

Lawyer

THE STATE BAR OF MONTANA

**A cure
for an
ongoing
water
rights
headache**

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Another
cy pres award
for Montana
Justice
Foundation



Photo by Todd Hido

A Wired magazine report:

How *a city judge
in a small
Montana town
became*

**an
unlikely**

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**A growing
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(406) 442-7660; Fax (406) 442-7763.
E-mail: mailbox@montanabar.org

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THE MONTANA LAWYER

Publisher

Christopher L. Manos, Executive Director

Editor

Charles Wood (406) 447-2200; fax: 442-7763

e-mail: cwood@montanabar.org

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PRESIDENT'S MESSAGE

A lesson from Mr. Kringle

Analyzing your perspective, from his perspective

Jock Schulte

My eyes are fixated on the bare space where our Christmas tree will stand. The tree has been in the garage for over a week and the television was moved over three days ago to create that bare space, the traditional location for our tree. But alas, I have been busy with State Bar of Montana activities and my practice, so I can justify and rationalize (at least to myself) why the hal-lowed tree lies untrimmed in the dark garage where it is enjoyed by no one. However, I assure you that by the time this article is published the tree will be up, fully decorated and the holiday spirit will permeate the household. I will not lose perspective on the importance of holiday spirit and tradition in spite of other demands on my time.

Keeping the proper perspective during the holiday season is a topic that is regularly discussed and analyzed at this time of year. So to encourage all lawyers to be mindful of the extra stresses and burdens that can be placed on us, our families and clients during the holidays, I have some observations on perspective, although they will not necessarily be my own.

Perspective, according to one of the many definitions supplied by our trusted advisor Daniel Webster is: "the capacity to view things in their true relations or relative importance." As lawyers, our perspective is vital to our practice, as that is what materially influences the advice and representation we provide for our clients.

We deal with serious and life-changing matters that require our full concentration and effort. Thus, it becomes unavoidable that at certain times other very important obligations and people in our lives are neglected. As a result, from these people's perspectives, it may appear that the neglected matter is unimportant to us or we do not really care.

To absorb more remarks on perspective from the Bar president is probably just a rehashing of words that we have all heard before and not really offering anything new or different. Therefore, I want to analyze perspective from two different sources – the first being from a man that has become known to me as Kris Kringle.

Mr. Kringle's unique perspective has resulted in a beautiful and wonderful set of values that he effortlessly practices. These values include, but are not limited to, things

like being kind; being patient; being understanding; being giving; being industrious; being fair; being loyal; being courteous; being diligent; being friendly; being zealous; being trustworthy; being happy; being appreciative; being loving; and being able to keep a few secrets.

Quite obviously, to those that know him, Mr. Kringle has very intense and demanding seasonal obligations. But because of his perspective and the resulting values, he handles these extreme obligations very well; in fact, in exemplary fashion.

Perhaps Mr. Kringle can maintain perspective and handle high-stress situations because he is able to achieve balance in his life. I know for a fact that, based on certain media coverage of Mr. Kringle, he has a relatively cushy off-season. I have actually seen video footage of him relaxing on a tropical beach in the Carribean, free from the demands of his clients and employees. His schedule is his own, his finances are in order and he is in control of his personal life. So, I believe that Mr. Kringle, by leading with his remarkable example, can teach us all very much about balance and proper perspective in our personal and professional lives.

THE OTHER SOURCE OF MY perspective analysis still largely involves Mr. Kringle, but comes from watching a person who this year had the opportunity to meet Mr. Kringle for the first time. My initial observation of her perspective on getting to know Mr. Kringle is that she is extremely impressed with his happiness, finding that value displayed by Mr. Kringle to be so important that she regularly reiterates his sage words: "Ho! Ho! Ho!"

I am certain that I will continue to gain additional perspective from observing this important source, not only during this Holiday Season, but on life and the practice of law. This perspective – the ability to see things in their true importance – comes to me through the eyes of a one-year-old child who still has the ability to see things simply and exactly as they are, in a pure and untainted way. That is why I can assure you that the bare space I have been staring at will soon be adorned with a beautiful Christmas Tree.

Happy holidays and best wishes for a wonderful New Year.

Behind enemy lines with a suburban counterterrorist

By Jack Hitt
for Wired magazine

Look,” Shannen Rossmiller says, pointing at her computer screen. She’s in an online chat room, and the name Terrorist11 has just popped up. “He’s one of the more popular guys.” To get here, she signed onto *alfirdaws.org*. Then she clicked into the Paradise Jihadist Supporters Forum. The site is in Arabic, so she turns on the basic Google text translator that renders the discussion into clumsy phrases.

“Take a charge with caution,” warns one jihadist posting, “this thread is monitored.” Meanwhile, Terrorist11 is praising the 2004 Madrid train bombings and posting videos of the dead for other jihadist wannabes to enjoy. Old news, terrorism-wise.

Rossmiller flips her blond hair. She looks bored. “They are just flaming, ranting and raving,” she says. “Do you want to see some blood and guts? Let’s go find it.”

In her small, one-chair home office in Montana, I sit beside Rossmiller on a little tiled table normally reserved for a lamp. Outside, the vistas stretch across Big Sky Country to the Elk Horn Ridge Mountains. Inside, Rossmiller shows me what she does as America’s most accomplished amateur terrorist hunter.

We’re monitoring jihadist chatter, and she has warned me that we’re not likely to come across anything too dangerous. Home-brew cyber-counterterrorism, it turns out, is a lot like most police work — weeks of tedious beat patrols punctuated by occasional bursts of excitement. And the section of the Internet populated by terrorists is a lot like the rest of the Internet — only instead of commenting on, say, a video of 1,500 prison inmates performing Michael Jackson’s “Thriller,” everyone’s chatting about the death of Americans.

Rossmiller hopes to find some people discussing an actual upcoming plot and then join the conversation. But it’s mostly just idle banter today. We come upon a thread in which participants are discussing a Baghdad sniper who has been killing U.S. soldiers. “They call him Juba,” Rossmiller says. She suspects there isn’t a single sniper but rather a cell, and that the thread is designed to create an identity for Juba, a hero who might attract others to the cause.

It’s hard for me to pay attention to Rossmiller. I’m distracted by a little GIF that pops up at the end of one person’s posts. It’s a 1.5-second cartoon of an American GI poking up from the hatch of a tank, getting shot in the head, and slumping over

*Montana woman is wielding her
computer savvy to fool jihadists*

dead. Rossmiller is rushing to the next page, but I ask her to scroll back so I can stare at the clip again. The little GIF’s repetition has an adolescent playfulness to it, so loopy and horrifyingly goofy, so Internet-y, I can’t stop staring. Hatch, headshot, slump. Hatch, headshot, slump. Hatch, headshot, slump. Hatch, headshot, slump.

SHANNEN ROSSMILLER grew up on a Montana wheat farm. She is blond and slim: When she was a cheerleader in high school, she typically wound up at the top of the human pyramid. Her husband runs a wireless Internet company, and they have three children. After college, she was appointed a local judge in a small Montana town, where she and her family still live and which she’d rather not identify [the town in which she was city judge was identified in an earlier *Montana Lawyer* article]. Although she’s happy to talk about what she does, she fears for her safety: She has received phone threats, and her car got shot up once, an incident she attributes directly to her counterterrorism work.

Now 38, Rossmiller spends her weekdays in Helena working in the civil litigation department of the attorney general’s office. She gets up at 4 a.m. and does her hunting predawn. On the weekends, she tracks down killers while relaxing in the bosom of her family. Some days she’s at the computer when her kids — two young daughters and a son who graduated from high school earlier this year — wake up.

“I’ll say, ‘You get your own breakfast; there’s a Jimmy Dean sausage in the kitchen.’ Meanwhile, back in Kurachi...”

SHE HAS LONG HAD an attraction to criminally deviant minds. In the seventh grade, Rossmiller made a poster for school that explored the “mind of the serial killer,” from Vlad the Impaler to Ed Gein, who had a habit of wearing the tanned skins of his victims. Now she can pursue her childhood obsession with a utilitarian twist: She goes right inside the minds of killers, and, if it works out, she catches them.

Rossmiller developed her remarkable talent for chatting up terrorists after September 11, when she started going into online forums and cajoling valuable information from other visitors. She has passed along numerous case files to federal authorities. Her information has led U.S. forces abroad to locate Taliban cells in Afghanistan, discover a renegade stinger-missile merchant in Pakistan, and help another

foreign government identify a ring of potential suicide bombers.

She has also assisted in nabbing two domestic would-be terrorists and seen them both convicted of felonies: National guardsman Ryan Anderson received five concurrent life sentences, and Michael Reynolds, convicted in July and awaiting sentencing, faces a similar fate. Timothy Fuhrman, special agent in charge of the FBI's Salt Lake City office, says Rossmiller was "instrumental in the successful outcome of those cases."

Rossmiller succeeds by exploiting a fundamental flaw in al Qaeda's famously decentralized organization. The absence of a strict hierarchy makes it pretty easy for a cunning person to mix among the terrorists. So she poses as a potential al Qaeda soldier looking for like-minded comers. She creates multiple characters and uses her older and more respected personae to invite the new ones into private forums. There are other self-taught counterterrorists like her, but they tend to translate and discuss, lurk and report. Rossmiller works the terrorism boards as if she were playing a complex videogame. Her characters come complete with distinct personalities and detailed biographies that are as richly conceived as any protagonist on an HBO series. She keeps copies of everything, time-stamps files, and takes screenshots. She has an Excel spreadsheet that details the 640 people with whom she has had contact on these boards since 2002.

Rossmiller admits that all this makes for a bit of a weird hobby. But not only has she gotten an amygdala's-eye view of America's adversaries, she may well have pioneered a new form of intelligence-gathering.

LIKE MOST AMERICANS, Rossmiller woke up on September 11, 2001, and couldn't believe what she was seeing on TV. She could barely get her kids ready for school. At work, the television was on all day, drawing her in. That night, she decided to relax in the family's Jacuzzi. She slipped and fell hard to the ground, knocking her head. When Rossmiller came to, she had an excruciating hairline fracture in her pelvis.

After a stay at the hospital, she spent six weeks in bed at home, flat on her back, watching nonstop cable news about the hunt for Osama bin Laden and the threats from a new kind of terrorism. "The painkillers and the muscle relaxers affect your mentality. You're in a depressed state anyway. I think that contributed a lot to how I got radicalized."

Rossmiller admits to a certain tunnel vision when she decides she's going to master some field of knowledge — her husband, she says, sees her as a kind of idiot savant. Every

time she heard a scholar quoted on television, she'd ask her husband to fetch their book. "I bought The Koran for Dummies, and then I bought a Koran." As her health returned, she read textbooks on Arabic, took a nine-week online language course, and began quietly lurking around jihadist Web sites.

"I just clicked around and looked at the pictures," Rossmiller says. At first she was at the mercy of mediocre shareware translators. "The stupid machine would translate sentences like 'Respect my mustache! I have a happy mustache!'" she says, bursting into a fit of giggles.

But then she started her online courses and bought high-quality translation software. In February 2002, as her Arabic improved and she became more comfortable with her software skills, she wrote herself a goal: "I was going to try to talk to these people as someone not me."

She quickly encountered technical obstacles: For instance, it would be easy for someone to figure out that her e-mail was originating in the U.S., specifically in Montana. So she invested in a proxy server application, which creates a fake IP address off a known IP server someplace real. That way, Rossmiller could send her e-mail as someone living, say, in Yemen, and anyone closely examining the e-mail header would see that the message did appear to come from Yemen. Rossmiller researched the area she was purporting to be e-mailing from and learned the neighborhood so she could casually mention a nearby restaurant or mosque, sometimes even the name of a local imam.

Rossmiller registered on several major sites, including *arabforum.net*. "I just wanted to see if I could post something in Arabic and have them respond. Someone would say a car bomb went off and killed three infidels and praise be Allah. And every Joe was going, 'Praise be Allah.' So I added a simple greeting and said, 'Praise be Allah.'" No one outed her, so she decided to add a few words of what she considered to be plausible terrorist chatter.

"I went to bed but couldn't sleep," she says. "So, finally, I went to see if I got a nibble. My thought was that I would get around 10 to 12 replies, but it was a total dud."

She squints a bit while admitting this, as if embarrassed that she didn't succeed in her first spin as a terrorist.

She began making her postings more sophisticated, and she started watching overseas news programs on cable TV. She worked references to local events into her messages, and suddenly her postings began to draw comments. And she quickly mastered the rather baroque salutations that open many missives in Islamic culture. For instance, when she first wrote to Ryan Anderson, her character decreed how "Allah is



Photo by Todd Hido

ever forgiving of the faithful and most beneficent and merciful. It is never too late to feel the call of the will of Allah.”

Rossmiller took language from Mohammed Atta’s favorite poem and included it in some of her flowery posts. She got a lot of hits and replies, so she’s been laying down the purple prose ever since. “I would change and tailor it to what I needed,” she says. She knew that Arabic communication and speech often quote the Koran, so she would page through it, learning the stories and noting suitable verses.

“These are handy little things to adjust for different occasions,” she says, “like Hallmark cards for jihad.”

IN MAY 2002, Rossmiller saw a post from a man in Pakistan who said he had access to Stinger missiles he wanted to sell. She wrote back to the person she now identifies in her files as Rocket Man, posing as someone interested in purchasing his wares. After a few exchanges, she abruptly threatened to cut off contact unless he provided proof he was who he said he was. “And I’ll be gol-danged if a few days later, a nice little zip file appears with pictures of him sitting on some crates.” The inventory numbers of the Stingers were clearly visible. Rossmiller then realized that her hobby had turned into something that needed attention from the FBI.

Rossmiller put a file together and drove to the FBI office in Great Falls, about an hour away from her home. But she wound up just circling the building and never going in. “I chickened out,” she says. “I thought they’d lock me up. So I put all the information into little digital files and sent them to the FBI tip line.” She included her name, social security number, educational background, and a note saying, “I am not a crazy person.” Within a week, she got a phone call from the FBI Joint Terrorism Task Force in New Jersey, and the Feds began working on the case.

She later learned that the inventory numbers matched those on Stingers the U.S. had supplied to the mujahideen — likely remnants of their war against the Soviets in 1980s.

SHE CAUGHT HER NEXT BIG BREAK a year later when she was poking around a Yahoo chat group called *brave-muslims*. Mostly she had been watching and listening, learning the styles and attitudes that marked the conversations at these sites.

One day she saw a post from someone named Amir Abdul-Rashid who wrote a garbled Arabic greeting, “Wa salaam alaaikum,” and then went on in English:

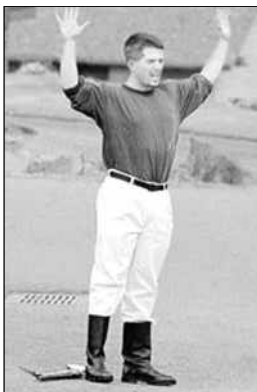


Photo by Todd Hido

Ryan Anderson

Who: Army National Guard tank crew member.

Crime: Attempted espionage to help al Qaeda.

Rossmiller’s role: Posing as Abu Khadija, a terrorist operative based in Germany, she befriended Anderson in a Yahoo chat group. He sent her information on US military strategy and defense weaknesses.

Status: Convicted in Washington state, serving life sentence.

Michael Reynolds

Who: An aspiring domestic terrorist living in Wilkes-Barre, Pennsylvania.

Crime: Aiding al Qaeda, distributing explosives

Rossmiller’s role: Posing as a terrorist financier named Abu Zeida, she got Reynolds to agree to a rendezvous on a highway. He was met by the FBI instead.

Status: Convicted in Pennsylvania, sentence pending.

“Hakim”

Who: Jihadist based in the Middle East.

Alleged crime: Planning suicide attack on U.S. forces in Iraq.

Rossmiller’s role: Posing as Abu Musa, a fellow jihadist she created as a financier of terrorist operations, she persuaded Hakim to meet in a public area to make further arrangements.

Status: Apprehended by Middle Eastern intelligence agents.

“Rocket Man”

Who: Weapons dealer based in Pakistan.

Alleged crime: Trying to sell nine U.S. Stinger missiles.

Rossmiller’s role: Posing as Abu Issa, an operative who claimed to have bombed United Nations facilities in Afghanistan, she got the dealer’s contact info and photos of the missiles. She then passed these to the Feds.

Status: Unknown.

“Just curious, would there be any chance a brother who might be on the wrong side at the present, could join up... defect so to speak?”

