complex Real Estate Cases; Structured Settlements

Construction Law

Life Cycle of a Project; Defect Claims & the Prompt Payment Act; Workers' Compensation; ADR; Pursuing Payment; Contracting for Energy Projects; Perspectives of Owners, Buildings and Design Professionals on Design-Build Projects

Family Law

Common Mistakes in Calculating Child Support; Why We Practice Family Law; Special Issue Parenting Plans; Ethics; Depositions & Evidentiary Issues; Military Benefits; New Public Access Rules

General Practice

Indian Probate Reform Act; Impaired Practitioners; Criminal Law Update; Judges: What to Do; Ethics; Medicaid; Privacy & Public Access

Leap Into Litigation

All Law, On All Matters; Who Wants to be Stress Free?; Subpoenas: 3rd Party, State; Federal & HIPPA; Settlements & Mediation; Legal Investigation

Oil & Gas

Elm Coulee Field; Right to Access & Surface Damages; Leasing from a Lessor's Perspective; BLM's Leasing Program; Lawyer-Created Title Problems; Natural Gas Power Plant Development; Joint Ventures & Audits

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Small Firm - Solo Practice

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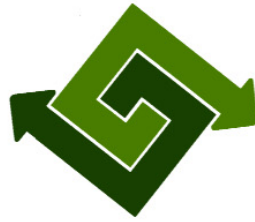
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September 14, 15, 16

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September 17 & 18 *Family Mediation* \$310

With both courses students meet comprehensive family mediation education criteria. Our course is the only one in a six state area approved by the Association of Conflict Resolution (acrnet.org) **\$650 for both**

August 18 & 19 *Comprehensive Negotiation Workshop* \$300

October 20 & 21 *Comprehensive Negotiation Workshop (repeat)*

Based on the principles and teachings of the Harvard Negotiation Program and Dr. Lewicki of The Ohio State University who says "Negotiators are made not born". Be empowered and comfortable as a negotiator. Appreciate the professional and personal enjoyment to be derived from negotiating in both the realm of "distributive" negotiation and "interest based or principled" negotiation. Each negotiation represents an opportunity, because it provides the negotiators with the chance to improve their respective circumstances.

IN MISSOULA

University of Montana School of Law & School of Business

**Negotiation Course
June 19-21
& June 26-28**

**Fundamentals
of Mediation
October 5, 6 & 7**

**Family Mediation
October 8 and 9**

Art taught at the University Of Montana School Of Law, Masters of Communication, MBA, and other Graduate School programs for twelve years before "following the grandchildren to Billings in late 2008. Art taught basic and advanced mediation skills, family mediation, special topics, and directed the Law School's Mediation Clinic. His negotiations course was adopted by the School of Business in their MBA program. This course will continue to be taught by Art during summer session at UM. In 2008 Art was honored at Law School graduation with the "Outstanding Adjunct Professor Faculty" award and received his "Scholars Brick" in front of Main Hall for his Fulbright Senior Specialist activities for the past 7 years in South America. Kitty has been an accredited mediator for 18 years, specializing in organizational conflict from large companies to government agencies to middle and high schools across the state. With Art, she co-founded the Community Dispute Resolution Center of Missoula County and still serves on the board of directors.

The Peaceable Workplace

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**September 28 & 29
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■ **Sexual Orientation:** Susan Ridgeway, a private practitioner from Missoula, spoke at the meeting about a case in which she represented a lesbian mother who was fighting for custody of her children. Susan discussed the barriers faced by individuals whose rights were not considered in the enactment of laws, such as lesbians and gays. For example, Montana's domestic relations, adoption and probate laws do not contemplate same-sex partners. The absence of these laws leaves a significant portion of the population without legal remedies.


■ **Gender:** Sherry Mateucci was the first female president of the State Bar of Montana. She made gender equality her focus as president, and commissioned a task force to examine gender bias in Montana. That task force has now become a Montana Supreme Court commission that is currently chaired by Julianne Burkhardt. Julianne spoke at the meeting about the commission's recent activities, which include a proposal to change the Canons of Judicial Ethics to prohibit judicial bias on any basis, including sexual orientation.

