

# Lawyer

THE STATE BAR OF MONTANA

## Puritans vs. Vigilantes



*Both Taliban-like  
in punishments,  
Vermont's and  
Montana's roots  
of criminal law  
were planted  
in different soil*

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with changing criminal-defense traditions

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**Freedman  
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## MAY INDEX

### Cover Story

- The hanging tree & the pillory: Roots of criminal law in Montana and Vermont 6

### Features

- Big drop for Justice Foundation 9
- Lawyers told to attend initial proceedings 21
- Lawyers debate defender need for minor crimes 21

### Commentary

- President's Message: The need for mentoring 4
- Letters: Dues increase; Great Falls awards 23

### State Bar News

- Legislative bills followed by Bar 5
- April Board meeting summary 10
- Criminal law CLE to feature top ethics experts 11
- Jameson Award nomination form 12
- Professionalism Award nomination form 13
- Pro Bono Award nomination form 14
- State Bar Calendar 14

### Courts

- Commission on Practice elections 18
- Water Court judge applications sought 18
- Discipline: 3 attorneys penalized 19

### Regular Features

- Upcoming CLEs 15
- State Bar Bookstore 16
- News About Members 26
- Deaths 27
- Classifieds 29



## PRESIDENT'S MESSAGE

# Easing the transition

## *Mentors needed at 'birthing' of new lawyers*

Chris Tweeten

**T**he transition from law school to law practice is never completely smooth. In fact, for many lawyers, it's like being born. We leave the safe, warm womb of law school wide-eyed and scared by the noise, the bright lights, and the harsh scrutiny of a bunch of people we don't know. Then, someone slaps us on the backside and we're forced to greet the new world.

Some lawyers, however, find a lawyer to ease the transition. Traditionally, it's one of the senior lawyers in the firm that hires the new lawyer. It could be someone who is already close – parent, a sister or brother, a family friend – probably the person who inspired the desire to become lawyers in the first place. For some, it's the judge who provided a coveted clerking opportunity. For some, it's a big-hearted lawyer in the community who has a bad habit of taking a floundering new lawyer in hand and introducing the new lawyer to the profession. This person is known as a mentor.

**BACK IN THE DAY**, law schools paid scant attention to teaching lawyers to be lawyers. Legal education was built around a premise that law students did not need a practical education in lawyering. Turn out law graduates who have learned the principles of the law, this paradigm said, and big established law firms will hire them and take responsibility to turn them into lawyers.

That paradigm, if it ever existed, is long gone today. The percentage of law school graduates who find jobs in large established firms has shrunk, and will probably continue to shrink as economic times for law firms get tougher.

Over the years, more University of Montana Law graduates are choosing to go solo or to form one- or two- or three-person firms, either in the familiar surroundings of Missoula or somewhere else.

**SLOWLY BUT SURELY**, legal education is changing to meet the times. The University of Montana is at the forefront of this change.

Some years ago, the Law School adopted a groundbreaking and now nationally recognized curriculum designed to integrate classroom teaching and practical lawyering to produce graduates who are prepared to move, as smoothly as possible, into serving the needs of clients.

The centerpiece of the program is a required clinical experience for all students in the third year, something done by only a handful of law schools.

These efforts will surely continue to benefit law graduates as they enter the practice. But governing courts and state bars across the country are realizing that one additional step is needed. A small but growing group of states and local bars are embarking on some kind of mandatory or voluntary mentoring for lawyers before they receive a full-fledged license to practice. It's kind of like a restricted drivers license for lawyers.

**ALONG WITH THE** State Bar of Montana (see box on Page 11), several state supreme courts and bars have adopted a mentoring program.

■ In Georgia, the State Supreme Court and the State Bar have established mandatory mentoring for all lawyers in the first year after passing the bar exam. It is based on four principles:

- (1) Each lawyer is assigned a mentor in the first year.
- (2) The Bar has created a CLE program called "Enhanced Bridge-the-Gap" that emphasizes lawyering skills and relationships with clients, other lawyers, the courts and the public.
- (3) A preceptorship relationship is created between the mentor and new lawyer focused on basic principles of law practice, practical skills, ethics, and professionalism.
- (4) The relationship is reduced to a written mentoring plan to be completed in the first year of practice.

■ The Ohio Supreme Court directed the Bar to create a voluntary mentor program. Both mentors and mentored lawyers receive CLE credit and other incentives. The program began in 2008 and has received overwhelming approval and support from participants.

■ In South Carolina, the Supreme Court has embarked on a pilot project in which the Court required a segment of the bar exam passers to participate in a mandatory program.

**More MENTORING, Page 11**

# Lawmakers, governor battle over new judges

As the 2009 Legislature entered its final week, two State Bar-watched bills were still undecided after the governor amended them and threw them back for a revote.

Of the two bills, only one – adding three new district judges to state courts – was facing the possibility of a governor's veto at *The Montana Lawyer's* press time.

Senate Bill 158 originally called for the addition of six district judges, but that number was cut in half by the Legislature. The bill as passed by the Legislature calls for only three new judges – in the 1st (Helena), 11th (Kalispell), and 13th (Billings) judicial districts. The bill also provided for the election of the judges in November 2010 and that they take office in January 2011. The bill was supported by the State Bar.

However, the bill was amended by Gov. Schweitzer to delay its implementation for four years. The governor's rationale: "While the need for additional judges is clear, so too, are the limits of our financial capacity during these financially challenging times. The amendments I propose would delay the effective date of this legislation by four years. They seek to achieve the balance of bringing a greater level of judicial services, but to do so when the state's economy has rebounded and our revenue picture has improved."

The bill was sent back to the Legislature, both chambers of which overwhelmingly rejected the governor's amendment.

During the House debate, according to the Lee Newspapers State Bureau, Republican Rep. Ken Peterson, a Billings attorney, urged representatives to reject the governor's implementation delay. "It is absolutely imperative that the judges take office as soon as possible," Peterson said. He said he made a motion for a summary judgment in Yellowstone County District Court nearly two years ago, and the court hasn't ruled on it yet because of the work overload.

Rep. Ray Hawk, R-Florence, said the Legislature's priorities should be centered more on law enforcement and public safety. "Our judicial system can't wait another four years to get new judges," he said.

Great Falls attorney Anders Blewett, a Democratic representative, said there is "a fundamental right to a speedy trial." Access to courts has to be near the top of society's priorities, he said. No representatives spoke in favor of Schweitzer's amendments, the Lee State Bureau said.

Watch the State Bar Blog at [www.montanabar.org](http://www.montanabar.org) for the outcome on this bill



Peterson



Blewett

Legislature the bill did not say that a paralegal must practice under the supervision of an attorney. The State Bar had noted that the omission was at odds with the definition of a paralegal in the bylaws of the State Bar's Paralegal Section, and could give an opening to unauthorized practitioners of law. The Paralegal Section, with whom the bill originated, did not wish to change the bill's wording, so the State Bar asked the governor for the amendment. (See Page 10 for a discussion of the disagreement between the State Bar and its Paralegal Section over this aspect of the bill.)

The governor amended the bill by adding the line "A person may not practice as a paralegal except under the supervision of a licensed attorney and is prohibited from engaging in the unauthorized practice of law."

Both the House and Senate overwhelmingly accepted the governor's amendment and sent the bill back for his signature.

## Legislature passes Fair Arbitration Act

House Bill 322, sponsored by Rep. Anders Blewett (D), a Great Falls attorney, requires a person nominated or appointed as a neutral arbitrator to disclose a conflict of interest. It also provides for vacating an award because of a failure to disclose a conflict of interest.

The bill was also amended by the governor, at Blewett's request, to clarify that it is the arbitrator that must comply with the requirements, not the arbitration agreement; and indicate that the disclosure requirements apply not only to "nominated and appointed" arbitrators, but to "proposed" arbitrators," as well.

## Signed into law

Two Bar-watched bills that passed the Legislature have been signed into law by Gov. Schweitzer:

- House Bill 155 requires state agencies to develop procedures to protect personal information, including Social Security numbers, and to provide a notification procedure regarding a breach suspected of compromising certain personal information. The new law parallels information-privacy guidelines issued recently by the Montana Supreme Court for the state court system.

- Senate Bill 12, sponsored by Sen. Jim Shockley (R), a Victor attorney, This bill adds the 22nd Judicial District to the judicial districts represented in the composition of the Judicial Nomination Commission.

## Still being worked out

The Legislature was in final stages of producing a budget for the Montana Court system. The final numbers were unknown at press time, as was the fate of the courts' Self-Help Law Program.

## Lawmakers accept paralegal-fee change

Gov. Schweitzer also sent House Bill 301 back to the Legislature with an amendment. The bill allows inclusion of reasonable paralegal fees as a component of attorney fees that may be awarded to a prevailing party in certain cases. The bill also defined "paralegal," but in the version passed by the

# The hanging tree and the pillory

by **David F. Kelley**,  
a Vermont lawyer  
now living in Ennis, Mont.

*"I suppose it is no good  
telling you that we're inno-  
cent?"*

*"No good," Tetley  
assured him.*

– **The Ox-Bow Incident**  
**Walter Van Tilberg Clark**

**Y**ears ago, a man who was a security guard, and who carried a firearm, walked into my office. He told me he had been involved in a nasty custody fight. He had gone to the Williston barracks of the Vermont State Police to solicit their help in a domestic dispute. He apparently irritated the officers on duty because they arrested him and charged him with violating a statute that made it illegal to carry a firearm in a state institution. Those police officers then sent out a press release and as a result of the subsequent publicity, the fellow lost his job. The Vermont State Police made this arrest despite the fact that the term "state institution" referred to a corrections facility or a state hospital, but plainly not a police barracks.<sup>1</sup> This fellow hadn't done anything wrong. It sounded to me like he got arrested because he had irritated somebody – and that isn't a crime.