Rossmiller wrote back as Abu Khadija, e-mail address *khadija1417@hotmail.com*, to say that she was organizing some training camps in Pakistan and noted firmly, “To receive an order, contact me.” And the guy did. Pretty soon, it became obvious to Rossmiller that he was an American. He asked to write in English and confided that he was “due to enter the war zone” and “unfortunately due to my position, I will be bearing the arms of the enemy.” Rossmiller realized he was an American soldier and saw that his IP address put him in Washington state.

After a few more back-and-forths, she learned his real name was Ryan Anderson and that he was a tank-crew member in the Army National Guard, destined to ship out for Iraq soon.

Many of Anderson’s e-mails with Rossmiller were full of chatty banter, the kind people use when they’re thrilled with a new online friend — except that every once in a while, he would throw in riffs about killing Americans or Arabs. But he

would also offer upbeat raves about his fellow soldiers. In one e-mail he cheerfully describes his commanding officer as “a really cool guy, and a vet of a couple of other deployments including Gulf War I.” Later he flattered Khadija by describing how tough terrorists are and how they are “a real Alliance of Evil like our C in C says... (yes, I still like George Bush, even though he’s sending us there, he’s the guy I voted for, and I’ll probably vote for him again...).”

For weeks, Rossmiller, posing as Khadija, had regular exchanges with Anderson. In notes replete with emoticons, Anderson told her that he would be going to Iraq. This was a time when few knew how the US military intended to station itself in Iraq, and yet he explained that his exact destination would be “Baghdad proper – something my CO called the ‘Green Zone,’ we’re not supposed to talk about it to the newspapers for some reason but I guess family and friends are OK, so I’m not too worried about telling you.”

Anderson wrote that he got “a copy of the Qur’an” for his PDA and then became “so conflicted about all this.” He continued, “What am I to do if I must fire on someone attacking me when I wish I was with them?”

As he prepared to ship out, he wrote, “Our opportunities are coming to an end.” And, indeed, they did – with his arrest on charges of attempted espionage and trying to aid the enemy.

When Rossmiller was summoned to the witness stand of a military court in Fort Lewis, Wash., she described publicly for the first time her methods and techniques. She explained how difficult some of this work was – she trawled through sites for a year and a half before coming upon Anderson.

She also described how easily she could gain certain types of information, like how she had typed Anderson’s e-mail address into Google and quickly discovered not only her contact’s name but also his Army e-mail address, as well as menacing pictures of him clutching rifles and handguns.

AFTER HER TESTIMONY, Rossmiller says, the FBI made her an intelligence asset. She now has a contact at the Great Falls FBI field office, an agent named Mark Seyler. His boss, Timothy Fuhrman, would not comment on Rossmiller’s claim that she has sent the FBI more than 200 of her “packages” since 2002, saying that he would rather keep the details of her intelligence role restricted to what is already on the public record. He did say that “we can always learn from her.”

In fact, it’s distinctly possible that Rossmiller, alone at her computer, has a better track record than the Justice Department. A *Washington Post* analysis in 2005 of the 400-plus people charged with terrorism-related crimes by the federal government found that only 14 of those convicted actually had any ties at all to al Qaeda or its network. Rossmiller’s cases have come with solid backup, while the feeble evidence in the other high-profile Justice Department cases makes many prosecutors roll their eyes.

Consider the seven Miami men arrested in the summer of 2006 and hyped as desiring to wage a “ground war” against the U.S. and intending to blow up the Sears Tower in Chicago. They turned out to be a bunch of trash-talking blowhards whose plans were formulated while smoking pot in an empty warehouse.

In contrast, the man Rossmiller most recently implicated – Michael Reynolds – had prepared meticulous plans to blow up pipelines and was shopping online for used gas trucks to implement his plot. The Pennsylvania resident was arrested after traveling 2,000 miles to southern Idaho, lured by Rossmiller into a supposed meeting with a financial backer.

“When I was in the White House and doing terrorism, the holy grail was ‘actionable intelligence,’ and she brings a form of actionable intelligence,” says Roger Cressey, a White House counterterrorism official in both the Clinton and George W. Bush administrations. (He learned of Rossmiller after he left the government.) The FBI, on the other hand, has failed in every attempt to

modernize its technology since 2001, and it so restricts the software available to agents that they can’t even begin to match what Rossmiller does.

“The FBI is a dinosaur in many respects,” says Cressey.

Rossmiller agrees. “I went to a meeting in Great Falls, and we got to talking, and someone had to look something up online,” she says. “I asked, ‘What do you use for Internet access?’ and one agent said, ‘We have to go to the public library down the street.’”

She also tells a story about another agent who had to get permission to open a Yahoo account because it violated office regs. “They weren’t allowed,” she says.

Some of Rossmiller’s tactics are taken straight from the hacker playbook. For instance, on several occasions she has sent individuals in foreign countries images altered to conceal, say, a keylogger that uploads everything the recipient types, including passwords [see spyware article on Page 11]. One keylogger recipient was a Middle Eastern journalist who had been a known contact of al Qaeda members. Rossmiller passed along the information she got to government officials.

But many of Rossmiller’s most innovative techniques are shockingly simple. To get a good ID of some of her targets, she bullies them into filling out an oath of allegiance known as a bayat. Her bayat is hilariously blunt. Here are the first few lines translated:

Oath of Allegiance to the Jihad

My legal name is...

The son of...

My family’s tribe...

My country...

The contact information for the leadership for my family

If it is Allah’s will I become a martyr in the cause of Jihad

To get a good ID of some of her targets, she bullies them into filling out an oath of allegiance known as a bayat. Her bayat is hilariously blunt.

More COUNTERTERRORIST, Page 36

Montana's new cure for a water-rights problem

House Bill 39 established a system for updating water-right ownership records

By **John Grassy**
DNRC public information officer

The long, rigorous effort to adjudicate water rights in Montana has a new ally – House Bill 39 – and title companies, attorneys, and anyone else closing a property transaction in Montana will want to become familiar with it.

The Water Resources Division of the Montana Department of Natural Resources & Conservation (DNRC) has been working since 1982 to adjudicate some 215,000 claims in the state. The project would be daunting enough with accurate ownership records, but in 2005, after sending out adjudication fee invoices to 108,000 supposed water-right owners, DNRC found that more than one-third of them were returned as undeliverable.

“People simply weren’t filing ownership updates on their water rights when property changed hands,” said Terri McLaughlin, chief of DNRC’s Water Rights Bureau. “We had water rights owned by people who had passed away or who had transferred the water right in a sale years ago.”

Ms. McLaughlin estimated there were some 72,000 water rights in the DNRC database for which the ownership information was obsolete.

SINCE 1983, Montana water law has required the parties to a property transfer to file a water-right ownership update form with the DNRC. Staff would enter the new owners into the water-right database. The purpose of the statute was to facilitate the maintenance of a reliable record of water-right ownership.

In an effort to accelerate ownership updating to assist the adjudication of water rights, Montana lawmakers in 2007 turned to the state Department of Revenue (DOR) and its geocode tracking system. Every piece of property in the state is assigned a geocode by the county for tax purposes; if a property is subdivided, each new parcel gets its own geocode. The DNRC and DOR put their heads together to come up with a system for matching water rights with property geocodes in order to find a way to automate updating water-right ownership.

House Bill 39 authorized the funding to facilitate DOR sharing its property database with DNRC. The agency will link geocodes to water-right parcels. Then DOR will forward on a periodic basis to DNRC the new property owners and addresses with the property geocode. DNRC can then upload the data file, match the geocodes and update the new owners’ names in their water right records. Beginning July 1, 2008, future trans-

fers of water rights with property will have the new owners updated automatically through the linking of the two agency databases.

McLaughlin said using the geocode system will update 80 to 90 percent of the water-right ownership records electronically. DNRC will still have to update some 5,000-10,000 records by hand. Once that task is complete, Ms. McLaughlin estimates that 90 percent of all future records will be updated automatically.

HB 39 WILL GO INTO EFFECT on July 1. What does it mean for title companies, attorneys and other parties closing a property transaction?

By law a water right automatically transfers with a piece of property when it is sold unless specific provisions are made by the seller at the time of the sale. When filling out the Realty Transfer Certificate (RTC) which is filed with the deed at the county, the seller must disclose his plans for the water right. A revised RTC form will identify the possible scenarios, which include the following:

- An outright transfer of the water right to the new owner.
- A division of the water right among two or more owners (this may occur when a parcel of land is subdivided).
- An exemption or reservation of the water right from the sale of the property. This means the water right remains with the seller even though the property changes hands.

A water right can also be “severed” from a parcel of land. In this scenario, the water right is removed from the property and the owner sells the water right but keeps the property. These transactions require the owner to file a paper ownership update form with DNRC. Ms. McLaughlin said this scenario accounts for fewer than five percent of all water transactions.

THE COMPLETED RTC FORM is then filed by the closing party or closing company at the county clerk and recorders office, along with the deed. If the water right was divided or reserved, the RTC form and deed must be accompanied by a certification that the water-right ownership update form and fee is in escrow or will be filed with the DNRC within five days of filing the deed. The DNRC will provide the form to the sellers or closing companies.

The closing company will collect the DNRC update filing fee whether the water right transfers, is divided, or reserved. If the property has been divided, the county clerk will then assign the property a new geocode, which will go into the Department of Revenue’s database. Each month, DOR will send DNRC the latest batch of new owners with geocodes, enabling DNRC to update its records.

UNTIL THE NEW LEGISLATION goes into effect, Ms. McLaughlin said, it’s important that title companies and others

handling property transactions file the Water Right Ownership Update Form 608 (available on the web at: www.dnrc.mt.gov/wrd/) with DNRC if there's a water right connected to the land. Most of the time, she added, that duty falls to the buyer. "About 80 percent of the time it ends up being the buyer's responsibility," Ms. McLaughlin said. "The seller has already left the area."

Why is it so important to have the correct owner of every water right in Montana? In a word: Adjudication. The process of adjudicating water rights in every Montana basin is accelerating due to the 2005 Legislature passing HB22. If the Montana Water Court sends out notices of a decree to water right holders on a particular river or stream and the notice goes

to the wrong party, the rightful owner could lose out on the chance to contest the court's ruling – and could ultimately lose the water right.

There's another, equally important reason, Ms. McLaughlin said. "DNRC gets new water-right applications every day. Part of the application process involves notifying potentially affected water right owners. If we don't have the right owner, that person could miss out on the chance to file an objection or participate in a hearing."

FOR MORE INFORMATION, or if you have questions or comments, contact DNRC Public Information Officer John Grassy at (406) 444-0465 or by e-mail at jgrassy@mt.gov.

MONTANA ATTORNEYS

Lawyer receives Carroll College's highest award

Carroll College in Helena has bestowed its highest honor, the Insignis Award, on Helena attorney Jerome "Jerry" Loendorf.

The award was conveyed at the conclusion of the college's annual President's Banquet in Helena on Oct. 26. The Insignis Award recognizes a person whom the college selection committee finds is an example of outstanding personal excellence, combined with sincere solicitude and service to the College and community, the College said in a news release.

Mr. Loendorf, who graduated from Carroll in 1961, is chair of the College's board of trustees.

"Jerry has, time and again, given Carroll College the very best of his many gifts, including wisdom, personal service, time and energy," said Carroll President Tom Trebon at the ceremony. "Where he sees a need, Jerry labors to address it, as he has so many times, including his moral and financial support of the Science Building campaign that really put the college on the map as a leading undergraduate institution for natural sciences, pre-med, nursing, mathematics, engineering and research across many disciplines. His establishment of an endowed scholarship in honor of his



Helena attorney Jerry Loendorf, center, receives a leather Carroll jacket from Carroll Vice President for Advancement Richard Ortega, left, and Carroll President Tom Trebon, right, after the President's Banquet in October.

parents is only one of several gifts he has provided to help future generations of Saints complete their educations."

Mr. Loendorf, a former Fighting Saint football player, was inducted into Carroll's Athletic Hall of Fame in 1980. He co-founded Carroll's Century Club, an association to advance Saints student athletes. The College honored his support for Saints Athletics by conferring on him the 1993 Carroll College Warren Nelson Award.

The Oct. 26 Insignis Award ceremony recognized Loendorf's lead gift to the Carroll Centennial Campaign. "Because of his vision and belief in Carroll, we

can now go forward with this campaign and the growth in new programs, professorships, scholarships, endowment, enrollment and facilities that Carroll will see as a result," Mr. Trebon said.

Mr. Loendorf was a Helena attorney for 40 years and partner at the firm of Harrison, Loendorf, Poston & Duncan. He participated in the 1972 Montana Constitutional Convention. In addition to his longtime service on Carroll's board of trustees, he has been a member of the Rocky Mountain Development Council's board for 35 years and the board of trustees for the Helena YMCA for over a decade. ○



The growing phenomenon of computer spying

By **Sharon D. Nelson**, attorney,
and **John W. Simek**
Sensei Enterprises

Spyware has made the notion of peeping through keyholes wonderfully quaint.

How much simpler it is to record your spouse/lover/significant other's every keystroke and know for sure what they are up to without ever leaving the comfort of your computer station. Adultery is as old as time, but who would ever guess that cyber-adultery would be a commonplace phenomenon, and often the genesis of divorce?

Who would ever imagine that the authors would be interviewed by NBC, ABC, CBS, USA Network, NPR and Oprah's "O" magazine, each interview focusing on the obviously sexy topic of spyware and divorce?

The legality of spyware used to be murky, at best. The courts have spoken of it only infrequently, so there is precious little guidance. How does a lawyer appropriately advise the client who wants to employ spyware, or who already has? How does a lawyer appropriately advise the client who believes

The insidious gathering of electronic evidence for family-law practitioners

that someone has used spyware to conduct surveillance on their computer usage? It is a dicey business, and fraught with risk for lawyer and client alike. Before plunging into the legality of spyware, let us attempt to set the stage.

First and foremost, what constitutes spyware?

No one quite agrees, but generally speaking, it is software installed on a computer without the target user's knowledge and meant to monitor the user's conduct. Most of the time, in domestic practice, the target is e-mail and chat rooms, but the software will record everything the user does, including financial record keeping, the preparation in a word-processing program of letters to counsel, or the keeping of business records. Some spyware is used to gather personally identifiable information like passwords, credit card numbers

and Social Security numbers, all useful for those interested in fraud and identify theft. Some spyware programs will hijack your web browser, reset your home page, add toolbars, alter search results or send popup ads that cannot be closed, all intended to hawk some vendor's products.

Spyware has become insidiously clever recently – many programs come with a reinstall – as soon as you attempt to remove it, it reloads itself. Many forms of spyware hide in Windows system files and even mimic the file names so the average user would have no idea that the files are in fact shielding spyware. The latest wrinkle with spyware is that it can turn the infected machine into a spam zombie. This means that your computer is being used as a relay point to send spam messages without your knowledge.

What is adware? Is it spyware?

Those who are responsible for adware will have conniptions if you tell them their products are spyware, but in fact they usually are, even though they are a lesser form of it. If you click something and agree to install adware, it cannot be

classified as spyware. However, if you (or very likely, your children) want to install a neat screensaver, cool game, or swap music/movie files via a peer-to-peer (P2P) sharing program, chances are that the downloader will never read the user agreement and will simply hit "I agree." This is how most adware finds its way into a computer system. Mind you, there are other more insidious ways as well including "drive-by downloads" from web sites, malicious cookies, etc.

True adware, however, isn't meant to steal your personal financial information or monitor your love life. Usually it is used to send information to marketers about your searching, surfing and buying habits to assist them in general marketing and to target you in particular, especially with popup ads, spam and their unwelcome brethren. For purposes of this article, we will not deal with adware, but its more insidious kin, spyware designed specifically for purely nefarious purposes.

What are some of the spyware programs commonly in use?

These days, there are so many spyware manufacturers that it is well nigh impossible to list them all. They have such names as eBlaster, IamBigBrother, SpyAgent, Spy Buddy, Spector Pro, Keylogger Pro, Invisible Keylogger and 007 Spy Software. They have different features and have slightly different operating characteristics but they are all intended to spy on someone else's computer use – stealthily.

There are also hardware keystroke loggers such as KeyKatcher, a small, dongle-like device that fits in between the keyboard and the PC. It's a modern day "bug" with a memory capacity of 64K, 128K, 256K and 4MB, able to store several weeks' worth of typing, after which it can be removed and all the text downloaded onto another machine. The drawback, obviously, is that this requires that the person placing the KeyKatcher have continuing physical access to the machine. KeyKatcher is

therefore primarily used by husbands and wives residing together. In point of fact, having analyzed hundreds of computers in divorce cases, 100 percent of the time, a software spyware application was used instead of a hardware logging device.