■ **Diversity:** Guest speaker Amie Thurber, of the National Coalition Building Institute (NCBI), pulled all of these issues together in a way that caused the trustees to examine their own diversity, or lack thereof. Amie involved the trustees in a limited version of the diversity workshops that she, UM Law Professor Andrew King-Ries and others present to large groups. Amie started the meeting by asking attendees to self-identify the groups they belonged to, such as first-borns, only children, family or friends of gay and lesbians, persons who grew up without sufficient family income or with more than enough family income, nationality, and disabilities. The exercise demonstrated a remarkable phenomenon: By exposing personal information to the group, a level of bonding takes place that makes it much easier to open up about oneself during the ensuing meeting. Based upon the limited exposure the trustees had to NCBI's diversity workshop at the strategic planning meeting, I would highly recommend the full workshop to any large group.

As a result of the panel's discussion, the trustees added two new items to the State Bar of Montana's Strategic Plan, items that promote diversity in the Bar and the Law School, and encourage State Bar committees and sections to examine the need for and propose new legislation addressing current barriers to access to justice. I hope that we as a bar can continue this discussion and look at ways to eradicate or reduce these barriers.

FINALLY, I WANT TO SAY welcome to the University of Montana School of Law's new dean, Irma Russell. The State Bar looks forward to working with Dean Russell in its continued collaborations with the Law School. I also want to say thank you to former Dean Ed Eck, for his years of service to the bar as dean of the Law School. Dean Eck modestly

shunned attention as he retired from his deanship, sincerely requesting that no one make a big deal about him leaving the position he has held for over a decade. I am sure I am among many who want to express deep thanks to Dean Eck for the fine job he did leading the Law School all those years. ○



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Helena lawyer was world-champion rower and two-time Olympian

By John Harrington
Helena Independent Record

People who don't pay much attention to sports — and even those among us who do enjoy following the athletic exploits of others or actively participate ourselves — may get tired of the “sports as a metaphor for life” clichés that often overflow the sports pages, networks and radio stations.

After all, in the grand scheme of global accomplishments, what are sports, really? The ability to knock a white ball into a hole in the ground; to throw a leather ball through a hoop; to run faster than a bunch of other people. ...

None of those skills on their own ever solved world hunger or cured cancer, and none ever will.

But on a deeper level, sports can teach us a great deal about ourselves — about our character, our perseverance and our ability to achieve things physically and mentally we never thought we could. Sometimes, clichés become clichés because, well, they ring true.

Monica Tranel sees the value in sports. Now a 42-year-old mother of two daughters and attorney with the firm of Luxan & Murfitt, Tranel was, for much of the 1990s, one of the best rowers in the world. She's got the gold medals from the world championships and two appearances in the Summer Olympics to prove it.

EFFECTIVELY RETIRED FROM competitive rowing since the 2000 Olympics in Sydney, Australia, Tranel applies lessons daily in both the courthouse and her home that she learned during countless hours of training and competing on rivers and lakes around the globe.

“Sports organize your thinking and how you live life,” she said. “It teaches you how to accept not being good at something or to develop certain skills. You learn how to bring out the best in yourself. There's a greater social benefit to sports. You see people push themselves beyond anything they thought was possible, and that's inspirational.

“We can be better than we are, and that's a great message to be reminded of every day.”

The sixth of 10 children in her family, Tranel grew up on a ranch between Billings and Miles City and didn't touch an oar



Monica Tranel, at right, is shown rowing her scull above.



until she reached Gonzaga University. She rowed in Spokane, then increased her involvement when she moved on to the Rutgers School of Law in Camden, N.J., just across the Delaware River from Philadelphia, the rowing mecca of the country.

FROM THE OUTSET, Tranel was drawn to solo rowing, or sculling, though she spent much of the 1990s rowing “eights” — a team of eight rowers with a coxswain in the back of the boat who alternately steers, encourages and browbeats the team.

“The appeal of the eight is it's big and it's loud and it goes fast,” she said. “It's a team function and you really are so meshed with the people you're rowing with. We rowed for two hours at a time or more, and the rhythm of it ... it's visceral, you feel it.

“And you're right in the water, so you hear it. You hear the oar catch the water, hear the bubbles in the water. You're with other people, you get support from them, you share all that as a team. Unlike basketball or football, there's really no standout person. It's sort of the ideal team sport in a lot of ways. Everyone has to pull their weight.”

Literally.

TRANEL JUST MISSED a spot on the 1992 U.S. Olympic Team, but she says that wasn't a huge disappointment. She still had years left to compete.