Back then, I was mostly worried about paying my bills, and this wasn't a case that was going to ring any bells. But it made me think back to when I was in law school. I lived a block behind the United States Supreme Court. Every day on my way to and from school, I couldn't help but notice the words above the entrance to the Court: "Equal Justice Under Law." It was a phrase that was probably first coined by Chief Justice Melville Fuller when he wrote:

*"...no State can deprive particular persons or classes of  
persons of equal and impartial justice under the law."<sup>2</sup>*

The architect who designed the building dropped the words "and impartial" because they took up too much space.<sup>3</sup>

The notion that all citizens, perhaps even non-citizens as well, would be treated equally by our justice system is a notion that is superficially simple. Justice is sometimes at the mercy of a person, place, and time.

Like Atticus Finch, we hope our law enforcement officers and our courts have the wisdom to rise above passions and prejudices in their administration of justice, but the winds of passion and personal prejudice and the winds of the here and

now are powerful forces. And sometimes the people empowered to administer the law forget that the law was meant to serve something besides themselves. We can look back through history and condemn much of what has passed for "justice." But the tougher question is whether we ourselves could

have done better, had we been there.

We had the criminal charges against the security guard dismissed, and then we sued the State Police for, among other things, false arrest and malicious prosecution.

**TODAY THE TWO STATES** whose legal systems I am most familiar with are Montana and Vermont. Looking back on the history of criminal justice in both places, one can begin to sense how elusive the ideal of "equal justice" can be when it is pummeled by the winds of passion and prejudice. It was an entirely different set of passions that brought the first settlers to both places and it was those passions that manifested themselves in the criminal justice systems they spawned.

It isn't hard to understand why people came to Montana. Montana's nickname is "The Treasure State." Montana's motto is "Oro y Plata" – "Gold and Silver." The first white settlers came to Montana to get rich. Most of them died poor, but in the interim many of them spent a good deal of time fighting over those beguiling minerals.

Vermont was a different kettle of fish. But the passions that drove people to settle there were no less treacherous. The first white settlers came to Vermont from Connecticut. They were the second or third generations of evangelical Puritans, like Thomas Hooker, who had founded the Nutmeg State. The Nutmeggers who left Connecticut for what was to become Vermont were no less zealous in their quest for redemption. And they certainly didn't think the Crucifixion was sufficient atonement for anybody's sins.<sup>4</sup>

Not surprisingly, the roots of criminal law in Montana are buried deep in the protection of property. The roots of criminal law in Vermont are buried deep in the promotion of morality.

**IN 1862, MINERS FLOCKED** to Montana when gold was discovered on Grasshopper Creek. There were no courts, no jails and no police. There was a lot of gold and a lot of people who didn't care how they acquired it. People needed to bring some semblance of order to the mining camps. The people

who brought order, though not necessarily law, to these mining camps were lawyers.

There is a portrait hanging in the Montana Capitol of a man named Sidney Edgerton. Mr. Edgerton's primary claim to fame is that, in 1864, two years after the discovery of gold, he organized vigilantes who became the law in mining towns like Bannack and Virginia City. The vigilantes hanged 20 some odd alleged road agents, thieves, murderers, drunks, and at least one sheriff, in most cases without the benefit of a judge, jury or trial or anything resembling due process. Apparently Sidney wasn't listening when they talked about appeal rights in his Criminal Law class. He seems like an odd man to be honored with his portrait in the building where the laws that govern Montana are written today, but he *is* credited with curbing Montana's earliest crime spree.<sup>5</sup>

Over time, the vigilantes that Edgerton and his cohorts first organized began to sign their work by leaving the numbers 3-7-77 pinned to the bodies of their victims. The exact significance of those numbers has never been fully explained. One theory has that they are the dimensions of a grave (3' x 7' x 77"). But it doesn't make sense that two dimensions would be in feet and the other in inches. Be that as it may, today the uniform of every Montana highway patrolman still bears those numbers on their shoulder patch. Like the portrait of Mr. Edgerton hanging in the State

House, likewise, it seems odd to honor the memory of those who would hang another human being without benefit of the most perfunctory trial by having it worn on the uniforms of those who are expected to "serve and protect." It is, however, an honest recognition of Montana's earliest criminal procedures.

**VERMONT'S EARLIEST DAYS** are no less challenging to current notions of justice. The first criminal code of Vermont reads as if it were written by Mullah Omar instead of men like Ethan Allen. It recognized nine crimes that were punishable by death. Among them were "blaspheming the name of God the Father, Son and Holy Ghost, with direct, express presumption, and high handed blasphemy," or cursing "in the like manner."<sup>6</sup> Now keep in mind, this is the death penalty. Today one has to travel to Somalia or the ungoverned borderlands of Pakistan to find similar criminal laws.

In that same Criminal Code of 1779, Vermonters made it clear they didn't condone any hanky panky with married women. "Whoever shall commit adultery with a married woman, or one betrothed to another man, both of them shall be severely punished by whipping on the naked body, not exceeding 39 stripes" and to further insure future wholesomeness the statute went on to direct that the offenders be "burnt on the

forehead with the letter A, using a hot iron, and each of them shall wear the capital letter A, on the back of their outside garment, of a different color in fair view during their abode in this state." The offenders would be subjected to more whippings if caught without their letters.<sup>7</sup>

Suffice it to say, that if taking the Lord's name in vain had been a crime punishable by death in the Montana mining

camps, it is unlikely that anyone would have gotten out alive. And it is likely that no one worried about adultery because no one bothered to get married. There is still no common-law marriage in Vermont. In Montana even today, if you live together and act as if you are husband and wife, then you are considered legally married.<sup>8</sup>

Vermonters' zealotry for high morals and rectitude did not end with cursing and adultery. Gambling and horse racing were also illegal.<sup>9</sup> If a Vermonter was deemed to be a "tavern haunter" or someone who spent "his time idly" his name was to be posted on every tavern door to give notice he (or she) was not allowed to partake of spiritous drink. The tavern keeper who served him liquor could have his tavern closed and be subject to a fine. The "tavern haunter" could be put in stocks or pilloried.<sup>10</sup>

Piety and the Good Lord were not subjects to be toyed with in the early days of Vermont any more than gold, silver, or horses were to be toyed with in

the early days of Montana. Getting drunk was punishable by a fine of eight shillings or being placed in the stocks for three hours. Borrowing from "the Connecticut law book" it was a crime to perform any labor, "works of necessity and mercy, only, excepted," or engage in "any game, sport, play, or recreation" on Sunday, or on any day of public fasting or thanksgiving, under a penalty not exceeding £10. Anyone guilty of "any rude, profane, or unlawful behaviour on the Lord's day, either in words or actions, by clamorous discourse, or by shouting, hallooing, screaming, running, riding, dancing, jumping, blowing of horns, or any such like rude or unlawful words or actions, in any house or place, so near to, or in, any public meeting-house for divine worship, that those who meet there may be disturbed by such rude and profane behaviour," was to be fined 40 shillings for each offense, and "whipped on the naked back, not exceeding ten stripes, nor less than five." No one was allowed to "drive a team, or droves of any kind, or travel on said day," except on business relating to "the present war" or if there had been an accident the night before, and even then Vermonters could proceed no further than to the "next inn or place of shelter."<sup>11</sup>

Vermont law also stated, "If any number of persons shall convene and meet together in company or companies in the street or elsewhere, on the evening next before or after the



Montana's founders had a definition of villainy that was far different from Vermont's.

Lord's day, and be thereof convicted, they shall pay a fine not exceeding three pounds, or sit in the stocks not exceeding two hours."<sup>12</sup>

If Vermont's founding fathers could come back to visit the University of Vermont on a Saturday night these days they would be apoplectic.

**MONTANA'S HISTORY** of self-help justice did not end with the mining camps. After the gold mines began to peter out, the Northern Pacific Railroad brought Montana's next economic boom – and with it a whole new crew of ruffians and ne'er do wells.<sup>13</sup> In Billings, a town that was spawned by the railroad, a new vigilante committee came to life, posting the numbers 3-7-77 as a warning and "drove out in a body the entire lot of roughs, vagabonds, and female nuisances."<sup>14</sup> Due process – along with judges, juries, and any notions of the rule of law – was simply another set of "nuisances" with which the good citizens of Billings could not be bothered.

Interestingly, the newspapers made a distinction between "good lynchings" and "bad lynchings." The editor of the *Helena Daily Herald*, Wilbur Fisk, wrote editorials condemning mob violence. But who could object to a decent, orderly lynching? His view, like that of many others at the time, was that vigilante justice was a responsible, fair, and efficient way of addressing criminal behavior. In one editorial he wrote:

*We do not so much object to a decent, orderly lynching when there is a particular atrocity in the crime and there can be no mistake as to the criminal.*<sup>15</sup>

It is particularly disturbing that the people who were responsible for these systems of justice were well educated and well respected lawyers. Sydney Edgerton was a lawyer, a former Congressman from Ohio, and was appointed by Abraham Lincoln to be the first territorial governor of Montana. One of the other principal organizers of the vigilantes in Montana was W.F. Sanders. Sanders was a lawyer and a major force in organizing Masons in Montana. He went on to become a U.S. Senator from Montana and as late as 1896 was being heralded in the *New York Times* as a hero comparable to one of Richard the Lion Hearted's templar knights under the walls of Acre. "They (the organizers of vigilantes) were a temple of strength in evil times, as brave and true as the knights of old."<sup>16</sup>

Sanders was an attorney who at least organized a semblance of a trial for one of the vigilantes first victims. When the jury of miners found the defendant guilty he asked the crowd of miners that had attended the trial who was for hanging the defendant then and there. He decided the "ayes" had it and the defendant was hanged on the spot. If there was any defense attorney, he must have decided there was no merit to an appeal.<sup>17</sup>