Some of the older programs acted like cameras, taking a picture of whatever was on the screen every few seconds. The picture playback was like a herky-jerky film from the 1920s. Many of the programs would send the log files of the activity to an e-mail address so that you



can "play back" the sessions. Today, most of the software actually records keystrokes, so you can see every chat message or e-mail in its entirety, along with the Internet sites visited, documents composed and financial transactions conducted.

How much does spyware cost? Not much – \$30-\$100 is a common range, a cheap price for a heinous invasion of privacy. Two of the most devious spyware applications, eBlaster and Spector Pro, cost \$99.95.

Will the user know that spyware has been installed?

No – these applications are exceedingly clever. They change their install dates, don't show up as a running program, don't show up in your list of programs, don't show up in the Add-

Remove function, and change their names to something that sounds like a benign – and boring – system file. Who would ever give the file name *window-stht.dll* another thought?

So how does spyware get installed? Clearly, if the spouses reside together, it is easy for one party or the other to install spyware. However, if the parties live apart and the spouse wishing to install spyware doesn't have physical access to the other party's machine, then there are methods of remotely installing spyware. For instance, the husband

might send an electronic greeting to the wife saying how he sorry is for the pain he's caused, etc. etc. He sends the card as an attachment with a cover e-mail that says, "Honey, I'm so sorry for all the pain I've caused – the attached card helps me to express my real feelings." Whether she loves him or hates him, she's going to want to see the card so she opens the attachment. And bada-bing, the spyware downloads (invisibly) right along with the greeting card.

In the same mode, perhaps he sends some cute photos of the kids when he took them to the beach. Irresistible to the wife – she opens them and the spyware, piggybacked on the photos, covertly installs itself and begins monitoring her online activities.

Fortunately, spyware programs cannot hide from skilled forensics examiners who know where these stalkers hide. This is one of the most difficult parts of computer forensics because you are specifically looking for something which intends to be invisible. In the vast majority of cases, the authors have found that significant amounts of data can be uncovered, most notably the e-mail address to which the reports were sent. Once an attorney has that, if there is not currently a divorce proceeding on file, the attorney can file a John Doe suit and serve a subpoena on the Internet Service Provider to learn the identity of the account holder.

What is the status of laws explicitly dealing with spyware?

As of June, 2007, there is no federal

anti-spyware law. The U.S. House of Representatives has passed (again) two bills designed to punish those who install spyware on people's computers without their knowledge. This charade has gone on for at least four years, with the bills stalling when they get to the Senate, reputedly due to the lobbying efforts of the Direct Marketing Association. All such bills say they will pre-empt state law, so it will be fascinating to see what Congress agrees to, assuming it ever agrees. The Spy Act requires businesses to obtain permission before placing computer programs on people's computers, an opt-in procedure. Technology companies generally prefer "opt-out" language that allows consumers to request that programs not be uploaded to their computers, but doesn't force companies to ask permission every time. It would prohibit unauthorized software from changing a browser's default home page, changing the security settings of a computer, logging keystrokes and activity, and delivering advertisements that the user can't close without turning the machine off or ending all sessions of the browser.

The bill also outlaws some of the most insidious practices associated with spyware, including many of the gimmicks used to trick people into installing the programs. Violators could be fined up to \$3 million per violation. Many spyware functions would be defined as unfair business practices subject to Federal Trade Commission fines.

The Internet Spyware Prevention Act has been less controversial. It focuses on some of the spyware distributors' more overtly criminal activities and imposes jail terms of up to five years on those who use software to illegally gain access to a computer.

Most states currently have legislation which is intended to prevent some kinds of spyware. Our own state of Virginia has an explicit anti-spyware law as well as a computer trespass statute and a wiretap act so spyware is a definite no-no here, even if the computer is a joint family asset. Section 18.2-152.4 says "It shall be unlawful for any person, with

malicious intent, to . . . install or cause to be installed, or collect information through, computer software that records all or a majority of the keystrokes made on the computer of another without the computer owner's authorization." Violation constitutes a Class 1 misdemeanor [in Virginia].

[In Montana, 45-6-311 MCA more broadly and less clearly for spouse spyware definitions – says that

(1) A person commits the offense of unlawful use of a computer if the person knowingly or purposely:

(a) obtains the use of any computer,

Computer forensics in divorce proceedings is now commonplace. PCs are being examined to prove or refute claims by one spouse that the other has been engaging in extramarital affairs, obsessively searching for Internet porn (adult or child) or hiding financial assets.

computer system, or computer network without consent of the owner;

The Montana law more specifically goes on to forbid the altering or destruction of computer programs or software without consent of the owner. Although Internet "phishing," where hackers fool e-mail users into providing personal information to what appears to be a secure web site, is now forbidden by Montana law, it does not appear to specifically forbid the use of spyware.]

How about other laws not specific to spyware?

Herein lays many a trap in which a lawyer might unwittingly step. First, let us consider the federal laws:

■ **The Electronic Communications Privacy Act of 1986** prohibits the interception and disclosure of wire and electronic communications. It also applies to those who use information they know or have reason to know was intercepted. You'd think this would be a slam dunk

against spyware, but not so. The law is currently in flux, with decisions on both sides. The problem is that the law is old, and not written to accommodate current technology.

One case being watched with interest is *U.S. v. Councilman*, in which a rare book dealer offered free e-mail hosting to clients. However, he copied their e-mails for the purpose of gaining a competitive advantage, watching over their correspondence with other book dealers. The lower court found that the e-mail had been in the computer's memory and therefore were not technically intercepted. The 1st Circuit Court of Appeals reversed the decision, finding that the law did not require the case's dismissal, but remanded the case for further proceedings consistent with its opinion. In short, no one knows precisely what the Wiretap Act means when it comes to e-mail.

■ The Computer Fraud and Abuse Act prohibits a person from accessing a computer without authorization or from

exceeding authorized access and thereby obtaining certain governmental, financial or consumer information. Clearly, spyware is often used for these purposes.

Because this area is indeed a sand trap, there are also a number of state laws that may apply. Some examples include:

- Computer privacy laws
- Wiretap laws
- Computer trespass laws
- Fraud laws
- Harassment laws
- Stalking laws

Not only may spyware violate a myriad of laws, some of them do and some of them don't carry with them a clause excluding the admission of illegally obtained evidence. And where they don't contain such a clause, especially at the state level, it is generally held to be at the discretion of the trial court whether or not to admit the evidence.

Pass the Advil.

More SPYWARE, Page 28

We've passed the 5,000 member mark

The State Bar of Montana will end the year with a total number of members at more than 5,000, the first year that milestone has been reached.

Total membership as reported by Membership Coordinator Jill Diveley in December stood at 5,196. The 5,000 mark was passed in late spring; new admittees following the July Bar Exam helped that number increase.

Of the total membership, 3,601 members reside and practice in Montana, and 1,595 reside out of state.

About 70 percent of the members are male, 30 percent female.

Total Bar membership is broken down into nine categories:

- **Active** (meaning actively practicing law or at least holding an active license), 3,369 members.

- **Inactive** (not currently practicing

The following are membership numbers for each of the State Bar's 14 sections:

How big are the sections?

Bankruptcy	112	Health Care Law	49
Business, Estates, Trust	243	Indian Law	87
Child & Family Law	186	Natural Resources & Environmental Law	132
Construction Law	54	New Lawyers	446
Criminal Law	86	Paralegal	171
Federal Practice	136	Public Law	289
		School Law	58
		Women's Law	98

but maintaining a Bar membership that can be upgraded to active by the Supreme Court) – 746 members.

- **Emeritus** (retired attorneys who have signed up to help with pro bono cases) – 6 members.

- **Judicial** (judges) – 102 members.

- **Active Military** (guardsmen or reservists called up for active military service on a temporary basis) – 28 members.

- **Suspended** (members temporarily suspended from the practice of law by the Montana Supreme Court for disciplinary reasons or failure to pay dues) – 417 members.

- **Senior** (70 or older who are inactive but who wish to retain Bar membership and benefits) – 98 members.

- **Paralegals** – 170 members.

As can be expected, the membership numbers vary widely in the 22 State Bar of Montana geographical districts (iden-

By **Andrew Fox**, coordinator
Law-Related Education Center

Since its birth, the State Bar's Law-Related Education Center (LREC) has worked to create Montana-specific education materials. With help from teachers, attorney volunteers and local nonprofit leaders, the LREC is close to completing "The Montana Guide to Turning 18." The guide will educate teenagers on the important changes that occur when they turn 18. It will also provide teens with contact information for local help organizations.

The guide focuses on issues that 18-year-olds face as they become new adults, including the consequences of illegal activities such as underage drinking and using illicit drugs. It also explains the responsibilities that come with renting an apartment, buying a car, or being a parent. There are also several sections that focus on uniquely Montana issues, like traveling to Canada or hunting-and-fishing regulations. The guide

Bar producing 'Guide to Turning 18' for teens

has sections on age-of-consent law, selective service, gun laws, financial planning, and other topics.

While attending the Montana Education Association conference in October, I began taking orders directly from Montana teachers. Already, well over 300 copies of the guide have been ordered.

When coupled with an online PowerPoint presentation also being produced by the LREC, "The Montana Guide to Turning 18" should serve as the perfect classroom presentation for any teacher or guest attorney speaker.

Copies of the guide are available through the State Bar. PDF copies of the guide will also be available on the State Bar's web site. Reproduction and limited distribution will be free for all educational use. Please contact me if you wish to be sent a complimentary copy. I'm at (406) 442-7660, ext. 1205 or at afox@mtlsa.org.

STATE BAR NEWS

tical to the judicial districts).

The districts with the most “Active” members are:

District 4 (Missoula and Mineral counties) – 555 active members.

District 13 (Yellowstone County) – 504.

District 1 (Lewis & Clark and Broadwater Counties) – 50.

District 18 (Gallatin County) – 276.

District 8 (Cascade County) – 228.

District 11 (Flathead County) – 210.

The rest of the districts are in double digits, except for the district with the smallest number District 14 (Meagher, Wheatland, Golden Valley and Musselshell counties) with only 5 active members.

Ms. Diveley, the membership coordinator, guessed that that State Bar has been growing at roughly 80 members a year, subtracting resignations, retirements, etc. from new admittees. That means the State Bar might reach 6,000 members by the year 2020. ○



NEW ART FOR BAR OFFICE – Robin Demaray of the State Bar staff adjusts one of 15 large, framed color photos placed on display in the State Bar office hallways and conference room by Helena photographer Ron Boggs. Mr. Boggs’s photos, mostly of wildland scenes in the Montana Rockies and the Cascades, are printed on aluminum plates. Visitors to the Bar office will find each photo for sale, with the price exhibited next to the frame.

STATE BAR CALENDAR

January 4

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

January 7

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

January 18-20

2008 CLE & Ski, Huntley Lodge, Big Sky

January 29

Bar Admissions Application Clinic, 1 PM, University of Montana School of Law

February 1

Oil & Gas Law CLE, Holiday Inn, Great Falls

February 1

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

February 5-12

ABA Mid-Year Meeting, Los Angeles

February 15

Water Law CLE, Fairmont Hot Springs

February 22

Bench-Bar Conference, 8 a.m., DoubleTree Hotel, Missoula

February 25-27

Bar Examination, Great Northern Hotel, Helena

March 14

Small/Solo Firm Practice Tips CLE, 8 a.m.-5 p.m., Hilton Garden Inn, Kalispell

Upcoming CLE seminars for Montana lawyers

January 14 Great Falls – Heritage Inn

Estate Administration Procedures 6.50 CLE credits, including 1.0 Ethics credit. Presented by National Business Institute, (800) 930-6182

January 15 Sidney – Elks Club

Writing a Brief / Changes in Civil Procedure 3.0 CLE credits. No charge. Presented by the UM School of Law, (406) 243-4311 or at www.umt.edu/law

January 16 Billings – Billings Depot

Writing a Brief / Changes in Civil Procedure 3.0 CLE credits. No charge. Presented by the UM School of Law, (406) 243-4311 or at www.umt.edu/law

January 17 Helena – Colonial Hotel

Writing a Brief / Changes in Civil Procedure 3.0 CLE credits. No charge. Presented by the UM School of Law, (406) 243-4311 or at www.umt.edu/law

January 18-20 Big Sky – Huntley Lodge

CLE & Ski 9.25 CLE credits. Presented by the State Bar of Montana CLE Institute. See details of program and registration at www.montanabar.org, click on CLE, Upcoming CLEs

January 23 Billings – Holiday Inn Grand

Stormwater & Wetland Regulations 6.0 CLE credits, including .25 Ethics credit. Presented by Lorman, (866) 352-9539

January 30 Missoula – Holiday Inn Express

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

January 31 Billings – Holiday Inn Grand

Complete Trust Course 7.0 CLE credits. Presented by PESI, (800) 844-8260

February 1 Great Falls – Holiday Inn

Oil & Gas Law Presented by the State Bar of Montana CLE Institute. Details will be mailed to Bar members.

February 1 Helena – Great Northern Hotel

10th Amendment Seminar 6.50 CLE credits. Presented by the Helena Education Foundation, (406) 444-3660

February 1 Missoula – Holiday Inn Parkside

Complete Trust Course 7.0 CLE credits. Presented by PESI, (800) 844-8260

February 5 Miles City – Holiday Inn Express

Ethical Issues in Public Service 6.50 CLE credits, including 6.50 Ethics credits. Presented by the state Personnel Division, (406) 444-3985

February 6 Miles City – Holiday Inn Express

Other web & phone CLEs for Montana credit are:

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

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

Giving & Getting Job References 3.0 CLE credits. Presented by the state Personnel Division, (406) 444-3985

February 13 Helena – Metcalf Building, Capitol Complex

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

February 15 Fairmont Hot Springs

Water Law Presented by the State Bar of Montana CLE Institute. Details will be mailed to Bar members. See article on Page 25.

February 22 Missoula – DoubleTree Hotel

Bench-Bar Conference Presented by the State Bar of Montana CLE Institute. Details will be mailed to Bar members.

February 26 Helena – Metcalf Building, Capitol Complex

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

February 27 Helena – Colonial Hotel

Legal Ethics in Montana 3.75 CLE credits, including 3.75 Ethics credits. Presented by Lorman, (866) 352-9539

February 28 Missoula – Holiday Inn Parkside

The Persuasive Lawyer 3.50 CLE credits, including 2.50 Ethics credits. Presented by The Likeable Lawyer, (800) 524-2396

February 28 Missoula – Holiday Inn Parkside

The Trusted Lawyer 3.50 CLE credits, including 2.50 Ethics credits. Presented by The Likeable Lawyer, (800) 524-2396

February 29 Missoula – Holiday Inn Parkside

Aristotle: JD – Negotiation, Persuasion & Conflict Resolution 5.50 CLE credits, including 3.0 Ethics credits. Presented by The Likeable Lawyer, (800) 524-2396

February 29 Missoula – Holiday Inn Express

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

March 14 Kalispell – Hilton Garden Inn

Small / Solo Firm Practice Tips Presented by the State Bar of Montana CLE Institute. Details will be mailed to Bar members.

Federal court rule changes posted

The U.S. District Court for Montana has posted proposed changes to the District's Local Rules of Procedure for public review and comment.

The changes are contained in two documents available on the Court's web site, www.mtd.uscourts.gov. The first document is the set of proposed changes with a brief explanatory comment. The second document is a chart listing each current and proposed new local rule by title.

Comments or questions were to have been sent to the Court by Dec. 7. If adopted by the judges of the District of Montana, the proposed changes will go into effect on Jan. 1, 2008.

New MontGuide on beneficiary deeds

A new MontGuide on Beneficiary Deeds (about the law that became effective in Montana on Oct. 2, 2007) is now available from Montana State University Extension.

Co-authors are Kristen Juras, a professor at the University of Montana School of Law, and Marsha Goetting, MSU Extension family economics specialist. The MontGuide is available on the web at: www.montana.edu/wwwpb/pubs/mt200707HR.pdf.

A PowerPoint presentation based on this MontGuide was available on the web at the end of November at www.montana.edu/extensionecon/presentations.html. Under Estate Planning click on Beneficiary Deeds. Each slide has a notes section to assist attorneys in their presentations to any groups that may be interested.