“I wasn't ready,” she said. “I hadn't invested 10 years of my

life at that point. I was new at it and thought it was fun.”

For the next few years, she woke at 5 a.m., rowed on the Schuylkill River, practiced law all day, rowed again, ate and went to bed. Sports can pull a person into a singular and somewhat narcissistic lifestyle, almost by necessity — elite athletes focus on the goal, and by extension their own bodies and minds, 24 hours a day.

“What’s hard to explain is the way that you genuinely move into a completely different lifestyle. Your goal is so pure, there’s not really a debate about should I do that or shouldn’t I do that,” Tranel said. “And I never thought I was missing out. I thought, I have this great lifestyle.”

SHE EARNED A SEAT in the U.S. eight for the 1996 Olympics in Atlanta, and remembers sitting on the starting line before her event’s final race, her parents and all nine siblings among the crowd.

It wasn’t a moment for reflection.

“You’re so incredibly focused,” she said. “You’re thinking, is my oarlock tight? Do I have a little bit of water on my hands? Am I sitting where I’m supposed to be? Is my oar where it’s supposed to be? My hat? My breathing? It’s not that global perspective. It’s the practical details.”

The record book shows the U.S. team finished fourth, which to someone who doesn’t follow the sport might appear to be an awesome accomplishment. But to Tranel and her teammates, at the time it was anything but.

Just a month earlier, the American eight had set a new world record for the 2,000-meter distance in Europe, and came to Atlanta as the pick for a gold medal.

“’96 was the first international race I’d competed in when I hadn’t won a medal,” Tranel said. “We were the world champions, the favorites. We got a ton of attention. Every practice there was someone there with a camera or a microphone, and we weren’t used to it. We were rowers.”

She can still recall the sinking feeling of watching the race slip away, of being beaten off the starting line by the Romanian team, of seeing the Canadians sprinting past at the end to claim bronze.

“We just didn’t perform,” Tranel said. “It’s the worst feeling in the world. It was stunning. It was this feeling of incredible emptiness.

“And it’s not that I didn’t win a medal, it’s that I worked so hard to put everything together to perform, and we didn’t have our best race when it mattered. And that’s the hardest part of it. You want to be judged by what you’re capable of by the world at large, but you’re judged by how you perform.”

BUT OFTEN DEFEAT CAN provide the best lessons, and Tranel said that stinging loss helped teach her how to measure herself. There will always be people who will tell you you’re the best — or that you aren’t — but ultimately it’s up to each of us to judge whether we’ve accomplished all we can.

“That’s what I’ve tried to carry over to my girls,” she said. “You have to have your own internal barometer to use to determine whether you’re successful. You have to be truthful about your performance. It was great to be in the Olympics. It was an incredible accomplishment, but we failed on that day.”

Soon after Atlanta Tranel decided to focus her energy on the

single scull.

“Most rowers are team-oriented people, but single is always where my heart was,” she said. “It’s just you, it’s so raw, there’s no cushion, no excuses, nowhere to hide. It’s pure, it’s authentic.”

A seat in the eight awaited her for the Sydney Games in 2000, but she ultimately decided to compete alone.

“I just agonized over it,” she said. “There was a lot of baggage still from ’96. If I go into the single I really do have control. It’s not my best chance of winning, but it’s my best chance of walking away after the Olympics saying I did my best, trying to control that intangible in sports, which is performing when it matters.”

She missed her goal of making the finals, which would have meant a top-six finish. Tranel ended up 12th, and talks today like she ended her career with no regrets.

THAT DOESN’T MEAN, though, that retirement was easy. Many athletes struggle with how to fill the void left by their sport, and Tranel was no exception.

She moved to Helena, worked for the Public Service Commission for four years and got married in the process. After a short stint working in Washington, D.C., for Sen. Conrad Burns, her family returned to Montana (Butte) in 2005 and she entered private practice in 2006. The family returned to Helena late last year.

Today, her practice includes a variety of business cases, including telecom clients, associations, real estate cases and occasional litigation.

Starting a family and practicing law have each taught Tranel to focus attention outside herself — which she says can be just as rewarding as working toward an athletic goal.

“AS A LAWYER, what do I get out of my cases and representing my clients? I get the satisfaction of knowing I gave them some measure of peace in their life. Having lost in ’96 makes it easier to assess what my clients’ needs are, because it’s not about whether we win or lose a case, it’s about them and what they need to get out of this to go on with their lives. If I can give my clients what they need, as measured by them — it’s their life and their case, I’m just a tool to get them where they need to go.”