**VERMONT'S LEADERS**, at the time that its earliest criminal laws were adopted, were men like Isaac Tichenor, a Princeton-trained lawyer who went on to become governor and a U.S. senator, and Royall Tyler, a lawyer who was educated at Yale and Harvard, who sat on the Vermont Supreme Court and

who was a man of such high moral character that he fathered a child out of wedlock with the woman who cleaned his dormitory room at Harvard.<sup>18</sup>

To this day, the Vermont Constitution not only calls upon all Vermonters to honor the Sabbath but further directs that "Laws for the encouragement of virtue and prevention of vice and immorality ought to be constantly kept in force, and duly executed..."<sup>19</sup>

Our early puritanical lawgivers were so serious about their moral foundation that every member of the General Assembly, before taking his seat, was required to subscribe to an oath in these words:

*I do believe in one GOD, the Creator and Governor of the universe, the rewarder of the good and punisher of the wicked. And I do acknowledge the scriptures of the Old and New Testament to be given by Divine inspiration, and own and profess the Protestant religion.*<sup>20</sup>

While the Vermont Constitution purported to embrace freedom of religion there were, apparently, some reservations about Catholics and Jews – not to mention Buddhists, Hindus, and Moslems. To his credit, Ethan Allen, who was a member from Arlington, in October 1778 refused to take the oath but was nevertheless seated.<sup>21</sup>

How Vermont's earliest criminal laws were actually administered is somewhat hard to discern from the records, but it is clear, nevertheless, that they were indeed administered. According to one record:

*At the session of the Superior court, held at Windsor, in February, 1784, Abraham Taylor, who pleaded guilty to the commission of a crime too indecent to name, received this sentence: 'That he be taken by the sheriff to the whipping-post, and be whipped on the naked body thirty-nine stripes; sit in the pillory half an hour on two different days, viz. half an hour on each day; be imprisoned one month; pay a fine of £20 and cost of prosecution; and stand committed till judgment be complied with.' Martha Mansfield having been adjudged guilty of a certain offence, at the session of the Superior court, held at Marlborough on the fifth Tuesday of August, 1786, was sentenced to be taken to the public whipping-post in that town; whipped twenty stripes on the naked body; pay the costs of prosecution; and be imprisoned until judgment was complied with. At the same time Mary Hazeltine and Timothy Holbrook were sentenced to receive twenty-five stripes each, and Thomas Walker thirty stripes.*<sup>22</sup>

It is highly doubtful that the Court asked what Jesus would do.

**IN MONTANA, THE WAGES** of sin may have been somewhat more final than in Vermont, but we at least know what the allegations were. On one occasion the Vigilantes hanged a man for murder while his victim was still alive. The



# Justice Foundation is facing unprecedented funding drop

By Zoe Zulakis

Montana Justice Foundation  
AmeriCorps-VISTA Member

Less than one year ago, the Montana Justice Foundation (MJF) celebrated its capacity to award a record number of grants to legal aid providers throughout Montana. At the close of this fiscal year, the MJF faces a far bleaker reality – a 54 percent drop in overall funding.

The main source of this loss is a historical drop in Interest on Lawyers Trust Account (IOLTA) funding. In an effort to protect the faltering U.S. economy, the Federal Reserve has slashed federal fund rates causing a leveling of IOLTA revenues. As recently as 2007, the federal fund rate was more than 5 percent, and IOLTA programs nationwide reaped more than \$200 million dollars to support civil legal-aid services for the poor. Today that rate has dropped to the floor, and in Montana rates above 0.5 percent are rare exceptions.

**THIS DRASTIC CUT** in funding has sent reverberations throughout our national and local legal-aid communities. In East Texas, the regional legal-service budget has dropped from \$16 million to \$4 million this past year alone. At New York City's Legal Aid Society, staffing is so limited that the organization can represent only one of every seven eligible people seeking services. Judith Baker, executive director of the Oregon Law Foundation, explained that in Oregon "without a 1 percent [floor in IOLTA rates] we cannot meet the legal needs of our state, or our 2009 budget."

A 2005 study by Legal Services Corp. (LSC), the federal entity that administers funding to organizations that offer legal services to the poor, identified that "for every eligible person helped by an LSC-

funded program, another was turned away." And the gap between need and availability has only continued to grow in light of the recent recession. This spring, Montana Legal Services Association (MLSA), Montana's largest legal-services provider, was forced to let go of eight staff members.

Notwithstanding this loss, MLSA faces a growth of community members in need of legal services. In 2007, MLSA received an average of 420 new callers per month to its HelpLine. In 2008, that number grew to 503 callers. These numbers do not reflect clients whose cases require more calls and follow up assistance. MLSA Executive Director Klaus Sitte said, "It is particularly difficult for the MLSA Board to reduce staff at a time when those we serve need us most."

On March 11 a budget of \$390 million dollars was appropriated to the LSC through an omnibus appropriations bill in the U.S. Congress. Of that budget, \$365.8 million will be appropriated to 137 LSC-funded programs nationwide, including MLSA, Montana's only LSC-funded legal-aid program. However, the money allocated to MLSA will not sustain the losses the organization has experienced as a result of the recession. "At the very least," Sitte said, "we are hoping that the LSC increase will prevent any further reductions in staff."

**THE DRAMATIC LOSSES** will affect other MJF grantees as well. Domestic Violence Education & Services (DOVES) Executive Director Jenifer Blumberg projects that a reduction of MJF funding will mean taking away the "extras." In DOVES' case, the "extras" consist of travel reimbursement for clients to meet with their attorneys, providing a post-office box to clients in life threatening situations, and training for attorneys to serve as expert witnesses

in domestic violence cases. Ms. Blumberg said that these services "go an extremely long way with our clients ... who have to fight for survival on a daily basis."

**MJF GRANTS** are unique, often funding operational costs that other organizations would not usually fund. At Eastern Montana Court Appointed Special Advocates (CASA), for example, funding goes toward paying for gas. Having money for gas means being able to recruit and provide training to volunteer child advocates, throughout the huge area that Eastern Montana CASA covers. This means that that many more children will have a child advocate.

The challenges that the MJF faces are real. We are in a climate where small victories are quickly eclipsed by the rising numbers of those in need. If the MJF is unable to bridge the chasm in IOLTA funds, its grantee organizations may be forced to eliminate programs, lay off vital members of already meager staffs, and in some cases may be forced to close their doors. In response, the MJF has redoubled its fundraising efforts among the private bar, increased community outreach, and actively advocated for legislative funding of the Supreme Court's Self-Help Law Program and statewide Pro Bono coordinator position.

**FINALLY, DESPITE** the recent interest-rate downturn, IOLTA is still a valuable and viable source of funding for civil legal aid in Montana and throughout the nation – second only to federal funding. With this in mind, the MJF is developing an IOLTA Education & Outreach Campaign geared toward financial institutions and attorneys. "It is our goal to raise awareness among these stakeholders of the many programs and people that IOLTA revenues aid," said MJF Executive Director Amy Sings In The Timber, "and to impress upon them the powerful capacity that IOLTA partnerships have to make a positive difference in our communities."

**FOR MORE INFORMATION** on how you can help, or to make a tax-deductible contribution to the MJF, visit [www.mtjustice.org](http://www.mtjustice.org).

# Summary of April 6 Board of Trustees meeting

*The following are highlights of the State Bar Board of Trustees meeting held on April 6 at the UM School of Law:*

## **PRESIDENT'S REPORT – Chris Tweeten**

Mr. Tweeten described his involvement as a member of the search committee in the interviews for the new University of Montana School of Law dean. The school hopes to hire the successful candidate by July 1. He also reported on his attendance at the Western States Bar Conference meeting March 25-29 in Honolulu. Issues during this meeting included IOLTA, access to justice and the judicial election process.

## **SECRETARY-TREASURER REPORT – Joe Sullivan**

The ad hoc committee created to review the 2009-2010 Budget submitted its report following the Court's order approving the dues increase. The Committee remained conservative in its recommendations regardless of the dues outcome. It is also recommended that the State Bar develop a budget forecast for the next few years.

## **REPORTS REQUIRING BOARD ACTION**

### ■ **Approval of final 2009-2010 budget.**

The Board approved the budget after adding amendments by the ad hoc budget committee and the Executive Committee reflecting the dues increase.

After a presentation by the co-editors of the *Montana Law Review*, the Board also amended the budget to add \$5,000 back to the Bar's annual contribution to the *Montana Law Review*, for a total of \$10,000.

The Board also replaced its \$2,500 contribution, which had been deleted from the pre-dues increase budget, to the New Lawyers' Section with the condition that the funds be used to send New Lawyers Section members to the ABA-sponsored conferences for new lawyers.

### ■ **Controversy over Paralegal Section's legislative bill**

House Bill 301, drafted by the Paralegal Section to allow paralegal fees to be awarded to litigants along with attorney fees, was passed by the Legislature. But the State Bar Executive Committee had objected to the definition of "paralegal" in the bill that did not provide for a paralegal to work under the auspices of an attorney, leaving the door open to unauthorized practitioners. And the definition was inconsistent with the Paralegal Section's bylaws, the Executive Committee felt. Bar President Chris Tweeten reported on the Bar's efforts to offer amendments and meet with legislators on these criteria. After a long discussion between Board members and the Paralegal Section delegation – Barbara Bessey, Tina Sunderland, and Tammy Fagan – the Board voted for President Tweeten to appoint a committee made up of at least two Paralegal Section members and two Board members to try and

## Law School anecdotes sought

The theme for this year's Annual Meeting will be "History of the Bar and Law School," Bar President-Elect Cyndy Smith told the Board. And the host of the Annual Meeting Banquet, Missoula District Judge Douglas Harkin is seeking humorous anecdotes from Bar members about their UM Law School experiences. Judge Harkin will present those anecdotes as part of the Banquet Program.

E-mail your anecdotes to Cyndy Smith at [cks@montanalaw.com](mailto:cks@montanalaw.com).