Funding for the MontGuide was provided by the Washington State University Western Center for Risk Management Education program of the USDA Cooperative State Research, Education and Extension Service.

Boston law firm bans billable hours

A small law firm in Boston has boldly done what many competitors probably wish they could but think they can't. Shepherd Law Group, a five-lawyer employment boutique, has banned the billable hour, the *ABA Journal* reported. If clients insist on having attorneys who bill their time, they have to retain another law firm.

Clients of Shepherd are charged either a flat annual fee or a fixed price for a specific task, reports the *Boston Globe* in a

lengthy article about the firm and the history of the billable hour.

"Hourly billing is wrong, and it's anti-client," said Jay Shepherd, the firm's founding partner, who also authors the blog Gruntled Employees. "There's a disincentive to be efficient since you get paid more if you take longer to finish a matter – even though the client wants it to be finished as fast and efficiently as possible."

The ABA has estimated that about 90 percent of law firms use hourly billing, but recommends that lawyers look for alternative ways to charge clients, the *Boston Globe* said.

"Nobody is happy with it," says former ABA President Robert E. Hirshon of the billable-hours approach. "The attorneys who are practicing law don't like it. The clients don't like it. And yet everybody seems to believe that they're stuck with it."

Study suggests legal ed needs new attitude

A provocative new study by a senior researcher at the American Bar Foundation concludes that law professors need to incorporate humility into the core of legal education. The ABF research provides some of the most detailed observational data ever obtained on U.S. law teaching.

"We dissected the language of law as it is taught to first-year law students," said Elizabeth Mertz, the author of the study who is a senior research fellow at the ABF and professor at the University of Wisconsin Law School. Mertz used her training in linguistic anthropology to produce a close analysis of the core structure of U.S. legal language and reasoning. "As students are taught to 'think like lawyers,' they are pulled into a closed linguistic system," Mertz commented. "This system has benefits, but it can also shut students' minds to other ways of understanding the world."

Law professors' teaching styles can look quite different. However, Mertz was able to uncover a similar underlying message that was encoded in the deeper linguistic structure of the classes she studied. Students are taught a new approach to morality and emotion, substituting the closed circle of legal authority and texts for a broader social understanding of problems. It can blind the legal system to important parts of the problem before them, because it sometimes ignores crucial aspects of social context, the Foundation said.

Montana's Lawyers Helping Lawyers Hotline

1-888-385-9119

Call if you or a judge or attorney you know needs help
with stress and depression issues or drug or alcohol addiction

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

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

2008 Lawyers' Deskbook & Directory

Available in January
Book \$35

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
Bankruptcy
Client Bill of Rights

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

Statute of Limitations Manual

1998, 95 pages w/2001 Update
Book \$25

Step-parent Adoption Forms

2003, 5 forms
Book \$20

U.S. & Montana Constitutions

Pocket-sized booklet
\$4 each

University of Montana Law Review

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Public Lands Law Review

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Supreme Court delivers annual report

sage from Chief Justice Karla M. Gray

Montana's Judicial Branch has been improving steadily in many ways for some years, and 2006 was no exception. Indeed, I believe the Judicial Branch has entered a new era of accountability, modernization and increased responsiveness to Montana's citizens.

During 2006, your Judicial Branch focused on clearly defining the workload – and resource needs – in the district courts. This multi-faceted and intensive project will set the stage for obtaining and managing resources in the district courts for years to come.

The Judicial Branch also focused renewed efforts on children in the court system. Specifically, we spent significant time at the local and state levels finding ways to improve the process for cases involving abused and neglected children. These cases should receive special attention from the courts and staff, and they do – in the district courts and the Supreme Court. Our commitment to these cases and kids is strong and ongoing.

The Judicial Branch takes its constitutional obligations to be open to every person and to provide equal justice under law very seriously. Consequently, I am troubled by the large number of litigants who must represent themselves in Montana's courts because they cannot afford an attorney, but also cannot be served by the underfunded Montana Legal Services Association. Judges and clerks in both the courts of limited jurisdiction and the district courts are responding by actively trying to make court processes more user-friendly to these self-represented litigants, and the Supreme Court's Commission on Self-Represented Litigants continues to help. Judges must remain the neutral arbiters of disputes, however, and cannot resolve the challenges of inadequate access to justice alone. I believe we must partner

with everyone involved in the administration of justice, including the Executive and Legislative Branches, to address this lack of adequate access to justice in Montana.

This 2006 Annual Report of the Judiciary of the State of Montana will give you a much broader view of what is happening in the Judicial Branch, and what challenges remain. Montana is served by extraordinary judges and staff. They handle difficult and extensive caseloads with diligence, commitment, compassion and wisdom. Our judges and staff have my utmost admiration and respect. It is my hope that, after you review the 2006 Annual Report, they will have yours too.

Major initiatives & successes:

The Supreme Court resolved 736 cases in 2006. The number of actions filed before the court increased 8 percent from 2005. Pro se litigants continued to represent a large percentage of litigants – 33 percent of the litigants filing cases with the court were representing themselves. A full breakdown of Supreme Court statistics is available at Montana Supreme Court Caseload Statistics at www.montanacourts.org/clerk/stat_info.asp.

■ The Supreme Court co-hosted the first Montana Children's Summit – a two-day event that brought together the various parties involved in the abuse and neglect cases in the courts. More than 200 people participated in the summit. Participants, including judges, caseworkers, attorneys and advocates, worked hard to create action plans for local districts.

■ The State Law Library, under the leadership of the Supreme Court, unveiled an updated web site with enhanced search capabilities. State Law Librarian Judy Meadows spearheaded

the changes as part of the ongoing effort to provide legal-research resources to the public and the increasing number of pro se litigants in all courts.

■ The Supreme Court successfully completed rules addressing public access to court documents. This project, led by a court-appointed task force, resulted in very specific and detailed rules governing access to electronic and paper records in the courts. The rules are available at Privacy and Access Rules at www.montanacourts.org/newrules.asp.

■ Clerk of the Supreme Court Ed Smith, who has served as the clerk since 1989, was re-elected to another six year term in 2006. The Clerk's Office completed the first full year with a modern case-management system for the appellate court and was actively involved in the deployment of the second phase of the system in the Supreme Court.

■ The Supreme Court's lawyer discipline system continued to manage a high volume of complaints against lawyers from members of the public. The Office of Disciplinary Counsel processes all complaints against Montana attorneys. Complaints deemed valid are moved forward to the Commission on Practice, which makes disciplinary decisions or recommendations to the Supreme Court. Full statistics about attorney discipline are available at MT Supreme Court –Office of Disciplinary Counsel at www.montanaodc.org

■ Other commissions operating under the supervision of the Supreme Court continued to process hundreds of complaints and petitions and perform other important work. A full overview of the boards and commissions is available at MT Supreme Court Boards & Commissions at www.montanacourts.org.

Major initiatives in Montana district courts

■ 2006 marked the first full year of uniform case-filing standards in the district courts. Cases are now counted in the same manner in each of the 56 district courts. In 2006, more than 41,500 cases were filed in the general jurisdiction courts. About 40 percent of these were civil cases and 20 percent were criminal. Full statistics are available at www.montanacourts.org/dcourt/dcstats.asp.

■ Under the direction of the District Court Council, the judges undertook a study of the workload within the district courts. The study, funded in part by the State Justice Institute, will guide the way for systemic resource decisions in the district courts. The full report is available at www.montanacourts.org/dcourt/dcc/Montana%20study.pdf.

■ A new judge, the Hon. John Brown, joined the 18th Judicial District in Gallatin County. The new judgeship was created during the 2005 Legislature.

■ The district courts started the first step toward a modern case-management system in the 56 county clerks' offices. The 4th Judicial District in Missoula and Mineral counties piloted the new system. The system, when operational, will modernize case-management functions in the district clerks of court offices.

■ The District Court Council undertook resource reallocation in the Youth Courts, which resulted in the movement of some vacant positions to districts with a need for additional staff.

■ The District Court Council finished extensive policy changes that were made necessary by the creation of the statewide public defender office. The newly created office assumed financial responsibility for public defender costs on July 1, 2006.

■ District Court judges along with judges in the courts of limited jurisdiction attended a day-long conference with media representatives to discuss the courts and media coverage. The conference – a national initiative by the

National Judicial College – allowed judges and print and broadcast journalists to discuss the complexity of covering courts and judges.

■ District court judges continued to demonstrate leadership in maintaining and increasing local drug courts. The 8th Judicial District started an adult felony drug court while planning a juvenile drug court similar to an active juvenile court in the 4th Judicial District. Family drug courts continued to thrive in the 2nd, 10th, 13th and 16th Judicial Districts despite significant funding problems. Montana drug courts, which have shown great success, continue to be funded with a mix of federal, local and private grant dollars.

■ District courts continued to make use of video conferencing capabilities. A cost-benefit analysis of the video network completed in 2005 supported the theory that the use of video technologies, when appropriate, could lower costs in the court and criminal justice systems.

■ Youth courts produced the first annual report with a variety of statistics and information about youth served through the youth court. The report was made possible because the web-based youth court case-management system is now fully operational. The report can be viewed at Youth Court Report Card at www.montanacourts.org/dcourt/youth_court/ReportCardweb.pdf

Major initiatives in Montana courts of limited jurisdiction

■ Limited jurisdiction court judges continued to manage huge caseloads in 2006. A detailed summary and breakdown of court statistics is available at www.montanacourts.org/lcourt/lcourt_stats.asp

■ The Commission on Courts of Limited Jurisdiction, in addition to overseeing the twice-yearly judges' training sessions, successfully completed the judges' certification school in fall 2006. Every four years all judges in the limited jurisdiction courts are required to take and pass a comprehensive exam covering their jurisdictional areas. Newly

elected or appointed judges must take and pass the test within six months of taking office.

■ Judge Mary Jane Knisely, with financial support from a federal grant, started the first-ever limited court drug court. The court, part of the Billings Municipal Court, addresses the substance abuse issues present in some criminal defendants. Several other limited courts are also considering adding a drug court component. Judge Karen Orzech continued her activities with a mental health court in Missoula County.

■ All but the smallest limited jurisdiction courts were equipped with an automated case-management system by 2006. In addition, the courts began reporting data to a central court repository. The repository provides a back-up site for courts and also permits appropriate information exchanges between the courts and other partners such as the Department of Justice. In the first pilot, several courts began submitting drivers' license information to the Department of Justice electronically, thus reducing a large paper flow.

■ Judges in the courts of limited jurisdiction continued to take an active role in court-related projects by serving on various commissions and task forces.

Montana's judiciary quick facts

■ Most judges and officials within Montana's Judicial Branch are elected. The chief justice, justices and the clerk of the Supreme Court are statewide elected officials. District court judges are elected within a judicial district while clerks of the district courts and justices of the peace are elected on a county basis. Municipal court judges and some city court judges also are elected.

■ In Montana's limited jurisdiction courts, approximately 15 percent of the judges are attorneys; 85 percent are lay judges. Further, 45 percent of the limited jurisdiction court judges are women. Many judges (about 35 percent) in the limited jurisdiction courts serve as both a justice of the peace and as city court judge or a city court judge in multiple



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locations. More information about the location of limited jurisdiction court judges can be found at Montana Court Locator at www.montana-courts.org/locate/.

■ Montana has 43 district court judges who serve citizens in all 56 counties. These judges have more than 400 years of combined experience. The current longest-serving judge, the Hon. Douglas Harkin, has been on the bench since 1981.

■ Montana's 22 Judicial Districts – established by statute – are quite different in size and scope, much like the rural and urban make-up of the state. For instance, the 16th Judicial District has two judges covering seven counties stretching across eastern Montana. Other judicial districts have multiple judges located in one county.

■ The state funds the district courts, including judges, judicial staff and programs. In 2006, the state court system had about 350 state-funded employees located throughout Montana. The clerks of the district courts are county-funded elected officials located in all 56 counties. Local governments fund the limited jurisdiction courts.

■ State-funded Judicial Branch expenditures in fiscal year 2006 (July 2005-June 2006) amounted to \$39,980,554. The district court program, which includes the variable budget for costs such as the indigent defense system, accounted for nearly 80 percent of the total Judiciary state expenditures.

Looking ahead

Montana's Judiciary continues to mature in extraordinary ways, thanks to the efforts of many dedicated judges, employees and partners in the justice system. New methods of gathering statistics and data about court caseloads and processes will allow Montana's Judicial Branch to make informed decisions about resources and services. Taking a fresh look at what we do is crucial in this era of increasing demands on the court system at all levels.

What will not change, though, is the commitment to meeting the constitutional requirements of access to courts for the state's citizens. This will continue to be our primary challenge and overriding goal. ○

DISCIPLINE

Bigfork attorney suspended

Bigfork attorney Richard Udell was suspended from the practice of law for 90 days by the Montana Supreme Court in a Nov. 28 order.

Mr. Udell filed a conditional admission to a rule violation under Rule 26 of the Montana Rules of Lawyer Disciplinary Enforcement, which keeps the details of Mr. Udell's infraction confidential.

The court order said Mr. Udell violated Rule 8.4(c) of the Montana Rules of Professional Conduct, which bars attorneys from engaging in conduct involving dishonesty, fraud, deceit or misrepresentation.

Mr. Udell's suspension was to begin on Jan. 4.

Helena attorney undergoes censure

Helena attorney Chris P. Christensen was publicly censured by the Montana Supreme Court on Oct. 30 for violating rules of conduct.

Mr. Christensen appeared before the Court in Helena on that day to receive the verbal censure.

He is charged with violating Rule 8.4 (d) of the Montana Rules of Professional Conduct – engaging in conduct that is prejudicial to the administration of justice – and Rule 8A (5) of the Montana Rules for Lawyer Disciplinary Enforcement – violation of the terms of any discipline or disciplinary order. Mr. Christensen admitted to the violations under Rule 26 of the Rules of Lawyer Disciplinary Enforcement, which means details of his violations remain confidential.

Appointments by the Court

The Montana Supreme Court has made the following appointments to Court boards and commissions:

● **Commission on Continuing Education:** Jordan attorney Nickolas C. Murnion has been appointed to replace outgoing member Merle Raph. Attorney and UM Law professor Scott Burnham, and State Law Librarian Judy Meadows have been reappointed to new three-year terms.

● **Sentence Review Division:** Columbus District Judge Blair Jones is appointed to a three-year term, to replace District Judge Randall Spaulding, whose term expired.

● **Commission on Self-Represented Litigants:** Missoula attorney Monte Jewell is appointed to replace Helena attorney Mark Yeshe, whose three-year term expired. Billings District Judge Russ Fagg is reappointed for another three-year term.

Identity-theft scheme tied to nonexistent jury duty

The FBI and the federal court system have issued alerts warning consumers about a new kind of fraud: The caller claims to be a jury coordinator. If you protest that you never received a summons for jury duty, the scammer asks for your Social Security number and date of birth so he can verify and cancel the arrest warrant. Give out any of this information and your identity was just stolen.

Court delays new privacy rules for court records

Implementation is put off until July 1 with a clarifying change

The following order was issued by the Montana Supreme Court on Dec. 12:

AF 06-0377

IN THE MATTER OF ADOPTING RULES FOR PUBLIC ACCESS AND PRIVACY TO COURT RECORDS IN MONTANA

Judy Meadows, State Law Librarian, and Karen Nelson, Director of Information Technology, Office of the Supreme Court Administrator, have filed in this matter a Petition to Amend and Extend Implementation Deadline for the Rules for Public Access and Privacy to Court Records in Montana (Rules).

The Petition notes that as part of the Court's education efforts with respect to the Rules under Section 8.30, it is apparent that Section 4.5(c) of the rules is confusing. The Petition requests that the first line of this section be amended to read:

Unless required to be made public, the following information is not available without leave of the court:

The Petition indicates that this minor change in wording will assist in the general understanding of the Rules and their implementation.

The Petition also represents that recent educational efforts have demonstrated that the courts and clerks of courts are not yet ready to implement the rules and that there is particular difficulty in applying Section 4.5's restrictions for Social Security numbers, full birthdates, financial account numbers and minor's full names. Although frequently not required by statute, and thus restricted under the new Rules, there are numerous current court forms that require this data. Accordingly, the Petition suggests that this Court delay implementation of the Rules until July 1, 2008. the Petition contemplates a sixty (60) day comment period in which courts, clerks of courts and attorneys will address the Taskforce on public access to privacy and court records in Montana with specific concerns about forms and processes that will need to be amended to comply with Section 4.5(c). The Taskforce will then use the following four months to respond to those specific concerns, modify forms and develop procedures and advice for courts, clerks and practitioners.