That’s not to say, though, that Tranel’s competitive flame has been completely extinguished. The rowing machine in her house is a long way from Atlanta’s Lake Lanier, but sometimes she can still hear the “whoosh” of the oar through the water.

“Every time the Olympics come up, even last year, there’s a little voice in my head that says, ‘Do you want to do it? C’mon, you can go back, take a leave of absence from work, train, your husband would be fine with it,’” she said with a laugh. “I wish I could go back and compete with the emotional maturity and perspective I have after having kids. I think athletes perform their best when they’re relaxed, and the Olympics really are a game, they’re for fun, it’s not life or death.”

Sounds like there’s a lesson in there for all of us.

○

Construction finished, judges at work in new Great Falls federal courthouse

"The hammers used to build the Missouri River Courthouse were hung up [on July 14], replaced by the pounding of gavels," the *Great Falls Tribune* reported in mid-July.

In a story catchily titled "State-of-the-art courthouse raises the bar," the *Tribune* announced the completion of construction of the \$16.4 million federal building, "except for a few finishing touches."

Moving crews have hauled furnishings from the old courtrooms and judges' chambers in the upper levels of the Great Falls post office to the new courthouse off Central Avenue West, near the west bank of its namesake river, the *Tribune* said. And by July 15, U.S. Magistrate Keith Strong had already held a felony arraignment as the build-

ing's first hearing.

As in all federal courthouses, the security is tight, the *Tribune* said, with a security station — with metal detectors and X-ray machines — right inside the front door in a well-lit lobby, and staff use modern equipment.

"It provides state-of-the-art security for the court in Great Falls, which we did not have by virtue of the fact that we were in an historic building [the post office]," said Patrick Duffy, clerk of the U.S. District Court in Montana.

Another problem with the old building was that there was only one elevator — used by judges, defendants, victims and anyone else. "That meant a potential threat to security, or at least some very uncomfortable elevator rides," the *Tribune* article said.

That's no longer the case — the new courthouse has several elevators.

At 48,000 square feet, the new courthouse has more room than the top floors of the post office — an important factor since Great Falls has the highest criminal caseload of Montana's five federal court districts.

Some of that extra space went to the U.S. Marshals Service and the Federal Probation office, the *Tribune* reported. "Those agencies are now under the same roof as the courtrooms, whereas they previously were in separate downtown buildings."

There's also more room for court spectators and the easy-to-find clerk of court's office has three computers for public access to federal court documents. The former clerk's office was hidden away and had just one public computer.

The major decorations in the new building are quotes engraved in giant marble slabs, the *Tribune* said. Most are

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justice related, such as "To no one will we sell, to no one will we refuse or delay right or justice," from the Magna Carta.

The last paragraph of "A River Runs Through It" by Norman Maclean also found a place on the wall.

"Among all the new is some old," the *Tribune* said. Mr. Duffy salvaged a wooden counter that was put in the clerk of court's office in Great Falls' original federal courthouse in 1912. It was taken out by crane, refurbished, and is back in use alongside furnishings that are 100 years younger. "They don't make them like that anymore," Duffy told the *Tribune*.

However, the *Tribune* said Mr. Duffy is happy with the way they make modern courthouses in Great Falls..

"The craftsmanship of the contractor and subcontractors is outstanding," he said. "It's a testament to the talent we've got in Great Falls. It's a beautiful building." ○

Court appointments

The Montana Supreme Court has made the following appointments to the Court's commissions:

● **Civil Jury Instructions Guidelines Commission:** Great Falls attorney Alexander Blewett III was appointed to replace Helena attorney P. Keith Keller, who resigned.

● **District Court Council:** Billings District Judge Gregory Todd and Butte Clerk of Court Lori Maloney have been reappointed to three-year terms.

● **Judicial Standards Commission:** Miles City District Judge Gary Day was elected by district judges to be one of the two district judges on the Commission. Missoula attorney Victor F. Valgenti was reappointed to a four-year term.


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When ipsie dixit is not enough

Substitution-of-judges revisions adopted

Following a public-comment period, the Montana Supreme Court on July 10 ordered the adoption of revisions to the rules on the substitution of Montana district judges (the proposed revisions were presented in the July 2009 *Montana Lawyer*.)