## Rookie Camp, Road Show set for Billings on June 12

Rookie Camp for newer lawyers will not be held at the Bar's Annual Meeting this year, but will be in Billings on June 12. The award-winning camp bringing rookies together with experienced lawyers, judges and justices, will be on the MSU Billings campus from 8 a.m. to 1 p.m.

Rookies and camp faculty will have the opportunity to participate in the State Bar's Road Show CLE for all Bar members that afternoon, at the same location, from 1 to 4:30, with 3.50 free Ethics credits provided.

hammer out an agreement, immediately after the Board meeting, over the definition of "paralegal" so that the bill might still be amended. No agreement was reached. The Bar then took its concerns to the legislative sponsors and to the governor's office and the governor sent the bill back to the Legislature (See Page 5) with an amendment placing the attorney-supervision role into the definition. At press time, the Legislature had \_\_\_\_\_.

### ■ **ABA Model Court Rule Re: Disasters**

The ABA has asked bars with no reciprocity to consider a disaster plan that would allow for displaced lawyers to temporarily practice law in their states to assist with legal service needs. The Board voted to adopt the rule for Montana and a petition will be prepared for the Montana Supreme Court.

## **REPORT FROM THE LAW SCHOOL – Shelley Hopkins**

There will be a dedication ceremony for the new Law School Building on Sept. 18 in conjunction with the State Bar Annual Meeting. Although the renovation is almost complete, additional contingency funds are need to be raised to fund furniture and audio visual equipment, among other unexpected necessities.

○

It has been said that, "If we had to pick the one person who first created modern legal ethics as a serious academic specialty, it would be Monroe Freedman." Professor Freedman is only one of six distinguished ethics experts who will speak in Bozeman on June 26 in a State Bar conference on Ethics in the Criminal Justice System.

Details will be mailed to Bar members and appear on the Bar website.

The *New York Times* described Prof. Freeman as "a pioneer in the field of legal ethics." He has received the ABA's highest award for professionalism and ethics, and has taught at Hofstra University Law School for 50 years. His clients have included William Kunstler, Roy Cohn, Alan Dershowitz, and members of Congress. He was also chosen by Nobel Laureate Elie Wiesel to be the first executive director of the U.S. Holocaust Memorial Council, and has received a Martin Luther King Award for "decades of work to advance human dignity and social justice."

The other speakers include:

- James McCauley, ethics counsel for the Virginia State Bar.

## Criminal Law CLE to feature top U.S. ethics experts

- Ellen Yaroshefsky, clinical professor of law and executive director of the Jacob Burns Ethics Center at the Benjamin N. Cardozo School of Law in New York. She is on the board of the National Association of Criminal Defense Lawyers.

- Richard Zitrin, of counsel to the San Francisco firm of Carlson, Calladine & Peterson. He teaches legal ethics at the University of California-Hastings College of Law. He was the founder and first director of the Center for Applied Legal Ethics (now known as the Center for Law & Ethics).

- Ellen Pansky, a partner in the law firm of Pansky, Markle, Ham in southern California. She specializes in professional liability litigation, state bar disciplinary defense, legal ethics consultations, and expert testimony. Ms. Pansky is past

president of the Association of Professional Responsibility Lawyers, a charter member of the ABA's Center for Professional Responsibility, and a founder of the National Institute for Teaching Ethics & Professionalism.

- Abbe Smith, who teaches at Georgetown Law. She also was a clinical instructor, lecturer on law, and deputy director of the Criminal Justice Institute at Harvard Law School.

Retired Supreme Court Justice Sandra Day O'Connor has been invited, but had not responded, said Bozeman attorney Chuck Watson, chair of the State Bar's Criminal Law Section, which is presenting the conference.

He said the speakers will cover issues such as fairness in the lawyer discipline system, the adversarial system vs. the truth-seeking system, the minimum standards for the effective assistance of counsel, reasonableness of fees in criminal cases, attorneys' rights and clients' rights in criminal cases, the scope of the defense lawyer's obligations to the court and client, and the constitutionality of judicial elections. ○

### MENTORING, from Page 4

Based on the first pilot program, a second has been created.

■ Similar programs are in development in North Carolina, Illinois, Utah, and Portland, Ore.

**THE STATE BAR** of Montana has initiated its own mentoring program (see box at right), and other programs are in development in Montana as well.

The Yellowstone County Bar has created a local mentoring program. The Bar has written a detailed mentoring manual covering selection of mentors, the expectations of mentors and new lawyers, and even a list of do's and don'ts for mentors and the new lawyers they serve.

Several years ago the Women's Law section began work on a mentoring program principally designed to match

## Montana's mentoring program

The State Bar of Montana's voluntary Mentor Program pairs new lawyers with more experienced members of the profession for a one-year mentorship.

The purpose of the program is to help new lawyers learn what they need to know about the real-world practice of law, with special emphasis on law office management, client relations, law practice procedure, and courthouse relations.

Application packets for those new attorneys wishing to be assigned mentors are included in new lawyers' admission packets, as well as at Rookie Camp. Contact Betsy Brandborg, bar counsel, at [betsyb@montanabar.org](mailto:betsyb@montanabar.org).

established women lawyers with women entering the practice.

**THE PROFESSION MAY** be headed in this direction. We should be active rather than reactive about it. We need to be aware of this movement and consider whether some kind of statewide program

is necessary or advisable here. Let's have a dialogue about it.

This message and some additional information about mentoring will be posted on the State Bar Blog at [www.montanabar.org](http://www.montanabar.org). Look at the information, think about it, and then post your reactions, thoughts, and ideas. ○

# 2009 William J. Jameson Award

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

1. Shows ethical and personal conduct, commitment and activities that exemplify the essence of professionalism.
2. Works in the profession without losing sight of the essential element of public service and the devotion to the public good.
3. Possesses an unwavering regard for the Rules of Professional Conduct, the Creed of Professionalism, the State Bar's Guidelines for Relations Between and Among Lawyers, and the State Bar's Guidelines for Relations Between Lawyers and Clients.
4. Assists other attorneys and judges in facing practical

and ethical issues.

5. Participates in programs designed to promote and ensure competence of lawyers and judges.
6. Supports programs designed to improve the discipline process for judges and attorneys.
7. Participates in programs that aid the courts in ensuring that the legal system works properly, and continually strives for improvements in the administration of justice.
8. Is actively involved with public and governmental entities to promote and support activities in the public interest.
9. Actively participates in pro bono activities and other programs to simplify and make less expensive the rendering of legal services.
10. Actively participates in programs designed to educate the public about the legal system.

Nominee: \_\_\_\_\_

Address: \_\_\_\_\_

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

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Your signature: \_\_\_\_\_ Print your name: \_\_\_\_\_

Your address: \_\_\_\_\_ Phone: \_\_\_\_\_

Nominations must be postmarked no later than **June 15**. Send them to:

**Jameson Award**  
**State Bar Past Presidents Committee**  
**P.O. Box 577**  
**Helena MT 59624**  
**or e-mail [mailbox@montanabar.org](mailto:mailbox@montanabar.org)**

# George L. Bousliman Professionalism Award

The award will recognize lawyers or law firms who have:

1. Established a reputation for and a tradition of professionalism as defined by Dean Roscoe Pound: pursuit of a learned art as a common calling in the spirit of public service; and

2. Within two years prior to the nomination, demonstrated extraordinary professionalism in a least one of the following ways:

- Contributing time and resources to public service, public education, charitable or pro bono activities.

- Encouraging respect for the law and our legal system, especially by making the legal system more accessible and responsive, resolving matters expeditiously and without unnecessary expense, and being courteous to the court, clients, opposing counsel, and other parties.

- Maintaining and developing, and encouraging other lawyers to maintain and develop, their knowledge of the law and proficiency in their practice.

- Subordinating business concerns to professional concerns.

Nominee/Individual or firm: \_\_\_\_\_

Address: \_\_\_\_\_

Please describe the nominee's activity in your community or in the state, which you believe brings great credit to the legal profession. Attach any supporting documents to this form.

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Your signature: \_\_\_\_\_ Print your name: \_\_\_\_\_

Your address: \_\_\_\_\_ Phone: \_\_\_\_\_

Nominations and supporting documents will not be returned. Send them no later than **June 15** to:

**Bousliman Professionalism Award**  
**P.O. Box 577**  
**Helena MT 59624**  
or e-mail to *mailbox@montanabar.org*

The State Bar Access to Justice Committee is seeking nominations for the annual Pro Bono Award.

The deadline for nominations is July 1.

An award recipient may be a lawyer who provides outstanding legal services to the indigent, or another individual such as a court reporter, paralegal, psychologist, or social worker who has provided pro bono services in aid of pro bono legal representation in Montana.

Attorney nominees must be admitted to practice in Montana. Nominees cannot be employees of organizations that provide free or low-cost services to the poor.

Nominations should include a description of pro bono services the nominee has provided, the number of hours he or she has donated and the approximate number of cases involved. Also include a brief description of the nominee's professional career.

Nominee: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

## Pro Bono Award

Attach extra sheet with the information required in the opening paragraphs of this form.