Good cause shown,

IT IS ORDERED that the first line of Section 4.5(c) of the Rules for Public Access and Privacy to Court Records in Montana shall be amended to read as follows (the underlying language being added):

Unless required to be made public, the following information is not available without leave of the court:

IT IS FURTHER ORDERED that the implementation deadline for the Rules is extended from December 31, 2007, to July 1, 2008. For sixty (60) days from and after the date of this Order, courts, clerks and attorneys are encouraged to advise the task force of their concerns with respect to specific forms and processes that will need to be amended to comply with Section 4.5(c) of the Rules. In the following four months following the 60 day comment period, the task force will respond to the specific concerns raised by modifying or suggesting modifications to forms and developing or suggesting procedures for courts, clerks and practitioners to comply with Section 4.5(c) of the Rules.

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Another complaint of unauthorized practice against Jerry O'Neil

A new complaint has been filed against Jerry O'Neil, a Republican state senator and paralegal from Columbia Falls, for allegedly practicing law without a license, the *Billings Gazette* reported.

The complaint was filed by Brenda Wahler, a special assistant attorney general who represents the Montana Department of Health & Human Services, the *Gazette* said. Ms. Wahler said O'Neil was representing a couple before the department's Office of Fair Hearings.

Mr. O'Neil said his work on behalf of the couple does not violate an earlier unauthorized-practice-of-law injunction issued against him by District Judge Kim Christopher of Polson. O'Neil said his work fits into an exception allowed under the injunction.

Ms. Wahler said O'Neil recently wrote to her requesting evidentiary discovery on a letterhead saying he is an "advocate and counselor" and that he has been "licensed to practice before the Blackfeet Tribal Court since 1984," the *Gazette* reported.

"By these actions, Mr. O'Neil is appearing or attempting to appear as a legal representative or advocate for others in a tribunal of this state," Ms. Wahler said in the complaint. "Mr. O'Neil is providing legal advice, making discovery requests, and requesting motions."

Ms. Wahler made her complaint against O'Neil to the Montana Commission on Unauthorized Practice of Law. Commission Chair John Connor, the state Justice Department's chief criminal counsel, wrote to O'Neil, informing him he must withdraw from the case or the Commission's complaint will be forwarded to the Lewis & Clark County attorney for civil or possible criminal sanctions.

The *Gazette* article said that Mr. O'Neil cited an Oct. 4 letter from the hearings officer in the case. "A signed statement from the (couple) identifying you as their authorized representative is all that is needed for you to proceed on their behalf – no state-issued licensure is required," the hearing officer was quoted as saying.

Water Court sets water-rights conference jointly with Bar CLE

On Feb. 15, 2008, the State Bar CLE Institute again hosts its annual Real Estate CLE at Fairmont Hot Springs. The day preceding the CLE, the state Water Court will host an informal conference at Fairmont.

The 2008 Real Estate CLE focuses on "Water Rights for the General Practitioner." Attorney Holly Franz will explain water-right fundamentals and the various forums for different water-right issues. Water Court Judge C. Bruce Loble will provide an overview of Montana's statewide adjudication of water rights and discuss settled issues. Attorney Carl Mendenhall will instruct on ditch rights. Hydrologist Marc Spratt of RLK Hydro will discuss supply and demand for existing and new projects following the 2007 *TU vs DNRC and Thompson Falls Lumber Co.* decision and HB 831. DNRC Water Adjudication Bureau Chief Jim Gilman will discuss the new disclosures and information required on new realty transfer certificates.

On Feb. 14, the day preceding the water CLE, the Water Court's conference – at 3 p.m. at Fairmont Hot Springs – will discuss the 2005 Legislature's mandate to accelerate Montana's statewide water-right adjudication effort. In the last seven years, the Water Court issued five decrees. In the next two years, the Water Court plans to issue nine new decrees. By 2020, the Court will issue 21 more decrees.

As each decree is released, the pace of the adjudication effort will increase and will eventually generate a whirlwind of adjudication activity. What problems will this accelerated adjudication schedule produce for lawyers and water users? What options might be available to facilitate everyone's work and to maximize the efficient use of public and private adjudication resources?

Bring your ideas to Fairmont on Valentine's Day and help plan for the future.

Proposed changes in district court local rules are posted for comment

The Montana Supreme Court has opened a 90-day comment period on proposed revisions to the Uniform District Court Rules.

The proposed changes, submitted to the Court by the Uniform District Rules Commission, can be found at:

www.montanacourts.org

The order for the 90-day comment period for lawyers and judges was entered on Nov. 13. That makes puts the 90-day deadline at about Feb. 11, although it was not specified in the order.

The comments and suggestions should be filed with the Supreme Court's clerk of court.

Legal aid is paid a visit by an old friend

*The Montana Justice Foundation
receives its second cy pres award*

By **Amy Sings In The Timber**
Montana Justice Foundation

For those of you who may have nodded off in Wills & Estates class during the 30 seconds in which the cy pres doctrine was covered, here is a brief refresher:

The cy pres doctrine hails from the Norman French term, “cy pres comme possible,” meaning “as near as possible.” The doctrine was originally used as a method of distributing trust funds when the original purpose for which the trust was established had been frustrated. Under cy pres, such funds are distributed in a manner that is keeping “as near as possible” with the original intent.

Old use aside, it’s the latest use of the doctrine that has legal aid programs excited. Since the early 1990s, the cy pres doctrine has been revived as a means for distributing residual funds in class-action lawsuits to legal aid and access-to-justice programs.

The underlying premise for class-action suits is to make access to justice a reality for “the little guy” who would otherwise be unable to obtain the protections of our court system. As such, legal-service programs commonly represent the next best use of unclaimed funds to indirectly benefit the members of the intended class.

In determining the next best use of residual funds, courts have broad discretionary powers and the Montana Justice Foundation’s (MJF) mission of improving access to justice for the less fortunate makes it a perfect match for class-action cy

pres awards.

BOZEMAN ATTORNEYS Brian Fay and Chris Angel of Angel, Coil & Bartlett, were thinking just that when they negotiated to name the MJF as recipient of residual funds in the case of *Dempsey, et. al. vs. Allstate Insurance Co.* The case involved retroactive payments of stacked, first-party benefits due to Allstate insureds.

As a result of Fay and Angel’s efforts, the MJF received its second cy pres award in the amount of \$5,307. The award came after an exhaustive search for the class members was completed by the defense and plaintiff’s counsel.

“We know [the Foundation] can put the money to good use,” said Mr. Fay, “and we are pleased to be able to present the Montana Justice Foundation with the award.”

The award could not have come at a better time. The MJF has just begun to launch a statewide campaign designed to bring awareness to the doctrine’s use as a means for funding legal services to the poor.

The MJF has also been named as cy pres recipient in the case of *Montana Land and Mineral Owners Assn., Inc., et. al. vs. Devon Energy Corp., et. al.* Award in this case is pending an exhaustive search to identify and locate class members.

The first cy pres award to MJF came in 2004 (see November 2004 *Montana Lawyer*) in the Montana case *Kimberlee Williams, et. al. vs. Norwest Corporation, et. al.* The Foundation received about \$300,000 in cy pres money from that settlement

FOR MORE INFORMATION on the MJF and cy pres awards, contact Amy Sings In The Timber at (406) 523-3920 or asings@mtjustice.org.

UM law professor honored for urging pro bono adoption work

By **Betsy Cohen**
of the Missoulian

There is a moment, usually at the end of the semester, when University of Montana Law School professor Dave Patterson asks students in his family law class to make a promise.

Those who oblige, and most of them do, raise their hands and pledge two

things:

■ To take on at least one adoption case pro bono.

■ And when they do, to call their former professor and tell him.

For 20-some years, this quiet oath has unfolded in Patterson’s classroom. And as the years go by, more and more of Patterson’s students become Montana lawyers, and more and more adoption cases are taken pro bono.

The ripple effect has been enormous, said Doug James, a Billings attorney and

UM Law School graduate.

“Professor Patterson has helped create a culture where nearly all adoptions in Montana are done by attorneys free of charge, which is something that is very unique to Montana in terms of accomplishments,” James said. “Professor Patterson is not just a teacher and mentor, but he is also being an activist and changing our culture.”

It is for those reasons that James wrote a letter to Catholic Social Services, nominating Patterson for the

More PATTERSON, Page 39

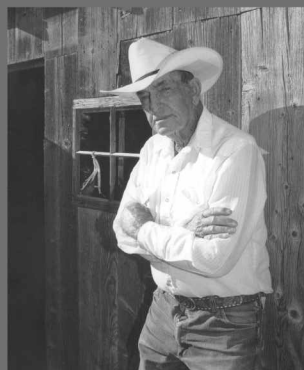


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What are the leading cases in this area?

The two cases cited most often are *White v. White* (N.J., 2001), in which a wife accessed the husband's e-mails which were stored in an America Online file cabinet on the marital computer. No password was required to get to the e-mails, though the husband was unaware of that. The court held that the wife had violated no laws in getting to that e-mail.

In *O'Brien v. O'Brien* (Florida, 2005), the wife installed spyware to monitor her husband's conduct. He had begun playing dominos with a woman he met through Yahoo, and then began playing, well, something more than dominos. Under the Florida Wiretap Act, the data gleaned from the spyware was not required to be excluded; however, the trial court had chosen to exclude it. The appellate court found that the exclusion of the data was within the trial court's discretion and it therefore declined to disturb the lower court's decision.

What are your clients up to?

Attorneys who do domestic relations work can answer this question easily. If you want to check out what your clients are reading online, just type "cheating spouse" in Google and prepare yourself for a slime bath. One typical site is www.chatcheaters.com/, which contains real life stories, ads for keystroke loggers, advice on how to catch cheaters, and even a PI and lawyer directory.

Most of the time, clients will have surfed all over the Net on this subject and purchased, installed and used spyware before they ever consult an attorney. They will arrive in your office with printouts of e-mails that scorch your eyebrows as you read them. They are generally quite pleased with their resourcefulness and blissfully unaware that they may have broken a law or multiple laws. The common belief is that "the computer belongs to both of us so I can do anything I want."

When told they may have broken a

law, they become ashen-faced, and are stunned to think that the "guilty" party now may have a cause of action against the "victim."

What else may your client be up to? Not uncommonly these days, they may have installed a GPS vehicle tracker. Bad move? It depends on who owns the vehicle. See Virginia Sec. 46.2-1088.6, which says that recorded data may only be accessed by the motor vehicle owner or with the consent of the motor vehicle owner or the owner's agent or legal representative; except for 1) a contracted service such as LoJack, 2) service of vehicle, or 3) access by an emergency responder service. If both parties own a vehicle, you're probably fine, but our

The general rule is that someone who creates a password (outside of the work environment, where the employer has a right to monitor computer conduct) has created an expectation of privacy and denied authorized access to anyone (including a spouse) who has not been given the password.

observation has been that these devices are being used willy-nilly without respect to ownership.

Though domestic relations sees the greatest use of spyware, fast catching up is the use of spyware for business espionage. Because those engaged in business espionage tend to hire professionals, they are often less likely to be caught. Unsurprisingly, businesses that find that their secrets have been revealed via spyware are not very happy about that fact becoming public. For public relations reasons, spyware incidents tend to be hushed up. This was particularly true where spyware resulted in financial or personal information being compromised. Hence, the current push in Congress to demand that businesses come clean when such breaches occur, whether through spyware or direct network intrusions.

It is noteworthy that a recent survey

of systems administrators found that their No. 1 concern for 2007 was not phishing (10 percent), not viruses (27 percent), but spyware.

Ethics & spyware

Under the scope of representation rule (Rule 1.2d, Montana Rules of Professional Conduct), "a lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent." You may, of course, discuss the subject of spyware with a client who may have used it or is considering using it, but only for the purpose of explaining its probable illegal nature.

Though we have heard lawyers argue passionately that they do not believe that spyware is illegal, especially in particular states, we believe these attorneys are sorely mistaken and leaving themselves open to sanctions and disciplinary proceedings if they act upon their belief in counseling their clients.

Rule 8.4 of the Montana Rules of Professional Conduct states unequivocally that it is professional misconduct for a lawyer to:

(a) Violate or attempt to violate the Rules of Professional Conduct, knowingly assist or

induce another to do so, or do so through the acts of another.

(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

...

Therefore, even though spyware has not been directly addressed in Montana law, there are two things you should not do:

■ Continue to represent a client who uses spyware after receiving the attorney's advice that use of such software may be ruled illegal.

■ Use illegally intercepted communications or information gleaned from unauthorized access to a computer (under the Virginia Wiretap Act, this is

expressly forbidden in any event).

One last point: the general rule is that someone who creates a password (outside of the work environment, where the employer has a right to monitor computer conduct) has created an expectation of privacy and denied authorized access to anyone (including a spouse) who has not been given the password. It does not matter that the computer is marital property because it is not a property right that is being protected – it is a privacy right.

But what about monitoring kids?

You do have the right to monitor your minor children. However, you absolutely may not use the software installed to monitor your children as an excuse to also monitor your spouse, ex-spouse, etc. To the extent that there are communications, for instance, between an ex-spouse and a child that show up in the child's e-mail, you are (so far as current cases are concerned) OK in having those communications. However, the point must not be to spy on the spouse – there should be a concern involving the child which motivates the usage of the monitoring software.

What should you advise a client who thinks there may be spyware on his computer?

If it sounds to you like the facts warrant it, you'll want to have a forensic technologist find and document the spyware's existence. This software is so squirrely that the evidence a lay person can get, if any, is so fragmentary as to be worthless in court. Far better to let an expert find and document the spyware. In any event, you don't want someone trampling all over the evidence, changing access dates, etc. Sometimes, the expert's advice will be to let the spyware continue operating briefly while a sniffer is employed to determine precisely where the information is going once it leaves the target network.

Clearly, an attorney cannot threaten a criminal charge. However, we've seen the use of spyware used as a trump card time and again. Once the use of the spyware is proven, all the attorney needs to do is communicate that fact to the other side's counsel for the implications to be clear. Sometimes, this is done in the

From the Columbus, Ohio, *Dispatch*:

Internet access implicated in growing number of divorces

Many sources say that the Internet is having a noticeable effect on patterns of divorce:

- Two-thirds of lawyers meeting at an annual conference in Chicago recently said the Internet had played a significant role in divorces they had handled during the past year.
- Meeting a new lover online and an 'obsessive' interest in pornography were the top two problems cited in many internet-related divorce cases. According to divorce-online, half of all divorce petitions it processes are due to 'internet adultery' and cybersex behaviour.
- Of the 500 divorce petitions surveyed, half contained allegations concerning cybersex, inappropriate online relationships and pornography.

course of a deposition where the deponent will deny under oath having used spyware, only to have the evidence shown to them. Likewise, if they take the Fifth, but the evidence is extant, it is clear to all what the risks are. To put it bluntly, cases in which the use of spyware can be proven tend to settle quickly.

If your objective, particularly in a case of modest assets, is to simply get the spyware off, you can have the client try running a reputable anti-spyware program, such as Webroot's SpySweeper or Sunbelt's CounterSpy. They may not find *all* spyware, but they will find most of it. Beware, however, because the installation of these programs will be detected by the spyware, thereby alerting anyone monitoring computer activity that you are "on to them." At that point, they may well use remote technology to order the software to remove itself and delete all traces of its existence.

If your choice is to simply find and eradicate the software, just be mindful that you will have no evidence of the computer spying to use in the future. Also, you must stress to your client that they should never again open an attachment from anyone likely to be interested in remotely installing spyware.

A caveat: Some people are convinced that there is spyware on their computer

when there is not. If you have a competent computer forensics expert and they say there is no spyware, the client is probably the one mistaken. One frequent explanation – the spouse has guessed or cracked a password – which is also illegal – so make sure you consider all the alternatives.

What should you advise a client who is using spyware to monitor someone else's computer activity?

Get it off. Now. No excuses. It is absolutely illegal in Virginia and may soon be illegal under federal law as well. Now that the *Councilman* decision has been overturned, even current federal laws against the interception of or unauthorized access to electronic communications may be held to apply to the use of spyware.

It is important to explain to anyone who has used spyware that they may be compelled to take the Fifth in depositions or in court.

In real life, we have seen some attorneys, after counseling the removal of spyware, nonetheless use data collected through the spyware to determine how best to use the resources of private investigators to glean proof of (for instance) adultery. Some attorneys have advised that they see no ethical concern here, though the authors believe that this

constitutes an impermissible use of poisoned fruit.