The revisions were made to make the rules easier to read and understand, the Court said. They will go into effect on Oct. 1, 2009.

You can find the new rules at <http://www.courts.mt.gov>.

ORAL ARGUMENTS

September 2009

■ Case No. DA 08-0506 PPL MONTANA, LLC, a Delaware Limited Liability Company, Plaintiff and Appellant, v. STATE OF MONTANA, Defendant and Appellee.

Oral argument is set for Wednesday, Sept. 16 at 9:30 a.m. in the courtroom of the Montana Supreme Court, Helena.

■ DA 08-0386 DELANEY & COMPANY, Plaintiff and Appellee, v. CITY OF BOZEMAN, Defendant and Appellant.

Oral argument is set for Wednesday, September 23, at 9:30 a.m. in the courtroom of the Montana Supreme Court, Helena.

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.

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work provider, to identify the customer who owns the cell phone.

■ **Cell phone number** – is referred to as the MSISDN (mobile subscriber integrated services digital network).

The following information may be found on a SIM card.

■ **Text Messages** – Normally there is space on the SIM which will show the last 12 text messages that were sent. In addition, cell phones also store messages in memory. Most cell phones use the SIM memory first before using the internal memory.

■ **Deleted Messages** – Similar to deleting a file on a typical hard drive; the first byte is set at zero. This means that deleted messages can be retrieved except for the first byte as long as a new message has not overwritten the old message.

■ **Phonebook** – Most cell phones have the ability to store at a minimum 100 dial numbers with an associated name.

■ **Last Dial Numbers** – Most SIM

cards only store the last 5 phone numbers. However, most phones store many more last dialed numbers on the phones internal memory.

Cell phones are very personal items and may contain ESI that could be relevant in a civil or criminal investigation. Utilizing cell phone forensics may provide you with a nugget of information that will help you win your case.

DON KOHTZ, an attorney, is the director of investigative and compliance solutions with Continuum Worldwide. He was an assistant attorney general for the State of Nebraska, the Fraud Bureau chief at the Nebraska Department of Insurance, and was counsel to insurance companies and financial institutions.

MATT CHURCHILL is the director of digital forensics and cyber investigations for Continuum Worldwide. He is a former member of the FBI's Cyber Crimes Task

Force and is president of the Nebraska Chapter of the High Technology Crime Investigation Association.

Notes

1. http://www.uscourts.gov/rules/EDiscovery_w_Notes.pdf
2. *Lee v. U.S. Security Associates, Inc.*, Slip Copy, 2008 WL 958219, Fn. 5 (W.D. Tex., April 8, 2008) (in dicta, it was discussed that destruction of cell phone records which would indicate the phone number and duration of calls may qualify for a spoliation instruction at trial)
3. Guidelines on Cell Phone Forensics, p. 8, Recommendations of the National Institute of Standards and Technology (NIST), NIST Special Publication 800-101, May 2007; <http://csrc.nist.gov/publications/nistpubs/800-101/SP800-101.pdf>
4. Id., p. 31.
5. Id.; these standards apply to civil matters.
6. Guidelines on Cell Phone Forensics, p.33, Recommendations of the National Institute of Standards and Technology (NIST), NIST Special Publication 800-101, May 2007; <http://csrc.nist.gov/publications/nistpubs/800-101/SP800-101.pdf>
7. Cell Phone Forensics, by Marty Musters; <http://www.computerforensics.ca/images/Cell%20Phone%20Forensics.pdf>
8. Id.

IPHONE MISTRIAL, from P. 7

illegally sold prescription drugs through Internet pharmacies. The arguments were completed and the jury was deliberating when one of them contacted the judge to say another juror had admitted to her that he had done some outside research on the case over the Internet.

As the judge questioned the juror about his research — which included evidence that the judge had specifically excluded — Mr. Rabin said he recalled thinking that if the juror had not broadly communicated his information with the rest of the jury, the trial could continue and the eight weeks would not be wasted. “We can just kick this juror off and go,” he said.

But then the judge found that eight other jurors had done the same thing — Google searches on the lawyers and the defendant, looking up news stories about the case, checking definitions on Wikipedia and searching for evidence that had been specifically excluded by the judge. One juror, asked about the research by the judge, said, “Well, I was curious,” according to Mr. Raben.