Your Signature: \_\_\_\_\_

Print Your Name: \_\_\_\_\_

Your address: \_\_\_\_\_

\_\_\_\_\_

Your Phone: \_\_\_\_\_

Please mail the nomination by July 1, to:

**Pro Bono Awards  
c/o Patricia L. Fain  
State Pro Bono Coordinator  
PO Box 21304  
Billings MT 59104-1304**

## STATE BAR CALENDAR

### May 1

**Law Day**, nationwide

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

**CLE Institute** planning meeting, 8:30 a.m., Hilton Garden Inn, Billings

### May 10

**Advertising & content deadline** for June *Montana Lawyer*

### May 13

**Group Benefits Trust** meeting, 10 a.m., Montana Bankers Boardroom, 1 N. Last Chance Gulch, Helena

### May 15

**Bucking Horse CLE**, Town & Country Club, Miles City

### May 19

**Swearing-in ceremony** for new lawyers who passed the February 2009 Bar Exam, 10 am, Supreme Court chambers, Helena

### May 22

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

### May 25

**Memorial Day**, State Bar offices closed

### May 29

**State Bar Executive Committee** meeting, 11:30 a.m., Double Arrow Resort, Seeley Lake

### May 29-30

**State Bar Board of Trustees** annual strategic planning meeting and regular quarterly meeting, Double Arrow Resort, Seeley Lake

### June 12

**Rookie Camp**, 8 a.m. to 1 p.m., MSU Billings

**Road Show**, 1 p.m. to 4:30 p.m., MSU Billings

### June 26

**Criminal Law Ethics CLE**, Bozeman

# Upcoming CLE seminars for Montana lawyers

April 30 Missoula – Missoula County Courthouse

**The Law & the Guardian Who Has Been Asked to Testify** 1.0 CLE credit. Presented by the 4th Judicial District Court, (406) 258-3461

April 30-May 1 Butte – Holiday Inn Express

**Montana Fair Housing Conference** 13.0 CLE credits. Presented by Montana Fair Housing, (406) 782-2573

April 30 Helena – Colonial Hotel

**Eminent Domain in Montana** 6.0 CLE credits. Presented by Lorman Educational Services, (866) 352-9539

May 14 Missoula – Grant Creek Inn

**Workers' Compensation** 6.0 CLE credits. Presented by Putman & Associates, (406) 257-0269

May 15 Miles City – Town & Country Club

**Annual Bucking Horse CLE** 6.0 CLE credits, including 2.0 Ethics credits. Presented by the State Bar of Montana CLE Institute, (406) 447-2206

May 19 Teleconference

**Special Planning Concerns for Older Clients** 1.50 CLE credits. Presented by Cannon, (706) 353-3346.

May 21 Helena – Metcalf Building, Capitol complex

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

May 21 Missoula – Missoula County Courthouse

**So You Think You Want to be a Guardian Ad Litem** 1.0 CLE credit. Presented by the 4th Judicial District Court, (406) 258-3461

May 22 Bozeman – Public Library

**Parenting Plan Evaluations: 5 Judicial Perspectives** 1.0 CLE credit. Presented by Constructive Agreement LLC, (406) 595-2263

May 26-29 Missoula – UM Law School

**Advanced Trial Advocacy** 27.50 CLE credits, including 1.0 Ethics credits. Presented by the University of Montana School of Law, (406) 243-4319

June 1 Missoula – DoubleTree Hotel

**Implications for the Court in Parenting Decisions** 3.0 CLE credits. Presented by the 4th Judicial District Court, (406) 258-4742

June 1-5 (mornings) Missoula – UM Law School

**Indian Child Welfare Act** 15.0 CLE credits. Presented by the University of Montana School of Law, (406) 243-6781

## Other web & phone CLEs for Montana credit are:

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

■ MTLA's SeminarWeb Live! Seminars at [www.seminarweblive.com/mt/index.cfm?showfull-page=1&event=showAppPage&pg=semwebCatalog&panel=browseLive](http://www.seminarweblive.com/mt/index.cfm?showfull-page=1&event=showAppPage&pg=semwebCatalog&panel=browseLive)

■ Lorman Education Services' teleconferences at [www.lorman.com/teleconferences/](http://www.lorman.com/teleconferences/)

June 1-5 (afternoons) Missoula – UM Law School

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June 2 Billings – Billings Convention Center

**Medical Records Law in Montana** 6.0 CLE credits. Presented by Lorman Educational Services, (866) 352-9539

June 8-12 Missoula – UM Law School

**Tribal Criminal Law & Procedure** 15.0 CLE credits. Presented by the University of Montana School of Law, (406) 243-6781

June 9 Billings – Crowne Plaza Hotel

**FMLA Master Class** 6.25 CLE credits, presented by M. Lee Smith Publishers, (800) 274-6774

June 15-19 Missoula – UM Law School

**Indian Water Law** 15.0 CLE credits. Presented by the University of Montana School of Law, (406) 243-6781

June 16 Teleconference

**Important Rules for Fiduciaries & Their Counsel** 1.50 CLE credits. Presented by Cannon, (706) 353-3346

June 26 Bozeman – Hilton Garden Inn

**Ethics in the Criminal Justice System** 6.50 CLE credits. Presented by the State Bar of Montana and its Criminal Law Section, (406) 447-2206. Details to be mailed to Bar members

June 29-July 3 Missoula – UM Law School

**Indian Education & the Law** 15.0 CLE credits. Presented by the University of Montana School of Law, (406) 243-6781

July 6-10 Missoula – UM Law School

**Taxation & Finance in Indian Country** 15.0 CLE credits. Presented by the University of Montana School of Law, (406) 243-6781

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# Commission on Practice area elections ordered

Elections in three State Bar of Montana districts were being held at *The Montana Lawyer's* press time to determine nominees for the state Commission on Practice – the panel that hears the prosecution of attorneys charged with ethics violations

The Rules for Lawyer Disciplinary Enforcement – Rule 2(A) – provides that appointments to the Commission shall be made by the Supreme Court when current commissioners' four-year terms are about to expire.

The appointees will come from a list of three licensed and practicing resident attorneys submitted to the Court from each area as having received the three highest numbers of votes by area members.

The Court, in orders filed March 12, designated the time and method for the

## Water court applications sought

The Judicial Nomination Commission is accepting applications for the position of chief water judge.

Chief Justice Mike McGrath said C. Bruce Loble's four-year term as chief water judge will expire on June 30. The Commission is accepting applications from any lawyer in good standing who has the qualifications set for by law for holding the position.

The deadline for applications for chief water judge is May 8 at 5 p.m. The Commission will forward the names of three to five nominees to Justice McGrath, who will appoint chief water judge.

You can find the Chief water judge application form at [www.montana.courts.org/supreme/boards/judnom.asp](http://www.montana.courts.org/supreme/boards/judnom.asp)

elections in three areas. Ballots were to be mailed out to Bar members and returned to specific district judges by April 10, and the judges were to send the names of the three highest vote-getters to the Supreme Court by April 17.

The State Bar areas from which the Court will choose one new COP commissioner each are:

■ **Area B** (Silver Bow, Deer Lodge, Granite, Powell, Beaverhead, Jefferson, and Madison counties), handled by District Judge Kurt Krueger, to re-elect or replace COP Chair John Warren, whose term expires May 2.

■ **Area D** (Choteau, Liberty, Hill, Roosevelt, Daniels, Sheridan, Blaine, Phillips, and Valley counties), handled by District Judge David Rice, to re-elect or replace Steven R. Brown, whose term expires May 2.

■ **Area H** (McCone, Richland, Dawson, Prairied, Wibaux, Garfield, Treasure, Rosebud, Custer, Powder River, Carter, and Fallon counties), handled by District Judge Joe Hegel, to re-elect or replace Mary Jo Ridgeway, whose COP term also ends May 2.

## Court appointments

*The Montana Supreme Court has appointed the following to Court commissions:*

### ● Commission on Technology:

Peg Allison, clerk of the 11th Judicial District court, will replace 1st District Court Clerk Nancy Sweeney, whose term expired. Reappointed were Karen Orzech and Jim Powell.

### ● Judicial Nomination

**Commission:** Billings attorney Martha Sheehy was re-appointed to a new four-year term.

### ● Equal Justice Task Force:

Great Falls attorney Robin Meguire will replace Missoula attorney Molly Shepherd, who resigned, until the end of Ms. Shepherd's term on Sept. 1.

## ORAL ARGUMENTS

## Court to have session in Bozeman May 4

The Montana Supreme Court, sitting en banc, will hear oral arguments on two cases in Ballroom A of the Strand Union Building on the campus of Montana State University in Bozeman on May 4 as part of the Bozeman-area Law Day celebration:

### ■ Case No. DA 008-0225, *STATE v. JOHNNIE LEE FOSTEN*.

An introduction for the public attending the oral arguments begins at 9:30 a.m. Starting at 10 a.m., the appellant will have 15 minutes for argument and rebuttal. The appellee shall have 10 minutes for arguments.

### ■ Case No. DA 08-0566, *GONZALES v. CITY OF BOZEMAN, et al.*

Immediately following the case above, the appellant will have 25 minutes for argument and rebuttal. The appellee will have 20 minutes for argument.

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

## Three lawyers face mix of penalties

Three Montana attorneys have been disciplined by the Montana Supreme Court following their conditional admissions to the infractions under Rule 26 of the Montana Rules of Disciplinary Enforcement, which keeps details of the rulebreaking confidential:

### Helenan censured, placed on probation

The Montana Supreme Court ordered Helena attorney James P. Molloy to appear for public censure and placed him on five years' probation for failure to pay taxes.

Mr. Molloy made state news last November when he resigned as the lead lawyer representing Montana public schools in their state-funding lawsuit after he was accused of repeatedly failing to pay state and federal income taxes for more than 10 years.

In 2007, Molloy paid the back taxes and penalties that he owed, from 1995-2005, and admitted he initially did not pay the taxes on time, one of Molloy's attorney colleagues told the Lee Newspapers State Bureau in November.

The Office of Disciplinary Counsel said Molloy's failure to pay taxes "within the time required by law" is professional misconduct because he committed "a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer."

Molloy's formal reply to the charges in October indicated that he paid at least \$220,000 in back taxes and penalties for tax years 1995, 1996 and 1999 through 2005, and probably more.

The Court ordered Molloy to appear

before it on April 22 for the public censure. As conditions of his five-year probation, during which he is allowed to practice law, the Court demanded that Molloy pay his taxes on time; provide the ODC with access to information from the IRS, state Department of Revenue, and his accountants; and provide ODC with copies of his tax returns. Molloy also was ordered to pay the costs of his disciplinary proceedings.