Be prepared for arguments, especially in domestic relations cases. Over and over again, we have to patiently explain that it doesn't matter if the computer is owned jointly. In our state of Virginia, you may search a spouse's car, briefcase, and wallet but there is a specific statute that says you may *not* install spyware. Violation will subject the offender to both criminal and civil penalties.

It is also a fact of life that many clients seem unable to "pull the plug" on their spying. Remarkably enough, the spying itself often becomes an addiction and the perpetrator is unwilling or unable to break the addiction. It may be necessary to be quite forceful, stating unequivocally that you will have to withdraw from the case if possible criminal conduct continues.

In a number of instances, we have seen those who installed spyware on someone else's computer religiously monitor correspondence between the victim and his/her attorney. Clearly, no attorney can have anything to do with such conduct under the disciplinary rules.

What do I advise a client who is fairly certain there is significant evidence on a marital computer?


No spyware. Wrong solution and it will likely end up getting the client in trouble rather than the spouse who is actually engaging in bad conduct.

The first thing you'll want to do is have a forensic image made of the computer. This can be done without the spouse knowing while he or she is at work or away on a business trip. Generally, if a computer is received in the morning, a forensic technologist can make and verify the image, returning the computer in the afternoon. At this point, at least you have a record. You will not want to authorize the technologist to analyze the image until a court order has been received, which will protect both attorney and client against any civil or criminal claim of computer trespass or invasion of computer privacy. If the court order is not a current possibility, and perhaps no divorce action is underway as yet, you still have a forensic image to examine when the time is right and you have the court's imprimatur.

Final words

As excruciatingly slow as Congress is, the outcry over spyware will probably lead to the passage of a federal law explicitly outlawing spyware. When that day comes, once the national definition of spyware becomes clear, lawyers will have an easier time dealing with spyware cases. For now the best advice is to treat it as though it is illegal, even where some doubt exists. Certainly, there is no doubt in the state of Virginia as to the illegality of spyware. For the sake of professional reputation, never mind more dire consequences, it is imperative that lawyers take the higher road and avoid the stench of the "spyware swamp."

THE AUTHORS are the president and vice president of Sensei Enterprises Inc., a computer-forensics and information-technology firm based in Fairfax, Va. They can be contacted at (703) 359-0700 or by e-mail at snelson@senseient.com.



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What Montana lawyers need to know about FINRA

The new player in the regulation of securities sales

By **Karen Powell**, chair
Montana Tax Appeal Board

Have you heard the newest acronym in financial regulation? FINRA is the new self-regulatory organization that joins the Securities & Exchange Commission (SEC) and the Montana Securities Department in regulating the people and financial organizations that buy and sell stocks, bonds, mutual funds, and similar financial instruments known as securities.

In July, the National Association of Securities Dealers (NASD) and portions of the New York Stock Exchange (NYSE) joined forces to create the Financial Industry Regulatory Authority. FINRA is now the largest non-governmental regulator for all securities firms doing business in the United States. FINRA oversees nearly 5,100 brokerage firms, about 173,000 branch offices and more than 669,000 registered securities representatives¹.

"The creation of FINRA is the most significant modernization of the self-regulatory regime in decades," said Mary L. Schapiro, chief executive officer of FINRA, in its July announcement. "With investor protection and market integrity as our overarching objectives, FINRA is an investor-focused and more streamlined regulator that is better suited to the complexity and competitiveness of today's global capital markets."

The consolidation, which was announced on Nov. 28, 2006, and approved by the Securities & Exchange Commission on July 26, 2007, became effective July 30, 2007.

Check out your broker: Protect yourself and your clients in advance.

Always check out your securities salesperson before investing. Go to finra.org and click on FINRA Broker Check. Be prepared with the first and last name of your broker or your broker's CRD number (available from your broker).

Where to go when a client has a securities complaint: The Montana Securities Department might be your first call if a client has a concern with his securities statement. The Department is available at (800) 332-6148. Ask for the Securities Department or more information is available at

www.sao.mt.gov/securities/index.asp

While reporting a concern to the SEC and FINRA may be advisable, the national scope of the jurisdiction may make it difficult to get an expeditious response for a client.

Key web sites:

The Securities & Exchange Commission at SEC.gov

The Montana Securities Department at www.sec.mt.gov

The Financial Industry Regulatory Authority at FINRA.org

The regulation of offers and sales of securities in the United States falls under a dual regulatory system. Securities salespersons and their firms are subject

The Financial Industry Regulatory Authority (FINRA) joins the SEC and state regulators in touching virtually every aspect of the securities business.

to strict oversight by federal and state regulators, including registration of both the salesperson and the securities themselves. In addition, self-regulatory organizations, such as FINRA oversee licensing, audits, market analysis and enforcement.

Although there is strict government and self-regulatory oversight and regulation, the sale of securities is typically a "buyer beware" situation. Federal and state law² require that investors receive significant (or "material") information concerning the securities being offered for public sale to prohibit deceit, misrepresentations, and other fraud.

Fundamental to securities law is the idea that a company or issuer of securities should provide potential investors with sufficient information about the issuer to make an informed decision. Requiring such disclosure to investors is designed to discourage illegal activity as well as release an issuer from certain liabilities when all material information was disclosed to a potential investor. Supreme Court Justice Louis Brandeis coined the phrase "sunlight is the best disinfectant"³ which reflects the idea that disclosure to investors is the root of the U.S. securities regulatory system.

The SEC is the regulator of nationally based activities, while preserving the role of state regulation over certain activities that are state-specific. The states continue to have authority to investigate and prosecute securities fraud on an administrative, civil and criminal basis.⁴ FINRA works in tandem with these governmental regulators for licensed securities firms and registered representatives (salespeople).

Market oversight. FINRA oversees and regulates trading on a national level, including NASDAQ, the American

Stock Exchange, the International Securities Exchange, the Chicago Climate Exchange and in the OTC markets, as well as trades in New York Stock Exchange- and Amex-listed securities reported to NASDAQ.

Generally, the SEC is the governmental regulator of these markets. For more information on specific companies registered on the exchanges, go to the SEC's database "EDGAR"⁵; the Electronic Data Gathering, Analysis and Retrieval system that gathers and disseminates submissions by all companies and others who are required by law to file forms with the SEC.

FINRA also regulates trading in the corporate bond markets. Corporate bond transactions are reported to FINRA's Trade Reporting and Compliance Engine (TRACE) and are disseminated to the public. In addition, private securities transactions executed under Rule 144A of the Securities Act are reported to TRACE for regulatory purposes, but not disseminated.

Salesperson regulation. All securities salespersons are registered with the state securities department in their home state, as well as other states where they have active business. FINRA oversees the background checks, examinations, licensing and oversight of the licensed

securities salespersons.

In addition, FINRA operates "Web CRD," the central licensing and registration system for the U.S. securities industry and its regulators. It contains the registration records of more than 6,800 registered broker-dealers and the qualification, employment, and disclosure histories of more than 660,000 active registered individuals (salespersons). FINRA notes that it is "the world's largest and most sophisticated online registration and reporting system."⁶

All regulators have access to the system to review and audit securities salespersons and firms. In addition, individuals may access the system to review disclosure on securities firms and salespeople. This data will include any reportable disciplinary action, certain criminal records information, examination information and other information.

Investor education. FINRA can be a good resource to learn the basics of the securities industry. There is a bias to the industry perspective, but there is a general overview of the securities industry, and definitions of terms such as mutual funds, 529 plans and other basic securities that is more accessible to a layperson. Material is available at www.finra.org/InvestorInformation/index.htm. A variety of financial calculators are also

available to assist with calculating mutual fund fees and expenses, 529 fees, and other calculations.

In addition to FINRA, investor education materials are available from the SEC at sec.gov, the Montana Securities Commissioner, (sec.mt.gov) or the North American Securities Administrators Association (nasaa.org).

Arbitration. The majority of contracts between a salesperson, a broker dealer firm and a customer include an arbitration requirement, and most contractual disputes will go through an arbitration process.

Although there are several organizations that can handle securities arbitrations, the majority of securities disputes are handled by FINRA according to FINRA specific rules and regulations.

There are few avenues for a customer or a securities firm to avoid the arbitration requirement. Before proceeding in an arbitration proceeding, counsel should understand the 1933 and 1934 Securities Act, the Federal Arbitration Act and subsequent cases in the U.S. Supreme Court and Montana Supreme Court.⁷

Enforcement. FINRA has authority to discipline licensed securities firms and registered individuals in the securities industry who violate its rules, federal securities laws, and rules enacted by the Municipal Securities Rulemaking Board. FINRA can fine, suspend or expel a firm from the industry. This jurisdiction works in coordination with the dual federal-state jurisdiction that gives authority to the SEC and the state regulators to regulate the members of the securities industry through administrative, civil and criminal filings.

FINRA joins the SEC and state regulators in touching virtually every aspect of the securities business – from registering and providing education to industry participants to examining securities firms; writing rules; enforcing those rules and the federal securities laws;



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Systems for free tax filing continue to be available to lower-income clients

By **Kelly Hart**
Montana Legal
Services Association

Once again, the Montana Legal Services Association (MLSA) is taking part in outreach efforts to promote free tax-filing services for Montanans.

This outreach includes a continued partnership with Montana's Credit Unions, Rural Dynamics Inc., the Montana Department of Revenue, AARP, the Human Resource Development Council Association, and the Montana Attorney General's Office. These organizations work to develop, maintain, and promote the web site www.MontanaFreeFile.org, offering information for Montana filers about various free tax-filing services.

Because there are so many free tax-filing options available, each with its own requirements, *MontanaFreeFile.org* helps taxpayers to decide which option is best suited for them, based on their location, age and financial status. Important information is available on the Earned Income Tax Credit and other tax topics, along with free tax-filing services such as Tax Counseling for the Elderly sites, Volunteer Income Tax Assistance (VITA) sites, a free online tax filing program called **I-CAN! E-File**, and various other IRS and state-approved free-file sites.

The site also includes a Live Help feature allowing visitors to the site to ask questions that are answered by a real person.

MLSA is excited to report that outreach on *MontanaFreeFile.org* was very successful last year and use of the online tax-filing program I-CAN! E-File increased by more than 800 percent.

I-CAN!E-File files both Montana state and federal taxes free of charge for anyone who does not own a home

and earns less than \$50,000 a year. Additionally, it allows filers to receive their refund by direct deposit. Over the last four years, the program

has brought more than \$3.2 million in refunds to the state of Montana. This user-friendly program is available at www.icanefile.org.

According to the Brookings Institute, for the 2003 tax year, more than 260,000 Montanans paid to file their taxes and nearly 30,600 Montanans took out a Refund Anticipation Loan (RAL). On a national level, the National Consumer Law Center and the Consumer Federation of America "estimate that 7 million working poor families spent more than \$900 million in RAL fees. These families paid \$1 billion in tax-preparation fees and about 45 percent of them spent approximately \$205 million to cash their RAL checks with check cashers" during the 2003 tax year. Filing through a service found on the *MontanaFreeFile.org* web site like the I-CAN!E-File program can help Montanans avoid these costs by empowering them to file on their own for free.

The potential for more Montanans to ultimately save money by not paying fees for filing their taxes and avoiding high cost RALs is even greater than before.

To help put money back into the hands of low- to moderate-income Montanans, please let your clients and others know about the opportunity to file their taxes for free by accessing the *MontanaFreeFile.org* web site and the I-CAN! E-File program.

FOR MORE INFORMATION, contact Kelly Hart at (800) 666-6124, ext. 23.

informing and educating the investing public; providing trade reporting and other industry utilities.

KAREN POWELL is the chair of the *Montana Tax Appeal Board*, appointed by Gov. Schweitzer. She is a former deputy state auditor and deputy securities commissioner.

NOTES

1. *FINRA.org*
2. State securities laws are referred to as "blue sky" regulations in reference to the Kansas Securities Act of 1911; the first state regulation of securities. Over the next few years, other states including Montana passed similar securities laws. Following the Stock Market Crash of 1929, the states urged the federal government to intervene with a national system of securities regulation. The federal government began to regulate investment activity with the passage of the Securities Acts of 1933 and 1934 and the creation of the U.S. Securities and Exchange Commission. The States however, kept certain regulatory authority. The dual regulatory system has developed out of the initial dual jurisdiction.

3. Justice Louis Brandeis, *Other People's Money, and How the Bankers Use It*, 1933.

4. In 1996, the federal government passed The National Securities Markets Improvement Act of 1996 ("NSMIA") which made substantial changes to the dual system of federal-state regulation.

5. <http://sec.gov/edgar.shtml>

6. *FINRA.org*

7. *Southland Corp. v. Keating*, 465 U.S. 1 (1984), *Willems v. US Bancorp Piper Jaffrey*, 2005 MT 37, 107 P.3d 465, *Zigrang v. US Bancorp Piper Jaffrey*, 2005 MT 282, *Buckeye Check Cashing v. Cardegna*, 546 U.S. 440 (2006), and *Martz v. Beneficial Montana*, 2006 MT 94, 135 P.3d 790.

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**NOTICE TO: ALL MEDICAID RECIPIENTS WHO MAY BE ENTITLED TO A REFUND
FOR MONEY WHICH HAS ALLEGEDLY BEEN WRONGFULLY COLLECTED
BY MONTANA DEPARTMENT OF HEALTH AND HUMAN SERVICES
FROM JUDGMENTS AND/OR SETTLEMENTS**

COURT ORDERED CLASS ACTION NOTICE

MONTANA TWENTIETH JUDICIAL DISTRICT COURT
LAKE COUNTY

TERRY BLANTON, individually,
and on behalf of himself and all others
similarly situated,

Plaintiff,

vs.

The DEPARTMENT OF PUBLIC HEALTH
AND HUMAN SERVICES,
a department of the State of Montana,

Defendant.

) Cause No. DV-06-37
)
)
)

) **CLASS NOTICE**
)
)
)
)
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)
)

NATURE OF THIS LAWSUIT:

This is a class action lawsuit which alleges that the Montana Department of Health and Human Services (DPHHS) is not obeying the federal Medicaid and anti-lien laws and the state "made whole" doctrine, for Class Representative Terry Blanton and all others similarly situated. This lawsuit also alleges that Montana DPPHS is required to return to all class members money which the Montana DPHHS has allegedly wrongfully collected from Medicaid recipients' judgments, insurance settlements, or other recoveries which was not specifically for medical expenses; all money the Montana DPHHS has collected from Medicaid recipients' judgments, insurance settlements or other recoveries before assuring that the recipient was "made whole" under Montana law; and all attorney fees, costs, disbursements and expenses involved in this action. This lawsuit also alleges that Montana DPHHS must develop uniform policies and procedures for determining "made whole" questions and implementing appropriate measures under federal Medicaid and anti-lien laws, with appropriate due process guarantees.

You are receiving this Notice of Class Action because you may be a member of the class. The Class alleges that all persons who paid or may pay money to the Montana DPPHS from judgments, insurance settlements, or other recoveries on or after February 14, 1998, are members of the class.

Montana DPHHS denies the allegations and disputes that the scope of the class is as above stated.

PURPOSE OF THIS NOTICE

On September 10, 2007, the Lake County District Court ordered:

1. That the following class be created:

(a) Any person, or such other person's legal representative, from whom Defendant DPHHS received money, pursuant to a subrogation or a lien claim by Defendant, for proceeds, where Defendant's claim was pursuant to §53-2-612, M.C.A., or by any other statute, interpretation of law or any other reason whatsoever, without first determining and establishing that the person had been made whole, as defined by Montana law, since July 19, 1999, or the applicable statute of limitation period;

(b) Any person or such person's attorney, who has been, or becomes during the pendency of this action, the recipient of a notice or claim, by the Defendant DPHHS, or a subrogation or lien claim of the nature set forth in subsection (a) above;

(c) Any person, or such other person's attorney from whom Defendant has collected, or will collect during the pendency of this action, medical expenses where the damages were not specifically paid for medical expenses, or those persons whose settlements have been taken in amounts above the actual payment for medical expenses in violation of the federal anti-lien statutes and the Medicare Act, as determined by the United States Supreme Court in *Arkansas DHHS v. Ahlborn*.

2. That this Notice be sent to all individuals who are potentially within the class through reasonable efforts, including mailing, newspaper advertisements or other means.