Information flowing out of the jury box can be nearly as much trouble as the

information flowing in; jurors accustomed to posting regular updates on their day-to-day experiences and thoughts can find themselves on a collision course with the law.

In the Arkansas case, Stoam Holdings, the company trying to overturn the \$12.6 million judgment, said a juror, Johnathan Powell, had sent Twitter messages during the trial. Mr. Powell’s messages included, “oh and nobody buy Stoam. Its bad mojo and they’ll probably cease to Exist, now that their wallet is 12m lighter.” Mr. Powell, 29, insists that he had not sent any substantive messages about the case until the verdict had been delivered.

But juror research is a more troublesome issue than sending Twitter messages or blogging, Mr. Keene said, and raises new issues for judges in giving instructions. “It’s important that they don’t know what’s excluded, and it’s important that they don’t know why it’s excluded.” The court cannot even give a full explanation to jurors about research — say, to tell them what not to look for — and so instructions are usually delivered as blanket admonitions, he said. Today’s judge, Mr. Keene said, “has to explain why this is crucial, and not just go through boilerplate instructions.” ○

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NEWS ABOUT MEMBERS

Randi M. Hood, chief public defender for the State of Montana, has become a fellow of the American College of Trial Lawyers, one of the premier legal associations in America. Her induction ceremony took place during the 2009 Spring Meeting of the College in Fajardo, Puerto Rico. The College is composed of the best of the trial bar from the U.S. and Canada. Fellowship in the College is extended by invitation only and only after careful investigation, to those experienced trial lawyers who have mastered the art of advocacy and whose professional careers have been marked by the highest standards of ethical conduct, professionalism, civility, and collegiality. Lawyers must have a minimum of 15 years trial experience before they can be considered for fellowship. Ms. Hood is a 1975 graduate of the University of Montana School of Law. Her husband, John Connor, was inducted in the College in 2005. They are the only married couple in Montana to become fellows in the College.

Robin Turner has been hired by DOVES (Domestic Violence Education & Services) to provide civil legal assistance for clients of the Confederated Salish & Kootenai Tribes (CSKT) Victim Assistance Program. Funding for her position comes from a federal Office on Violence Against Women Legal Assistance for Victims grant, which provides for a civil attorney in both the DOVES and CSKT Victim Assistance Program offices. The domestic violence crime victim advocate organizations are located in Lake County and on the Flathead Reservation. Ms. Turner was born and raised in Shelby, Mont. She graduated from the Gonzaga University honors program in 2002 and from the University of Montana School of Law in 2008. While at UM School of Law, she was notes editor of the *Montana Law Review* and served as the vice president and community relations manager of the Student Bar Association. She interned with Phillips & Bohyer law firm, the Missoula City Attorney's Office, and Montana Legal Services Association during law school. She served as the law clerk to Bozeman District Judge Holly Brown. Prior to law school, Ms. Turner worked with the Jesuit Volunteer Corps as a service provider and advocate for families experiencing homelessness and violence in San Antonio, Tex. She was inducted into the George F. Hixson Fellowship of Kiwanis International in 2000. Ms. Turner is admitted to practice in Montana's state courts and the Confederated Salish & Kootenai tribal court.



Robert Erickson, a Montana native, is joining Sullivan, Tabaracci & Rhoades law firm in Missoula as a senior associate. In 1997, Mr. Erickson graduated from the University of Montana with degrees in Business Administration, Political

Science, and a Communications Studies minor. In 2003, Mr. Erickson received his JD cum laude with a certificate in Environmental Law from the Tulane Law School in New Orleans. Mr. Erickson has been in the practice of law for the past six years in Albuquerque, N.M., where he focused primarily in the areas of commercial and civil litigation in the New Mexico state, federal, bankruptcy, and tribal courts. He will continue his practice in those areas in Montana. Mr. Erickson is licensed to practice in the Montana courts, the New Mexico state and federal courts, and in several tribal courts in New Mexico, Utah, and Arizona.

Molly C. Ward has joined the People's Law Center in its Billing office. She replaces Roxanne Rogers who has relocated to Shiprock, N.M. People's Law Center is a statewide nonprofit legal organization assisting individuals seeking Social Security disability benefits. Ms. Ward is Helena native and a Capital High School alum. She graduated magna cum laude from the



University of Notre Dame, where she earned a bachelor's degree in Political Science in 2003. She also earned her juris doctorate from Notre Dame Law School, graduating cum laude in 2006. While in law school she spent her summers interning at Montana Legal Services, People's Law Center, and Crowley, Haughey, Hanson, Toole & Dietrich, all in their Helena offices. She also participated in Notre Dame's international program, spending a year on their London campus. During her third year of law school, she was an intern with the Notre Dame Legal Aid clinic working with low-income individuals. Ms. Ward joined People's Law Center after practicing disability law in Chicago for two years with Thomas R. Nash law firm.