### Florence attorney draws suspension

Marla Jean Drozd of Florence, Mont., was suspended from the practice of law by the Montana Supreme Court for at least seven months for failing to respond to two requests from the Office of Disciplinary Counsel (ODC).

The ODC had asked her to respond to an informal complaint that was filed against her. The Commission on Practice said her failure to respond violated Rule 8.1(b) of the Montana Rules of Professional Conduct and Rule 8A(6) of the Rules for Lawyer Disciplinary Enforcement.

The Commission recommended that Ms. Drozd receive the seven-month suspension. She also must pay the costs of the disciplinary proceedings.

## Butte defender barred from private practice

A Butte lawyer has been barred by the Montana Supreme Court from engaging in private practice, even pro bono law, for the next 10 years, the Butte *Montana Standard* reported on March 26.

Attorney Walter Hennessey works for the State Public Defenders Office in Butte. He will be allowed to continue working in that capacity. Hennessey also was ordered to appear before the high court on April 22 and receive a verbal reprimand, the *Montana Standard* said.

The discipline came from four separate cases of professional misconduct that were investigated by the Office of Disciplinary Counsel (ODC) in 2007. As outlined in the *Standard*, the cases include a custody case Hennessey was involved with in 2005, a divorce he took on in 1998, an appeal of a criminal case from 2005, and a quiet title complaint he handled in 2001. Hennessey is accused of failing to provide competent representation and providing reasonable diligence and promptness in these cases, according to court documents.

In June 2008, Hennessey was given a public censure by the Supreme Court in a separate wrongful discharge case he took in April of 2002, the *Standard* said.

In the latest proceeding's probationary conditions, the Court ordered Hennessey to notify ODC if his defender work is terminated, to give ODC information about finding other jobs, pay \$2,000 in restitution to a client, and pay costs of the disciplinary proceedings.

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# Lawyers told to attend 1st felony proceeding

From the **Great Falls Tribune**

District Court Judge Dirk Sandefur in March ordered the Office of the State Public Defender to represent defendants at their initial court appearances.

Sandefur's order came after Great Falls lawyer Dan Donovan showed up in Sandefur's court to petition for such representation. Previously, defendants in Cascade County and many other places in Montana weren't given a lawyer until after the initial appearances.

In his order, Judge Sandefur said that wasn't good enough. In their first appearance before a judge, defendants who don't have lawyers often do foolish things – like make statements that can later be used against them – because they are overly focused on getting their bail reduced.

Judge Sandefur said in his order that the law requires a lawyer to be provided for a defendant in any critical court hearing. An initial appearance qualifies, he said.

**ALL THE NEXT WEEK**, attorneys with the Office of the Public Defender were in court, following the order by representing defendants. "We'll fully comply with Judge Sandefur's order," said Matt McKittrick, who supervises public defense attorneys in this district.

"It's a matter of logistics, but it's not a problem" Already, the attorneys have had an impact. Before, the only lawyers making an argument about bail were prosecutors, and judges usually set bail in accordance with prosecutors' requests. Now, there is somebody to fight for the other side.

Friday, a man appeared for his initial appearance on a felony drunken driving charge. Prosecutors asked for a \$10,000 bail. McKittrick, representing the defendant, said his client couldn't come up with that much money and might lose his job if he remained in jail. Instead, McKittrick asked the judge to set the bail at \$6,000, on the condition that the defendant could only drive for work and would have a device on his car that checks his breath for alcohol before he could start the car. The judge agreed.

**DONOVAN SAID HE WAS** pleased with Sandefur's order, but hopes people in other parts of the state won't be left out.

"I think the judge really did an outstanding job," Donovan said. "What concerns me, I don't know if the defenders office is going to follow that outside this district."

Donovan said the issue has been on his mind for a while, and he decided to act.

"I decided if I wait for somebody to do something, I'm going to be waiting for a year," he said. "It was kind of Don Quixote thing to do, but it worked anyway." ○

Attorneys also debate whether those accused of minor crimes need state-paid defender

A teenager accused of breaking a window will have his day in Great Falls District Court with a public defender arguing his case, the *Great Falls Tribune* reported.

An appeal by Davin Dahl, who at 18 was arrested for misdemeanor criminal mischief, examines whether a state-paid public defender should have been appointed for him, even though Municipal Judge Nancy Luth promised Dahl would not be jailed.

Paying for free counsel for a defendant not threatened with jail time "is a big waste of public defender dollars," Judge Luth told the Great Falls City Commission.

But going to jail is not the only thing that can happen to criminal defendants, said Matt McKittrick, regional deputy public defender in Great Falls. Someone found guilty, or who pleads guilty, can end up with a criminal record and hefty fines, McKittrick said. And if he violates terms of a sentence, the person can end up in jail anyway.

Through mid-decade, people in Montana accused of crimes



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could gain a public defender if they were poor enough and if they faced jail time; however, if the judge pledged not to send the defendant to jail, a public defender was not required.

It's that issue of the judge's pledge that eventually will be decided by state District Judge Kenneth Neill in Great Falls, the *Tribune* said.

The notion that a defendant is entitled to a public defender only when faced with jail time changed abruptly in July 2006 after a legislative overhaul of Montana's public defender system, the *Tribune* said. A new law said a defendant was eligible for a public defender if the potential penalty for the crime included jail. Plenty of minor crimes carry a potential for jail time, but jail for these misdemeanors often is not ordered.

At a budget session last week, Judge Luth told city commissioners that public defender cases have jumped from 218 cases two years ago to 368 last year. She contended it makes little budget sense to hire a public defender for a misdemeanor dog ticket when no jail time is involved.

However, McKittrick argued the law has changed.

In court papers, Eric Olson, training officer for the state public defender's office in Butte, said language about a judge's pledge not to jail a defendant was removed from state law by the 2005 Legislature. Olson, former public defender in Great Falls, called the new law "clear and unambiguous," the *Tribune* reported.

McKittrick prefers the new arrangement, saying it can be "very disturbing" for a person to face a criminal charge filed by a seasoned prosecutor without the assistance of an attorney.

In a letter to Municipal Judge Luth dated July 15, David Dahl's mother, Nancy Dahl of Great Falls, said her son is shy "and cannot possibly defend himself," the *Tribune* said. "I am very concerned that he will not receive a fair trial, since he does not have a lawyer to defend him or help him in any way," she

wrote. Judge Luth denied the request.

On July 23, Davin Dahl appeared in court for trial before the judge, the *Tribune* said, and again he asked for a lawyer's help. Judge Luth refused. "(I'm) not gonna go to trial then," Dahl replied. He pleaded guilty to misdemeanor criminal mischief, then filed an appeal two days later. "I felt bullied," Dahl said later in an affidavit. "I felt it was unfair."

If Dahl gets his way, Judge Neill would order a new trial, and instruct that a public defender be appointed to represent him.

The *Tribune* quoted McKittrick as saying the extra work generated by minor criminal cases in Great Falls Municipal Court has not yet overburdened the defenders' office. But, McKittrick acknowledged, "There's no doubt about it, yes. All the courts are busy."

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## BENCH-BAR BRIEFS

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**MLSA needs lawyers to take survey.** In an effort to better assess the needs of its client community and begin to examine agency priorities in regards to service delivery, Montana Legal Services Association has developed a priority legal needs survey. MLSA would appreciate it if you would take 10 minutes to complete this survey. It would be a great help to MLSA as its moves forward in working towards serving the legal needs of low-income Montanans.

You can access the survey at: <http://survey.lsntap.org/index.php?sid=94917&newtest=Y> or by following a link to the survey from [www.mtlsa.org](http://www.mtlsa.org) or [www.montanabar.org](http://www.montanabar.org). The survey will remain open until May 15.

MLSA asks Bar members to feel free to pass along the link to their colleagues and community partners who may be able to provide valuable feedback.

**Montanans to attend national ABA summit.** Montana is among more than 30 states that will participate in an American Bar Association national summit to foster cooperation and communication among the three branches of state government, and create approaches to meeting their respective responsibilities related to the justice system.

Montana Chief Justice Mike McGrath, Lois Menzies, state court administrator, and Chris Tweeten, State Bar president will comprise the Montana delegation attending the working summit, "Justice is the Business of Government," to build strategies to dismantle natural tensions between branches of state government that imperil their ability to deliver on public expectations of justice. Participants will develop responses to the challenges facing all branches that relate to the justice system, including such issues as the costs of incarceration, unequal access to and inadequate representation in the legal system, substance abuse services and mental health intervention.

The National Summit on the Critical Role of Fair and Impartial State Courts will

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## Dues increase concerns were blithely dismissed

I just read the Montana Supreme Court's order granting the State Bar's petition for a dues increase. I was stunned by the way in which the concerns of the opponents of the dues increase were so blithely dismissed by both the State Bar and the Court. Apparently the State Bar argued, and the Court accepted without discussion, that questions about the equity of the current dues structure among classes of membership were beyond the scope of the petition.

Maybe some comments were about the equity of the current dues structure, but mine most assuredly were not. My comments to the Court concerned the fairness of the proposed increase as applied to the current dues structure. That was precisely the question before the Court.

The State Bar had to submit evidence, and the Court had to accept, that the proposed increase would be "fair and necessary." Fairness cannot be determined without evaluating how the different increases affect the different classes. The proposed revenue expected to be derived from those increases, apportioned among the current classes, is also relevant to whether the proposed increase is necessary.

The issue I addressed was not whether there should be an inactive class, or a senior class, or a government class, or a military class, or a judicial class, or any other class of membership or any other dues structure than the one we have.

The issue was whether it is fair to require inactive members, who by definition cannot practice law in Montana, to pay twice the percentage increase in dues as active members. It is about whether it is necessary to apply such a large increase to inactive members when the same amount of funds could be raised by an increase on active members that is only slightly higher than what was proposed, and in fact less than the State Bar's original proposed increase for active members.

These were – and remain – relevant and important questions that deserved to be addressed.