RIGHTS AND RESPONSIBILITIES OF PERSONS RECEIVING THE NOTICE

1. You have the right to remain a member of this class action lawsuit, and, if successful, receive a recovery for some or all of the money which was allegedly wrongfully withheld from your judgment, settlement or other recovery by Montana DPPHS, and other possible relief, including interest, attorney fees, costs, disbursements and expenses.

2. You have the right to request that the Lake County District Court exclude you from this lawsuit. If you request exclusion, you have the right to file your own individual lawsuit against Montana DPPHS, but class counsel will not represent you in that case and you should consult a Montana attorney for representation.

3. If you do not request exclusion in a timely manner, you will automatically be a participant in this class action lawsuit.

4. To request exclusion from the lawsuit, you must send your request, in writing, postmarked on or before February 1, 2008 to:

Clerk of the Lake County District Court
106 - 4th Avenue East
Polson, MT 59860-2125

5. If you do not request exclusion, and do not enter an appearance through your own attorney, your interests will be represented by the Class Representative, Terry Blanton, and his attorneys Alan J. Lerner and Linda C. Semrow, P.C., of the Lerner Law Firm and James A. Manley of the Manley Law Firm, who are attorneys for the class.

6. If you do not request exclusion, you will be bound by the terms and final resolution of this lawsuit whether favorable or not.

Questions or Concerns May be Addressed To:

1. **Lerner Law Firm**
Alan J. Lerner or Linda C. Semrow, P.C.
P. O. Box 1158
Kalispell, MT 59903
Telephone: (406) 756-9100
Fax: (406) 756-9105

2. **Manley Law Firm**
James A. Manley
201 Fourth Avenue East
Polson, MT 59860
Telephone: (406) 883-6285
Fax: (406) 883-2861

my family members shall be contacted...

Early computer hackers did this, too. Despite their reputations for technical wizardry, much of the information they obtained was procured through “social engineering” – calling up people and bullshitting them out of their login names and passwords. To succeed at social engineering, you must maintain a strong dominant character, and Rossmiller is quite good at this.

THE MOST IMPORTANT strategy, she says, is attitude: A true terrorist has to possess a certain kind of haughtiness. Not anger or even belligerence but a subtle pushiness, even mild disdain for other jihadists.

“If I’m posing as a courier, financier, or recruiter, I try to take the upper hand,” she says. “A lot of times there will be talk about a private forum. I’d message someone and take a demanding tone. ‘What is this? Why didn’t I know about this?’ I always take a demanding tone, and usually there’s some little Joe who will give me an invite.”

Then, once in private contact with someone, she will chastise them for talking too much in public. She’ll often propose a method for private communication, such as sending notes as text in an online greeting card (which is hard to search or scan for).

Once a kind of bare trust is established, she will, like a good con artist, push her mark away, refusing him, telling him he’s not worth her time. Then he will come right back, often with surprising offerings of information to prove that he is the real thing.

“If they could see me, little blond me, they’d go crazy,” she says in a burst of hearty laughter.

Much of Rossmiller’s success can be credited to her understanding that the chattiness and chumminess that often cinches digital friendships applies in terrorist chat rooms just as it does in Yahoo Nascar forums.

THIS SKILL WAS ON DISPLAY when she struck up an online correspondence with a jihadist in the Middle East named “Hakim” (for Rossmiller’s protection, his name has been changed).

On this mission, Rossmiller assumed the identity of a particularly murderous terrorist known as Abu Musa. She befriended Hakim, who lived in a country bordering Iraq and was looking to travel there, possibly for martyrdom, with 10 other people. The talk quickly turned to personal travails, and soon Hakim was complaining about the biggest obstacle to his desired glory as a martyr: his mother. Hakim, it turned out, lived alone with her, and, because of that, was having trouble finding the time to go fight in Iraq. “I am trying to send her to live with a brother of mine who lives in a country close by,” he wrote, “if Allah will.” (The cliché of the reactionary blogger as angry vigilante plotting schemes from his mother’s basement appears to be universal.)

Hakim seemed to be a big fan of orotund flourishes, and

Rossmiller happily indulged him. “Brother in Allah... I still pray to Allah that my message arrives to you and you are in the more perfect of the health and the good health and protected from the eyes of the spies and polytheists and the cross slaves,” she wrote him in Arabic. Hakim also happily filled out the bayat form, giving Rossmiller all his real data, including address and phone numbers.

As usual, Rossmiller, aka Abu Musa, bragged about participating in events at which her presence couldn’t easily be corroborated (such as fighting in Fallujah a few weeks before). But then Abu Musa made a mistake: He told Hakim he was located in a village that turned out to be just a cab ride away from Hakim, who then wanted to visit.

Rossmiller had already alerted her contact in the federal government about Hakim. Now, this contact explained, he needed her to play for time while he contacted local authorities. Suddenly Abu Musa found himself summoned to Syria for an important mission.

When Abu Musa returned after a week, Hakim was briefly suspicious but then returned to being chatty and revved up for jihad. Abu Musa had ordered him to create a new e-mail account and a new password so they could be safe. “And he’s a good boy,” Rossmiller says. “Here, he’s made an e-mail account. I love the password. 123456.” Soon, Hakim is comfortable enough to tell Abu Musa that he and his friends are ready to go to Iraq and that he needs some ingredients for a bomb.

This e-mail is amazingly long, detailed, revealing, and inadvertently funny. Sure, he’d need “1000 sulfur Match sticks,” potassium nitrate, acetone, glycerin, and potassium permanganate. But he also wanted a food processor, a fan, a hair dryer, two cell phones, a remote control, a knife, and Scotch tape. Abu Musa agrees to send a contact to meet in the public area of an upscale neighborhood, and Hakim gives specific details as to his dress and appearance. Hakim is hopeful, praying for “Allah’s mercy and its blessings and pray to Allah that it keeps us and protects us from the cunning of the enemies.” And then, his last words: “We meet on our date God willing.”

“All I know,” Rossmiller says, “is that he showed up, and it played out to script.”

He led his new contact to a warehouse where the other brothers were training. The local authorities took over from there.

ROSSMILLER JOKES THAT she’s needed to become twisted herself to deal with all the beheading videos she’s had to watch. But after a few days of hanging around her, it’s clear that she’s not in the least bit abnormal. Her gallows humor is just a way of dealing with the world she lives in. (Imagine the kind of jokes you’d have to tell yourself if the hookers and chop-shop thugs in your Grand Theft Auto game were real.)

In fact, her main motivation seems to be literary. She really loves creating these characters and playing them. She cares for them on some level, the way a novelist might. She keeps files on them. She clips pictures off the Internet to give them faces. She gives each a birthday, a hometown, and a biography to make them believable to the people she chats with.



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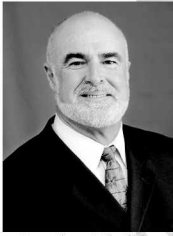
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"Do you want to see Abu Musa?" she asks me suddenly, as if he were hiding in the closet. She clicks on some files and up comes a picture of a fairly dashing man with a pair of hip glasses and one of those jaw-defining beards. He's wearing a fashionable kafia around his neck, and his posture is catalog-ready. Of course, Abu Musa is his jihadi name. His "real" name is Walid Ali Mustaffa.

She scrolls through his biography. On Dec. 17, 2003, Abu Musa was involved in a truck explosion that killed nearly 30 people outside the Mount Lebanon Hotel in Baghdad. "Those are real events," says Rossmiller, who has, of course, extensively researched the explosion. "He could have been involved in that."

Not long after his interactions with Hakim, Abu Musa was martyred by Rossmiller. "Abu Musa had been used enough," she says, pointing at the screen. "Here's the last one," she

says. "An insurgent gun battle in Ramadi. August 21, 2005. That's when he dies."

Rossmiller is serious, almost solemn. "I have a hard time letting go of these guys, because I kinda become them. When you develop a personality, you essentially morph into it. It's hard to let it go. He's the one I cried the most for."

JACK HITT is a magazine writer and a contributor to "This American Life" on National Public Radio. Will Sedlack contributed to this story.

This article first appeared on Wired.com on Oct. 23, and was published in the November issue of Wired magazine.

PATTERSON, from Page 26

adoption agency's inaugural certificate of appreciation for people instrumental in adoption work, called the Stork Award.

Upon learning of Patterson's legacy and efforts to give children permanent homes of their own, Catholic Social Services agreed with James's opinion of the law professor, said Rosemary Miller, executive director of the agency.

"The effect he has had on adopting in Montana makes him one of the greatest unsung heroes of our time," Miller said.

On Nov. 27, which happened to be National Adoption Day, Patterson was to receive the award and be honored during a celebration at Missoula Children's Theatre, where families currently in the adoption process sign the final documents that make their adoptions – and the welcoming of a new family member – official.

THE ATTENTION and recognition is unexpected, Patterson said. "There are so many more people who are more deserving of this. But I do feel honored."

Patterson said he doesn't remember the first time he asked his class to take the pro bono pledge, and over the years, he's lost count of the phone calls he's received from former students saying, "Hey, I did what I promised."

The idea was hatched spontaneously, he said, but the cause is something that



Professor Dave Patterson at work in his office at the UM Law School.

Missoulian photo

has long been close to his heart.

"There are a lot of kids out there in need of parents, and with the changes in our living patterns a lot of kids seem left in the lurch," Patterson said. "There are a lot of kids out there without the mentoring of parents."

Each year, more than 300 adoptions take place in Montana, most of which are done with the help of attorneys who donate their time and expertise free of charge, Miller said.

"The pro bono really helps families in being able to navigate the legal system and finalize the adoptions," she said. "For some families, it would be something to procrastinate on if there weren't attorneys to help finalize the adoptions at no cost."

ALTHOUGH PATTERSON is hum-

bled, if not wholly embarrassed by the honor he will receive, James said he is thrilled to learn the professor's work will be celebrated.

"Dave Patterson is a great example of how one person can change the world," James said. "Most attorneys in Montana have taken his family law class and many of those students practice family law or go on to practice family law."

"It is because of Professor Patterson we have this pro bono culture when it comes to adoptions," he said. "Adoptions are an incredible gift for our community and it's something that changes lives – it's amazing."

THIS ARTICLE and photo appeared in the Missoulian on Nov. 27.

Negotiation Theory & Practice

Alain Burrese

Negotiate from both sides of the table



The fourth chapter of “Done Deal: Insights from Interviews with the World’s Best Negotiators” – by Michael Benoliel, Ed.D, with Linda Cashdan – opens with a quote by former Supreme Court Justice Louis D. Brandeis:

Nine-tenths of the serious controversies which arise in life result from . . . one man not knowing the facts which to the other man seem important, or otherwise failing to appreciate his point of view.

There is a lot to this quote and the idea that a negotiator, to be successful, must know the needs of the other party.

Sometimes during a negotiation, it may appear that your interests are fundamentally incompatible with those of the other side. Regardless if some interests really *do* coincide, becoming biased or trapped into the thinking that they do not will most likely result in a failure to reach agreement. Successful negotiators not only seek out areas of compatibility that lead to agreements, but strive to overcome areas of *incompatibility* once they are identified. Negotiating from both sides of the table, or knowing what the other party needs, assists in accomplishing this.

DURING MY OPENING statement during mediations, I often remind the parties that they came to the mediation looking for something, and that it is the people at the table who have the ability to give it to them. I explain that while it may be helpful or persuasive in a courtroom to say that a person is a liar and try to discredit them, for the mediation purposes it’s sometimes helpful to remember that the people sitting at the table are the people who have what you came for.

This is the same for any negotiation; you are looking for something only the other side can provide.

As I wrote in the last column on BATNAs (October 2007 *Montana Lawyer*), the only reason to negotiate is to produce a result better than you can obtain without negotiating. Therefore, the negotiator must be able to bridge substantive differences in order to accommodate the needs of both parties to structure proposals and finally agreements. In order to do this, and I’ll repeat myself here, the successful negotiator must

know the needs of the other party.

While this idea seems fairly simple and uncomplicated, in practice, it can be just the opposite. Often during a negotiation it is difficult to step outside yourself, and your issues, to focus on those of your counterparts. It is quite easy to ignore your opponent’s point of view entirely.

I specifically use the term “opponent” because that is how many negotiators view those they are negotiating with, rather than a partner in a collaborative process toward mutual benefit. And while this latter view is the ideal, it is certainly a bit optimistic and maybe unrealistic for every negotiation. However, it can be a goal to strive toward.

GETTING BACK TO MY main point, according to Benoliel there is substantial academic research supporting the notion that negotiators tend to ignore even readily available information about the other side.

Because understanding the issues of your counterparts on the other side of the negotiation table is so important, the successful negotiator should work toward developing the mindset that will enable the learning and understanding of those issues. One way to do this in your preparation stages is to mentally bargain from both sides of the table. You can think of it like preparing for a debate without knowing what side you will be

chosen to represent. You prepare arguments for both sides. While negotiating, *mentally* bargain for both sides. Doing this will help you explore their issues and positions and help your understanding. Doing this can assist you with creating win-win situations.

This is not necessarily easy. In fact, it can be very difficult to develop an accurate picture of your counterparts across the table. This is especially true in conflict situations, and the more heated the

conflict, the more difficult it can become. During these times, we need to step back and remember that skilled negotiators invest in finding out as much about the other side as possible, especially what the other side’s interests are, so they can work toward agreements together.

There is more than one side in a negotiation, and to pursue your goals successfully, you need to enter the negotiations with a clear sense of your own objectives and bottom line and an understanding of your counterpart’s reality as well. Learn their goals, their interests, and their constraints. Try and determine what their BATNA may be. Mentally sit on their side of the table for a while and determine that you are going to work with, and not against, the other side. Do this and accomplishing your goals through successful negotiations will be much easier.

ALAIN BURRESE is a mediator and attorney with Bennett Law Office in Missoula. He conducts mediations and settlement conferences as well as speaking and training in negotiation and mediation. He can be contacted at: www.bennettlawoffice.pc.com or (406) 543-5803.

NEWS ABOUT MEMBERS

District Judge C.B. McNeil of Polson announced on Dec. 3 that he intends to file for reelection to his 20th Judicial District judgeship. "The announcement is being made at this time in order that attorneys considering filing for that office will know the incumbent will be seeking reelection," a letter from the judge said. Judge McNeil was first elected to public office when he served as a delegate to the 1972 Montana Constitutional Convention. No other sitting judge or justice in Montana has that background, his letter stated. Judge McNeil was the first district judge elected – in November 1984 – to the then newly created 20th Judicial District, which consists of Lake and Sanders counties. He was reelected in 1990, 1996 and 2002 and currently serves in that office.

Two attorneys have joined the Bozeman law firm of Tarlow Stonecipher & Steele:

■ **Thomas D. Shea Jr.** is licensed to practice law in Montana, Washington, D.C., New York, and New Jersey. He has been admitted to practice in both federal and State courts within those jurisdictions, along with the Supreme Court of the United States. Mr. Shea's practice is devoted to handling employment, personal injury, product liability, commercial, and construction disputes. He has gained extensive trial experience over his 17 years of practice. Based upon this experience, Mr. Shea has earned board certifications as a trial attorney by both national and state boards.

■ **Margaret C. Weamer** was raised in Billings. She graduated from Montana State University-Billings, with honors, in 2002. She received her law degree from the University of Montana in 2006. During law school, Ms. Weamer was a member of the National Moot Court Team and a teaching assistant for the legal research and writing program. Before joining the firm, she clerked for Justices Brian Morris, Patricia Cotter and John Warner of the Montana Supreme Court. Ms.

Weamer will be involved in all areas of the firm's practice. **Ben T. Sather** has joined the Billings firm of Ragain, Christensen, Fulton & Filz. A native of Havre, Mr. Sather graduated from the University of Montana, with honors, and the University of Montana School of Law. Mr. Sather clerked for Justices Rice, Nelson and Leaphart of the Montana Supreme Court. He will concentrate on the representation of plaintiffs in the areas of personal injury, professional negligence and commercial disputes.

Kaplan Law Firm of Columbia Falls announced the association of **Justin G. Breck**. Mr. Breck was born in Missoula and grew up in Kalispell, where his family has lived since 1901. He attended Pepperdine University, after graduating from Flathead High School in 1990, earning a BS in Business Administration in 1995. He obtained his juris doctorate from Willamette University College of Law in 1999. During law school, he interned for the Marion County District Attorney's Office and for Churchill, Leonard, Brown, Lodine, & Hendrie in Salem, Ore., served as an editor on the *Willamette Journal of International Law and Dispute Resolution* and was a member of Willamette's Moot Court Board. He earned a certificate in dispute resolution from Willamette's Center for Dispute Resolution. After graduating from law school, Mr. Breck worked for eight years in a variety of capacities in city government, private-sector information technology, financial planning, and court administration. After 17 years away from the Flathead Valley in locations including Portland, Ore., southern California, England and South Korea, Mr. Breck moved back to his native home of Kalispell in June of 2005 with his wife. Mr. Breck will practice in the areas of business formation, land use, real estate transactions, general litigation, and estate planning.