After 23 years in private practice, most recently with Delaney & Delaney, Missoula attorney **Brian Delaney** has joined ALPS Corporation as associate counsel. He will continue to reside in Missoula.

The **Western Montana Bar Association** has elected officers and directors for the 2009-2010 year: John Haffey, president; William McCarthy, president-elect; Natasha Prinzing Jones, secretary; Ryan Alane Phelan, treasurer. Jon Beal is past-president. The directors are James McCubbin, Patrick Hagestad, Thad Huse, and Andrew George. Ex officio members are Ed Higgins of the Montana Legal Services Association, and UM School of Law Dean Irma Russell.

Debra Thatcher Gilcrest, Missoula attorney

Debra Thatcher Gilcrest, 46, of Missoula, died on June 16 at the Community Medical Center Rehabilitation Unit after a brief bout with cancer.

She graduated from Sentinel High School in Missoula (1981) and Dartmouth College (1985). In 1990 she earned a JD with high honors from the University of Montana School of Law where she was an editor of the *Public Land Law Review*. Her legal practice included a clerkship with the U.S. District Court for Vermont and positions with law firms in Eugene, Ore., Waukesha, Wis., Washington, D.C., and in Missoula, most recently with the Connell Law Firm. Her practice focused on personal injury, civil rights, and criminal defense.

Ms. Gilcrest married David Gilcrest in 1986 in a ceremony scheduled to allow friends from out of state the opportunity to experience the Western Montana Fair & Rodeo. She was an accomplished vocalist and trombonist; she played regularly with both the Missoula Community Concert Band and the Missoula City Band. During her cancer rehabilitation, she was looking forward to marching again with the University of Montana Alumni Marching Band at Homecoming. She was also an avid camper, canoeist, and birder.

Ms. Gilcrest is survived by her husband, a son, a daughter,

and her parents, all of Missoula. A memorial fund has been set up for her. Contributions may be sent to: Gilcrest Children Benefit Account, First Security Bank, 1704 Dearborn, Missoula MT 59801, Account #: 9110863, Routing #: 092901337.

Victor Koch, Sidney attorney

Sidney attorney Victor "Vic" Koch, 84, died on July 10 at the Sidney Health Center Extended Care Facility.

Mr. Koch was born and raised in the Sidney area. He graduated from Sidney High School in 1942 and joined the Army shortly thereafter. He served in the European Theater until his discharge in 1945.

Mr. Koch attended the University of Montana, majoring in Law. While at the university, he met Lois Larson and they married in 1948. After receiving his law degree in 1950, the Kochs moved to Sidney, where he served as Richland County attorney for 38 years. He also was engaged in private practice until his retirement in 1991.

Mr. Koch's daughter, Leslie Carlson, preceded him in death in 1994; and his wife, Lois, died in 1997. Mr. Koch married Doris Zaback in 2002. He is survived by his wife, Doris, two daughters, a son, and two stepchildren.

Joseph Gilligan, Great Falls attorney

Joseph Patrick Gilligan, 52, of Great Falls, an attorney and former city judge, died July 10 in Great Falls.

Mr. Gilligan was born and raised in Great Falls. He graduated from the University of Montana in 1979, and Notre Dame Law School in 1982.

He worked for law firms in Havre and Great Falls, served as a city judge in Great Falls for several years, and then went on to develop his own practice, Joseph P. Gilligan Law Practice.


He was a member of the ABA, and sang with the symphonic choir for many years. He was an avid outdoorsman.

Survivors include his wife, Natalie, of Great Falls, a stepdaughter and three stepsons.

Other deaths

● **Janet Murdock (Balogh)**, 67, who worked at the library of the University of Montana School of Law from 1978 to 1980, died June 14 in Missoula of ovarian cancer.

● **Robert Allen Larsen**, who served for 23 years as justice of the peace and city court judge in Dawson County and Glendive, died June 17 in Glendive at age 72.




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