– *Rita Theisen, attorney  
and member of the State Bar of Montana  
Lancaster, Va.*

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convene May 7-9 in Charlotte, N.C., under the leadership of ABA President H. Thomas Wells Jr.; Sandra Day O'Connor, retired justice of the U.S. Supreme Court; and Mary Campbell McQueen, president and chief executive officer of the National Center for State Courts.

## Great work at Cascade clinic

I am the current executive director of Cascade County Law Clinic. I would like to provide you with some input concerning the recent awards presented to Travis Cushman and Jason Kindsvatter (*April Montana Lawyer*). These gentlemen have been critical in the continued operation of the clinic.

Jason along with Kim Cuttler, a paralegal, were critical in the survival of the clinic. Jason with Kim's assistance managed to continue functioning the clinic in a period of time in which funding was nearly non-existent.

Jason was responsible for obtaining funding sources that had been lost while at the same time soliciting attorneys to do pro bono work for low-income families in Cascade County and all the office and clerical work including interviewing applicants. This was an extreme responsibility and less capable individuals would not have been able to sustain the Clinic under similar circumstances.

Travis has been a welcome and enthusiastic participant in the Clinic's pro bono program. He has willingly taken on difficult cases, including landlord-tenant issues, in which it is often difficult to locate attorneys to assist. He has been a great public relations person for the Clinic and spoke highly of the services provided by the Clinic at the access to justice forum in September 2008. Along with his private practice, Travis currently represents the youths in Youth in Need of Care cases, which I've observed personally, and he is a fine advocate in his representation of the youths in these matters.

– *Michael R. Tramelli  
Cascade County Law Clinic, Great Falls*

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***When ipsie dixit is not enough***

## BAR-BENCH BRIEFS

**A day of 'challenging cases' set for Missoula.** A conference on "Working With the Most Challenging Cases: Domestic Violence, Substance Abuse, and Mental Illness in Family Law" will be held on Friday, May 8, in Missoula.

The conference will be presented by GAL-CASE (Guardian ad Litem Committee Advocating Standards & Education)

The conference will be at the Holiday Inn, Downtown at the Park, from 8:30 a.m. to 5 p.m.

You can get registration information by e-mailing [jillian.deborde@mso.umt.edu](mailto:jillian.deborde@mso.umt.edu) or by calling 243-2367. Cost is \$75 with advance registration.

CLE credit pending for 6.50 hours (including one hour substance abuse/mental health CLE credit to qualify under new CLE rules).

Space is limited, so early registration is strongly recommended.

**Let us know your Law Day involvement.** May 1 is traditionally set aside as Law Day across America, to teach the country's citizens about its legal system. In Montana, many lawyers and judges have made time to deliver presentations to schools and civic groups on or near Law Day.

The State Bar of Montana's Law-Related Education Center (LREC) has been working with several local bar associations to set up Law Day presentations in many of Montana's cities. Other lawyers will participate on their own.

*The Montana Lawyer* would like to list all of the Law Day activities that will be presented in May, and is asking Bar members to notify it – at [cwood@montanabar.org](mailto:cwood@montanabar.org) – of Law Day activities they participated in.

**22nd**

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victim recovered later. But the Vigilantes moved too fast for that defense to ever be argued. As one author put it “somewhat to the chagrin of the Vigilantes the wounded man eventually recovered.”<sup>23</sup>

Jack Slade was another somewhat questionable victim of Montana’s vigilante justice. Jack was a notorious drunk whose escapades had become well enough known throughout the West to have come to the attention of Mark Twain and to be immortalized in Twain’s “*Roughing It*.” Slade lived in Virginia City, Montana, and would go on a rowdy bender frequently enough to upset the town fathers and the leaders of the Vigilance Committee. Finally, at the peak of one of Jack’s drunken exploits, the Vigilantes simply decided to hang him. Word got back to Jack’s wife about what was transpiring. She rode 12 miles to try to halt the hanging, but she reached the hanging tree just a few minutes too late.<sup>24</sup>

It would be presumptuous to suggest that our criminal justice systems in either Vermont or Montana have achieved perfection or that we have finally reached a full and complete appreciation of human rights. But it is clear that today, in both states, hanging someone without a trial would be called murder. Whipping a man or woman for their sexual indiscretions and then burning the letter “A” on their forehead with a hot iron would be attempted murder, aggravated assault, or maiming.

### HOW DID WE GET from there to here?

Human decency has ebbed and flowed with place and time. Sometimes and in some places it has all but disappeared – most often in those places governed by mobs and the people who would exploit them. But throughout history there have always been a few people with courage, ideals, and a fundamental sense of decency strong enough to challenge the status quo. Those sometimes small efforts (Rosa Parks comes to mind) have been the cornerstone of any progress toward a recognition of human rights and “equal justice under law.” The people with the courage to challenge the laws and customs of their times, no matter how strong the winds of popular opinion might be, are, very often, history’s heroes.

In their earliest days, both Montana and Vermont compromised a fundamental sense of decency to serve a small group of peoples’ pragmatic and temporal purposes. Our criminal laws were guided by leaders who rationalized that their ends somehow justified their means. Intelligent, well educated men in positions of leadership and influence did not understand that with law the ends are the means and that the integrity of the process is more important than the result. They may have become senators and congressmen, but they left us with little of which to be proud.

**THE CASE OF THE** security guard with the firearm went to a jury in Middlebury, Vermont. The jury awarded him \$10,000 dollars in damages. The judge eventually rendered a judgment notwithstanding the verdict, stating that the State Police officers were protected by a qualified immunity. The Vermont Supreme Court upheld his decision.

We did not win the case. It was not one of those once-in-a-century, earth-shaking decisions. But it was how we got from there to here. One small case at a time, and you don’t win them all.

**DAVID F. KELLEY**, who practiced law in Vermont for 28 years where ski resorts were his primary clients, first came to Montana seven years ago with his schoolteacher wife, Kelley Robinson, to fish the Madison River. They moved to Ennis permanently last year. Mr. Kelley is the founder of Project Harmony, which became the largest youth exchange between the U.S. and Eastern Europe.

### NOTES

1. See *Cook v. Nelson*, 167 Vt. 505; 712 A.2d 382 (1997).
2. *Caldwell v. Texas*, 137 U.S. 692 (1891). See also, Funeral Oration of Pericles in Thucydides, History of the Peloponnesian War, 2.34-2.46.
3. [www.supremecourt.us/about/westpediment.pdf](http://www.supremecourt.us/about/westpediment.pdf), [en.wikipedia.org/wiki/Equal\\_justice\\_under\\_law](http://en.wikipedia.org/wiki/Equal_justice_under_law)
4. Ethan Allen, “Reason: The Oracle of Man,” Chapter XI “On Redemption,” Section IV.
5. The 21 victims are listed in Thomas Dimsdale’s “The Vigilantes of Montana” (Virginia City, Mont. 1866).
6. Acts and Laws of Vermont, 1779, pp.1,2, 5, 73, 74, 94. Slade’s Vt. Papers, pp. 267, 287, 288, 291, 292 354, 355, 375.
7. Acts and Laws of Vt., 1779, pp.3-5. Slade’s Vt. State Papers, pp. 290,291.
8. Mont. Code Ann. § 26-1-602, 40-1-403
9. Acts and Laws of Vt., 1779, pp. 35, 36, 44, 80, 88, 89, 92. Slade’s Vt. Papers, pp. 324, 331, 361, 362, 369, 370, 373.
10. Acts and Laws of Vt., 1779, pp. 44, 77, 89-92. Slade’s Vt. Papers, pp. 331, 359, 370-373.
11. Acts of Vt. 1779, p. 26. Slade’s Vt. Papers, p. 313.
12. Acts of Vt. 1779, p. 27. Slade’s Vt. Papers, p. 314-315.
13. As an interesting footnote to history, the president and driving force behind the Northern Pacific Railroad was Fredrick Billings, a lawyer who was from Woodstock, Vermont. He had made a fortune as a lawyer in San Francisco during the California Gold Rush and was later asked to rescue the Northern Pacific. Billings, Mont., is named for him.
14. These stories are reported in the *Helena Daily Herald* throughout the summer of 1882.
15. *Helena Daily Herald*, August 27, 1883.
16. *New York Times*, June 28, 1896, page 6.
17. Ibid.
18. [en.wikipedia.org/wiki/Royall\\_Tyler](http://en.wikipedia.org/wiki/Royall_Tyler)
19. Constitution of the State of Vermont, Section 68.
20. Benjamin Hall, “History of Eastern Vermont, from its Earliest Settlement to the Close of the Eighteenth Century,” p. 570.
21. Ibid.
22. Ibid, 582.
23. Hoffman Birney, “Vigilantes” (Philadelphia: Penn Publishing Company, 1929), p. 340.
24. See generally O’Dell, Roy Paul and Kenneth C. Jessen, “An Ear in His Pocket: The Life of Jack Slade,” J.V. Publications, Loveland, Colorado, 1996.

## NEWS ABOUT MEMBERS

**Susan Weber**, Cascade County's chief deputy county attorney, has earned the 2009 Woman of Achievement award from the Great Falls Business & Professional Women's organization for her work as a prosecutor.

**Monica J. Tranel** has recently joined the law firm of Luxan & Murfitt in Helena. She is a graduate of Gonzaga University and Rutgers University School of Law. She is licensed to practice law in Montana and Pennsylvania. Prior to joining Luxan & Murfitt, she was a partner in the firm of Jardine, Morris & Tranel in Whitehall. Ms. Tranel was a two-time Olympic athlete, competing in 1996 and 2000 in rowing. She is married to Jack Morris and they have two daughters. At Luxan & Murfitt, her areas of practice include general civil litigation and appeals, technology and telecommunications, regulatory law, administrative law, and criminal law.