DEATHS

Sherman V. Lohn, Missoula attorney and Jameson Award recipient

Sherman V. Lohn, 86, a longtime Missoula attorney and a winner of the State Bar of Montana's Jameson Award, died on Dec. 10 at The Village in Missoula after a short illness.

Mr. Lohn was born in Froid and spent his early teenage years in Wolf Point, but he and his family moved to Helena before his junior year in high school. He played football and basketball for Helena High School and was elected senior class president.

Mr. Lohn entered the University of Montana in 1940, but his studies were interrupted by World War II. He served in the U.S. Army, including a hitch at Fort Missoula.

After the war, he continued his pre-law studies, receiving his bachelor's degree with honors from the University of Montana in 1946. He entered the Law School at UM immediately after-

ward and was awarded the LL.B., with honors, in 1947.

After a brief stint with a law firm in Helena, Mr. Lohn traveled east to Harvard University where he received another postgraduate degree, an LL.M. He returned to Missoula and joined the legal firm of Murphy, Garlington & Pauly in 1949. In 1955, that firm became Garlington, Lohn & Robinson.

Mr. Lohn practiced law in Missoula for more than 50 years. He was a member of the Western Montana Bar Association and the American Bar Association. For many years, he acted as the state delegate to the ABA House of Delegates. He also was a director of the American Judicature Society. Mr. Lohn worked with the 9th Circuit Judicial Conference as a lawyer representative, was a member of the Senior Advisory Board of the 9th Circuit Court of Appeals, and served as a director of the 9th Judicial Circuit Historical Society.

Between 1954 and 1972, he taught the "moot court" component of the third-year course at the UM School of Law. For 30

years, he acted as counsel for the University of Montana Foundation and also served as Foundation president. He served as president of the Maureen & Mike Mansfield Foundation.

In 1992, Mr. Lohn received UM's Neil S. Bucklew Presidential Service Award. In 1993, he received the William J. Jameson Award, the State Bar of Montana's highest honor. In 1995 he earned the UM School of Law award for Distinguished Service to the Profession and the School of Law and Distinguished Attorney Award.

Mr. Lohn is survived by his wife, Betty, a daughter and two sons.

Jack Pinsoneault, Missoula attorney

Missoula attorney H.J. "Jack" Pinsoneault, 80, died on Nov. 1.

He was born in St. Ignatius and raised on the family ranch in the Mission Valley. After graduating from St. Ignatius High School, he enlisted in the Navy in 1945 and served as a Navy air traffic controller.

After his discharge from the service, he attended Gonzaga University, Stanford University and completed an accounting degree from the University of California at Berkeley in 1951. He returned home to Montana and later graduated from the University of Montana School of Law in 1954.

He had married Jean McNulty of Butte in 1953, and the couple first lived in Helena while Mr. Pinsoneault worked for the State Board of Equalization. They later moved to Missoula where he served as county attorney for 10 years during the 1960s. He then practiced law with the firm of Garnaas, Hall, Riley & Pinsoneault. In 1972 he was a member of the Montana Constitutional Convention. Mr. Pinsoneault continued an extensive private law practice until he retired in 1997.

Mr. Pinsoneault was a fourth-degree knight of the Knights of Columbus and served two years as grand knight. He also was a member of the Elks Club.

He is survived by his wife, two daughters and one son.

Harold R. Obert, former district judge

Former District Court Judge Harold R. "Dude" Obert, 82,

died on Nov. 20 at the Fort Meade VA Medical Center in South Dakota.

Judge Obert, who had been district judge in Sidney, Mont., from 1985 until 1991, was a resident of Lead, S.D., at the time of his death.

Judge Obert was born and raised in Milton, Ore. He joined the Navy at the age of 16. Following his honorable discharge, Judge Obert attended law school in Madison, Wis. He began his law practice in Colorado Springs, Colo. Judge Obert served as vice regional counsel to the EPA in San Francisco. He lived and worked on the West Coast for two oil companies as an attorney.

Judge Obert moved to Worland, Wyo., where he met and married Myrna Ferrel. He worked in the Worland area before they moved to Sidney, Mont., where he was a district court judge for six years, before his retirement in 1991. The Oberts moved back to Colorado Springs and later to Lead.

Judge Obert was a member of Barristers in Billings.

He is survived by his wife, three sons, and four daughters.

Alexander Hart, Missoula

Alexander Maurice Hart, 38, a 2002 graduate of the University of Montana School of Law, died on Nov. 29 at his home in Missoula.

He was born and raised in Columbus, Ohio. He met his future wife, Kelly, while working at Big Brothers/Big Sisters Camp. He attended the University of Idaho in Moscow, and received a degree in Crime & Justice Studies in 1998. While in Moscow he served on the Latah County and Palouse-Clearwater Search & Rescue teams.

Mr. Hart moved to Missoula in 1999 to attend the University of Montana School of Law. He competed at the national level with the UM Law Moot Court Team, was a member of the Order of Barristers, and was active in the Indian Law Clinic. He graduated in May 2002 and is a former member of the State Bar of Montana.

Mr. Hart is survived by two sons and a daughter. You may donate to an educational trust account established at Wells Fargo Bank for his children.

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LETTERS

Two notable mentoring programs

I read with interest the recent articles in *The Montana Lawyer* concerning the importance of mentoring inexperienced lawyers and the request for suggestions of "mentoring models." This is an area of professional responsibility which I believe all experienced lawyers owe to the profession.

In that connection, I participate on a regular basis with the Advanced Advocacy Program offered by the University of Montana Law School for a week each spring at the school. There experienced lawyers and judges put law students and young lawyers (and some

old ones) through an actual civil trial process.

Karen Townsend of Missoula has been in charge of organizing the program for the past few years. It is based upon the National Institute for Trial Advocacy model.

I would encourage the Bar to help promote the program. It is inexpensive because all participants volunteer and the Law School donates the space.

On a different note, I am sure you are aware of a national mentoring program which has been in place for the past 30 years or so, and which was originally

modeled after a similar program in England. It is the American Inns of Court program. A good overview of the program can be found at its web site: www.innsofcourt.org. I have tried at various times to encourage our local bar association to implement the program here without much success. Perhaps it could be offered by the State Bar on a statewide level.

Lastly, I hope no one goes unmentored who wants some sage advice. I assign the rise of incivility, in part, to such lack of direction.

**- Steven J. Harman, attorney
Harman, Warren & Harris
Billings**

HUMOR

One way to vent your displeasure

This potential legal case has been bouncing around the Internet for the past year, but only recently did the web site snopes.com confirm that it actually occurred. Snopes.com is in the business of confirming or debunking all sorts of crazy stories that make their way onto the web. In this case, the story was originally reported as fact by the Salt Lake Tribune and KTVX-TV in Salt Lake City in August and September of 2006:

A city councilman, Mark Easton, lives in a Riverton, Utah, neighborhood just outside Salt Lake City. He had a beautiful view of the Wasatch Mountains to the east, until a new neighbor purchased the lot below his house and began building a house in 2005.

The conflict started when Darren Wood excavated dirt from a hill on

which the homes of his neighbors, Mr. Easton and Stan Torgersen, sat, *Snopes.com* reported. The Eastons and Torgersens were concerned about the stability of the hill and contacted city officials, who ordered Mr. Wood to have a soil test performed. Mr. Wood was disgruntled by the decision because the previous owner had already done a soil test, and performing it again would cost him \$3,000 and delay his construction project by four months.

Then, when Mr. Wood began raising the frame for his house around mid-2006, his neighbors were again concerned because the structure rose higher than the rooftops of the other homes around his lot and partially obstructed their view of the mountains.

Mr. Easton and Mr. Torgersen again asked city officials to intervene because

they believed Mr. Wood's house exceeded the maximum height allowed by local building code.

Although Mr. Wood conceded that his house might have exceeded the height limit by about a foot, he was again mad, because, he maintained, that once the house was completed and the landscaping laid out, the home would fall within the code, and, in any case, the city had already approved his plans.

Snopes.com said the city forced Mr. Wood to lower the roofline.

Feeling that he was being unfairly harrassed by his neighbors and upset that the construction interruptions they prompted had cost him an additional \$25,000, on Aug. 15, 2006, Mr. Wood created a visible symbol of his displeasure by installing the vent covering . . .

. . . pictured on the next page



... on the side of his home facing the neighbors. So Mr. Easton then called the city and informed them that he did not like the look of his new neighbor's new vent, and asked the city to investigate.

Mr. Wood described his vent as a decorative piece of "abstract art" representing a cactus. His neighbors, of

course, viewed the vent cover as a giant hand flipping them off.

Mr. Wood said he would remove the vent cover if he received apologies from his neighbors.

A week later, Mr. Wood said, Mr. Easton "expressed to him that 'I am sorry for any discomfort that I have caused his family or him, and that I had no intent to do any harm to him

when I called the city with my concern about safety'"

Mr. Wood apparently found that sufficient and took down the controversial abstract "cactus."

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ATTORNEY: Position for attorney to do trial preparation work, mainly on Libby asbestos cases. McGarvey, Heberling, Sullivan & McGarvey, 745 S. Main, Kalispell MT 59901. Contact Jon Heberling, (406) 752-5566.

ATTORNEY: Bozeman firm seeking attorney with 4-plus years experience for immediate responsibilities in land use, business, construction, real estate and general practice counsel and litigation. Excellent professional opportunities with performance based compensation. Apply by faxing resume and writing sample to Wittich Law Firm PC, (406) 585-2811.

LAWYER: #66203112. \$51,247 - \$64,060, Great benefits. Dept. of Labor & Industry, Helena is seeking an individual to provide legal representation and litigation on behalf of various divisions within the department. For details and application materials contact MT Job Service or <http://mt.gov/statejobs/statejobs.asp> or e-mail dliapps@mt.gov. Deadline for applications is Dec. 28, 2007.

TWO ATTORNEYS: Established Montana law firm seeks two attorneys: 1) associate for Dillon branch office to practice primarily in water law, natural resource law, and real estate; 2) associ-

ate for Helena office to focus on energy law, telecommunications, natural resource law, and related litigation. Experience in these areas is desirable, but strong research, litigation and writing skills are required. The firm offers extremely competitive compensation and fascinating work. Submit cover letter, resume, writing sample, and transcript to: Doney Crowley Bloomquist Payne Uda PC, PO Box 1185, Helena, MT 59624, or e-mail application documents to solsen@doneylaw.com. Closing date: Dec. 20, 2007.

ATTORNEY: Expanding Kalispell bankruptcy (debtor, creditor and trustee), banking, business and commercial litigation practice seeks attorney with 4-plus years experience (will consider and train lesser experienced person). Competitive salary commensurate with experience. For more information, see us at www.cossittlaw.com. Please submit cover letter and resume to jhc@cos-sittlaw.com.

CONTRACT ATTORNEY: We are a national Social Security Disability law firm based in Los Angeles. We are committed to helping our clients get the benefits they need. We are seeking an attorney in the Billings area to argue claims at the hearing level on our behalf. This position is ideal for an attorney looking to supplement an existing Social Security practice. Please forward resumes to: rbrown@disability-group.com.

ASSOCIATE COUNSEL: Zoot Enterprises Inc., a banking software and services firm, is seeking an associate level attorney with one to five years experience to join its fast-paced in-house legal team. The primary job focus will be on transactional matters, but practice includes a broad mixture of legal fields. Successful applicants will have superior communication, analytical, and customer service skills. The ability to prioritize, multi-task and lead in a fast-paced team-oriented environ-

ment is preferred. Fun, friendly work environment with competitive salary and benefits. Apply on-line at www.zootweb.com.

ATTORNEY: The Montana Legal Services Association has an opening for a staff attorney in its Helena office. This position is funded by the Montana Supreme Court and will be responsible for drafting forms for use by pro se litigants in Montana. Salary: \$38,000-plus, depending on experience. Send a letter of interest, resume and three references to: Montana Legal Services Association, 616 Helena Ave., Suite 100, Helena MT 59601, or hiring@mtlsa.org.

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

ATTORNEY: Billings law firm with practice emphasizing commercial litigation, general trial work and transactions seeks experienced attorney. All applications will be kept confidential. Please send letter of application, resume and references to Donna at Patten, Peterman, Bekkedahl & Green PLLC, 2817 2nd Ave. North, Suite 300, Billings MT 59101 or e-mail to dbekkedahl@ppbglaw.com.

BANK ATTORNEY: Mountain West West Bank NA is expanding its legal department and hiring another attorney, who will be located in Helena. This position reports to Mountain West Bank's vice-president/bank counsel, and applications will be accepted immediately. Duties will include providing legal advice to management and personnel on lending, contracts, commercial law issues, employment law issues, and

other corporate matters. The position will also involve litigation and some travel. All applicants must have a JD degree, and be a member of, or seeking membership to, the Montana Bar.

Applicants should have a working knowledge of the Uniform Commercial Code, contract law, property law, and bankruptcy law. Applicants must be hard-working, with excellent communication and interpersonal skills, and a demonstrated ability to prioritize projects and complete multi-task assignments. Salary will be competitive and will depend on experience.

Additionally, Mountain West Bank provides an excellent benefit package. All inquiries will be kept confidential. Send a cover letter, resume and writing sample to: Amy Randall Esq., Mountain West Bank NA, PO Box 6013, Helena MT 59602-6013 or to amyr@mtwestbank.com.

ASSOCIATE: Great Falls firm seeks full-time associate attorney in plaintiffs' civil litigation, emphasizing personal injury, toxic tort, and environmental litigation. Private practice experience preferred. Excellent professional opportunities with performance based compensation and comprehensive benefits. Interested applicants should submit a cover letter, resume, writing sample and transcript to Lewis, Slovak & Kovacich PC, PO Box 2325, Great Falls MT 59403; or fax to (406) 761-5805.

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

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ASSISTANT / PARALEGAL: Missoula plaintiff firm seeks full-time assistant / paralegal. Excellent working atmosphere, with very competitive salary and benefits. Must have litigation experience, 3 years minimum. Position involves all aspects of case management, docketing and document production. Available immediately. Contact Laurie Bersanti, at Buxbaum Daue & Fitzpatrick for further information and application. (888) 771-8677

PARALEGAL & LEGAL SECRETARY: Want to work for a highly respected Missoula law firm? MDSN is seeking a full time paralegal and a full time legal secretary. Compensation depends on experience. Send cover letter & resume to Chris Nygren, MDSN, PO Box 4947, Missoula MT 59806.

PARALEGAL: PPL Montana is seeking an experienced, paralegal for immediate full-time employment in its Billings corporate office. PPL Montana operates hydroelectric dams and coal fired power plants throughout Montana. Successful candidate must possess superior organization, communication, computer skills (MS Office and Internet) and the ability to work independently and manage multiple priorities. Knowledge of discovery process, legal research, office and file management, scheduling, deposition and trial preparation essential. Qualifications required include Bachelor's degree, paralegal certificate preferred, plus litigation experience. PPL Montana offers a highly competitive salary depending on experience plus incentive bonus, as well as health insurance, vision, dental, vacation/sick time, 401k and retirement plans. Qualified applicants should apply and submit their resume online at www.pplmontana.com and click on Careers.

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LEGAL RESEARCH & WRITING:

Fast, accurate and thorough legal research. Effective legal writing - briefs, motions, pleadings, appeals. Attorney with 20-plus years of civil litigation experience. JD, UCLA; admitted in California and New Mexico. Reasonable rates. Local references. HLWashburn@aol.com; (406) 442-1298.

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BILLINGS: Grand Building, downtown at 100 N. 27th Street. Two blocks from county and federal courthouses. Available immediately. Offices for attorney and assistant, with common area reception and furnished conference room. Reasonable rates. Wireless Internet access. Call (406) 248-3900 (Steve).

BOZEMAN: Southside office space. Convenient location near Law & Justice Center. Two office spaces, with access to conference room. Possible sharing of secretarial services. (406) 585-0440.

BOZEMAN: Share office and expenses in three office, one conference room suite adjacent to Gallatin County Law & Justice Center. Overhead includes

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MEDIATION

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

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

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

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