DOVES (Domestic Violence Education & Services) in Polson announced that **Amy S. Rubin**, supervising attorney, and **Brandi R. Ries**, staff attorney, attended the training program titled "Establishing Expertise as an Ethical Expert Witness" co-spon-

sored by the University of Texas at Austin and the National Center on Domestic & Sexual Violence. The training, in January, was designed for attorneys, domestic violence service providers, and professionals interested in being considered as expert witnesses in domestic violence civil and criminal court cases. In addition to the function an expert witness plays when testifying in court, a domestic violence expert witness can be used as a consultant on a case. Funding from the Office on Violence against Women and the Montana Justice Foundation made it possible for the DOVES attorneys to attend the training.

**J. Colleen Herrington** has joined the Wittich Law Firm in Bozeman. Ms. Herrington received her BS from Mercer University in 2000 and her JD from the University of Maryland School of Law in 2003. She also received a master's in Professional Accountancy from Montana State University in 2008. Ms. Herrington previously worked for the Montana Office of the State Public Defenders. Prior to moving to Bozeman, she practiced in Maryland. Her practice will focus on bankruptcy, criminal defense, estate planning, tax disputes, and general civil litigation.

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## Stephen Foster, Billings attorney

Stephen (Steve) Foster, 70, died April 9 in Billings.

Born in Dillon, Mr. Foster was raised on a sheep ranch. He earned a degree in English from Montana State University and a law degree with honors from the University of Montana.

Mr. Foster's 40-year career as an attorney began with a clerkship for Judge James R. Browning of the U.S. Court of Appeals for the 9th Circuit. He went on to work in private practice at Crowley, Haughey, Hanson, Toole & Dietrich in Billings, as chief counsel for the Anaconda Company in Butte, as senior attorney for the Atlantic Richfield Company (ARCO) in Butte and Denver, and as a partner in the regional law firm Holland & Hart headquartered in Denver.

While serving on Holland & Hart's Management Committee, he helped grow the business to its current size of 400 attorneys in seven states. In 1980, he opened H&H's Billings office, hiring a core group of attorneys who have become firm and community leaders. He retired from the H&H partnership in 2005 but maintained strong ties to the firm and the legal community.

Mr. Foster mentored many young attorneys and litigators, among them former Montana Supreme Court Chief Justice Karla Gray, who was a colleague at ARCO. Consistently listed among "The Best Lawyers in America," he was lead defense counsel in *U.S. v. ARCO* and *State of Montana v. ARCO*, two major federal court cases involving the largest superfund sites in the United States. He was named a fellow of the American College of Trial Lawyers.

Mr. Foster was married to Kay Foster of Billings for 30 years. Together, they raised a son and a daughter. Mr. Foster married Beverly Hamilton Dunham in 1996, and they traveled the world together – Cambodia, Laos, Vietnam, China, Tanzania, Europe, and Peru. During this time, he took Beverly's two sons under his wing.

Mr. Foster was an accomplished pianist. At the time of his death, he was studying with Dorothea Cromley in private lessons and with young artists at Montana State University-Billings. He served on the board of the Billings Symphony Society and was instrumental in the founding of the Alberta Bair Theater. In recent years, he served on the board of the University of Montana Foundation. He also contributed to the Yellowstone County and Montana Bar associations in many capacities.

Mr. Foster is survived by his wife Bev and his children.

## Jerome Anderson, Helena attorney

Helena attorney Jerome Anderson, 87, a former state representative and a longtime lobbyist, died on March 29 at Helena's hospital.

"Jerry," as he was universally known, was a legend in Montana politics, government, and law.

Mr. Anderson was born in St. Paul, Minn., to parents who were residents of Glendive, Mont., at the time. The family

later moved to Billings. In 1932, at age 11, he was adopted into the Crow Tribe.

Mr. Anderson's father, Albert Anderson, was an associate justice on the Montana Supreme Court, so young Mr. Anderson grew up in a home filled with politics and law. He worked in the mine at Norris and in a factory in Chicago during summers in high school.

Mr. Anderson attended the University of Montana for his undergraduate and law degrees. He was president of the Sigma Chi house at the university, and was student body president at the same time.

Mr. Anderson's schooling was interrupted in the middle by his service in World War II. He served in the Marine Corps as a torpedo dive-bomber pilot in the Pacific, seeing more than two years of combat against Japan in the Solomon Islands, and then north toward Japan. He earned the Distinguished Flying Cross for action during an attack on Rabaul, a major Japanese naval installation. He was honorably discharged from the Marine Corps in 1945 at the rank of captain.

Mr. Anderson graduated from law school and began practicing law in 1948. He served as chief deputy county attorney in Yellowstone County from 1949 to 1952 and as Billings city attorney in 1953 and 1954.

He married the former Margaret Louise Heavlin of Missoula, and together they had three children. They later



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divorced. In 1975, he married Rita Ann Bidlake.

Mr. Anderson built a successful legal practice in Billings and became one of the leading transportation law experts in the U.S., practicing before the Interstate Commerce Commission representing major motor carrier companies. He also worked extensively in the petroleum industry, representing the largest producers of oil in Montana for many years and serving as president of the Montana Petroleum Association. He also served as a volunteer lobbyist for the State Bar of Montana.

Mr. Anderson served four terms in the Montana House of Representatives from 1955 to 1961, serving as the Republican majority leader in the House in 1961. He worked closely with Gov. Donald Nutter and later Gov. Tim Babcock, and was a close friend of both men. Bad weather forced him to miss the plane flight in 1962 in which Gov. Nutter was killed, and he was at the Governor's Mansion with Mrs. Nutter when the Highway Patrol tracked down Lt. Gov. Babcock and brought him to the mansion to be sworn in as governor.

In 1988, Mr. Anderson sold his interest in his law firm in Billings and moved to Helena to "retire." But he could not retire. He worked at every Montana legislative session from 1947 to 2009, either as a legislator or as a lobbyist. He started a vaudeville variety show for legislative entertainment in the 1960s that is the precursor to today's Legislative Attaché Party. He and his wife, Rita, were famous for their wild-game dinners that fed up to 250 people in their house each session. The "Jerry Anderson Martini" – one-half Ketel One vodka, one-half Tanqueray gin, with a twist of lemon and three olives – is a legend.

Up until the very end, Mr. Anderson was hard at work on preparing witnesses for an upcoming trial, reviewing legislative bill drafts and amendments, checking his Blackberry for e-mails and phone messages, and participating in conference

calls from the hospital.

Mr. Anderson is survived by his wife, Rita, two daughters and two sons.

Memorials are suggested in his name to the University of Montana School of Law, Missoula MT 59812-6552.

### **Francis McCarvel, Glasgow & Helena attorney**

Helena attorney Francis J. McCarvel, 72, died March 14 in Helena from kidney failure.

Mr. McCarvel was born and raised in Anaconda. He attended Carroll College in Helena, then transferred to Rockhurst College in Kansas City, Mo., where he received a BS in Industrial Relations. He graduated from Gonzaga University School of Law in 1962.

Mr. McCarvel was a member of the Board of Montana of the 9th Circuit Court of Appeals.

While he practiced law in various Montana locations early in his career, in 1973 he settled in Glasgow, where he established a practice that lasted for more than 25 years. In 2001 he moved to Helena, and finally retired in 2006.

Mr. McCarvel is survived by two daughters and two sons.

### **Jack Hamner, Butte attorney**

Butte attorney John Leslie "Jack" Hamner, 70, lost a long battle with Parkinson's disease in Butte on March 20.

Mr. Hamner was raised in Anaconda. In the 1950s, his family moved to Rocker where he attended the Rocker School and then went on to graduate from Butte High School in 1957.

Mr. Hamner had two equally strong passions — music and law. His love for music showed when he played many instruments by ear (violin, fiddle, trumpet, banjo, and organ).

His strong interest in the legal profession drove him to work all day as a law clerk for Judge Jack McCarthy and study many late nights.

Mr. Hamner took and passed the Montana Bar exam at the young age of 22 in 1960, without stepping foot into a college classroom. At the time he was the youngest person to have ever passed the exam.

He enlisted in the Marine Corps in 1959. Upon his return home, he began his legal practice which he continued until recent years. Due to the Parkinson's disease, Mr. Hamner was forced to semi-retire. He decided to go to college to obtain an associate's degree in GIS/GPS. He succeeded in 1999. He also had a strong interest in ham radio and was a ham radio operator since the late 1950s. He was licensed with Navy-Marine MARS since



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1990.

In 1974, he married Lori Foust. They made their home that he had personally constructed in Rocker.

Survivors include his ex-wife, Lori, two daughters, and a son.

### **Jack Combo, Idaho Falls attorney**

Montana and Idaho attorney John "Jack" Xavier Combo, 86, died on April 3 in Idaho falls.

Mr. Combo was born and raised in Butte. He graduated from the Montana School of Mines with a degree in Engineering, and later received a degree in Geological Engineering. He served as a commissioned officer in the Navy during World War II on a submarine chaser in the Marshall Islands.

Following the war, Mr. Combo attended Georgetown Law School in Washington, D.C. During law school, he worked for the U.S. Geological Survey. After graduation, he worked for the Department of Interior and then the Atomic Energy commission. In 1962, he transferred to Idaho Falls to serve as chief counsel to ERDA (later the Department of Energy) and became deputy manager and acting director of the INEEL

Site.

Upon retirement from DOE, Mr. Combo went into private law practice in Idaho falls with his son Bill. He was a member of both the Montana and Idaho bar associations. He served 18 years as a board member with the Idaho Transportation Department and on the board of the Montana Economic Revitalization & Development Corporation.

Mr. Combo coached youth baseball, and was the founder and president of the Booster Club at Idaho Falls High School.

Mr. Combo is survived by his wife and six children.

### **Other deaths**

● **Myrna Joy Boyd, 72**, an advocate for Native American families who was instrumental in getting a U.S. Senate investigation into the mistreatment of Native children in Montana's foster care system, died on March 26 in Wolf Point.

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