

MONTANA LAWYER

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DEVELOPING LEADERSHIP

BY THE HONORABLE
RUSS McELYEA

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FEATURE ARTICLES



BECOMING AN EFFECTIVE LEADER

Leadership is a skill that can be developed with practice and experience writes Chief Water Court Judge Russ McElyea.

ATTORNEY WELL BEING

Feel like a slave to the cellphone?

A digital detox could be just what the doctor ordered. **Page 17**

'Face plant parties': Ritual to celebrate mistakes could help develop resilience in face of failure. **Page 19**

Too risky to insure? Worries about malpractice insurance shouldn't deter reporting impairment. **Page 20**



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State Bar is keeping a close eye on legislative session

The 68th Legislature is in full swing here in Montana and the State Bar is carefully watching bills that affect the practice of law, regulation of attorneys, and the administration of justice. This session, there are an unusually large number of bills that fall into that category, from attempts to create partisan judicial elections (which our predecessor the Montana Bar Association worked to eliminate in 1935), to shrinking the size of the Montana Supreme Court, to attempts to legislatively (and the State Bar maintains unconstitutionally) rewrite court rules of professional conduct. I encourage you to monitor this legislative session closely.

In my last message, I discussed the importance of an independent judiciary and America's unique structure as a liberal democracy. As you may recall, America was founded as a liberal democracy, a specific type of republic. American citizens enjoy a government corralled and controlled by the separation of powers, an independent judiciary and a system of checks and balances between the legislative, executive, and judicial branches of government.

I have been watching this legislative session unfold and considering some of the ideas advanced which impact the administration of justice. One resolution stated Supreme Court opinions are "advisory only." Thankfully, that proposal was abandoned, in part because of the State Bar's strong opposition to what can only be described as alien to our liberal democracy. But another bill reads in part, "the belief that the court has exclusive authority to interpret the constitution and that its decisions are binding on the other two branches is a myth based on a faulty understanding of *Marbury v. Madison*." As I contemplate such proposals advanced in this current legislative session, I am again pondering the historical context in which America's founding principles were forged and asking myself what does all of this mean for lawyers and their clients?

It is well known that our Founders

were influenced by Montesquieu, an 18th Century French judge and philosopher largely credited with his theories on separation of powers, which was a new political concept at that time. Montesquieu's great contribution to the history of political ideas is that political power should be divided among the legislative, executive, and judicial branches of government to ensure The People's liberty.

However, Montesquieu's perception of the importance of the judiciary was limited, congruent with the times in which he contemplated his theories. In 17th and 18th century Europe, it was simply unimaginable that the people could self-govern, and that a society could be viable without a monarch.

It would be the American Founders and specifically America's first attorney-president John Adams, who would articulate the importance and necessity of an independent judiciary and judicial review. Against this backdrop, America's Founders would go on to create a system of government previously unseen in world history.

In 1776, Adams drafted "Thoughts on Government" in response to Thomas Paine's suggestion that all government power be vested in a unicameral legislature, as presented in his well-known work "Common Sense." Adams insisted that the judiciary must be independent from the executive and legislative branches. The reason? To secure individual rights. The judicial branch exercises its checks and balances on the legislative and executive branches of government through judicial review, a concept that would later be memorialized in perhaps the United States Supreme Court's most famous decision *Marbury v. Madison*.

In *Marbury*, Chief Justice John Marshall articulated *why* judicial review is necessary and justified: "Those then who controvert the principle that the constitution is to be considered, in court, as a paramount law, are reduced to the necessity of maintaining that courts must close their eyes on the



DAVID STEELE

Dave Steele is a sole practitioner at Geiszler Steele, PC. Dave assists both plaintiffs and defendants in a wide variety of legal matters. His practice includes advising clients about the cannabis industry, business and commercial transactions, real estate and real property transactions, contract issues, and other civil matters. Dave also serves as a Mediator, Arbitrator and Settlement Master.

Constitution and see only the law."

Marshall said that "[t]his doctrine would subvert the very foundation of all written constitutions. It would declare that an act, which, according to the principles and theory of our government, is entirely void; is yet, in practice, completely obligatory. It would declare, that if the legislature shall do what is expressly forbidden [*sic*], such act, notwithstanding the express prohibition, is in reality effectual. It would be giving to the legislature a practical and real omnipotence, with the same breath which professes to restrict their powers within narrow limits. It is prescribing limits, and declaring that those limits may be passed at pleasure."

Of course, lawyers, law professors and even judges sometimes opine on *Marbury*, as well as the scope of the separation of powers and judicial review. We are lawyers after all and, yes, we all

MORE PRESIDENT, PAGE 27

CAREER MOVES

Goetz, Geddes & Gardner welcomes Willstein to firm

Goetz, Geddes & Gardner P.C. is pleased to announce that Hannah S. Willstein, originally of Missoula, has joined the firm as an associate attorney. Willstein is a 2016 graduate of Colorado College and a 2021 graduate of the Alexander Blewett III School of Law at the University of Montana where she served on the Montana Law Review.

She recently completed a federal clerkship with the Honorable Kathleen DeSoto before moving to Bozeman to join the Goetz team.

Tarlow Stonecipher welcomes Riley as partner

The firm of Tarlow Stonecipher Weamer & Kelly, PLLC is pleased to announce Patrick C. Riley has become a partner in the firm.

Riley's practice focuses in civil litigation and trial work for both plaintiffs and defendants, including personal injury, insurance coverage and bad faith, and complex commercial. His transactional practice aims to help individual Montanans and businesses of all sizes in real estate matters, financial contracts, and business structuring.

Riley currently serves as the president of the Montana Defense Trial Lawyers Association. He obtained his J.D. from Loyola Law School in Los Angeles, and his undergraduate degree from California Polytechnic State University, San Luis Obispo, but is thrilled to be serving the legal needs of his hometown

community in Bozeman. He is presently welcoming referrals and new client consultations.

A Bozeman native and Bozeman Senior High School graduate, Riley has been in Bozeman raising a family and practicing law since 2011. Outside of work, he can usually be found in the gym lifting weights, noodling on a guitar, reading a book, cooking a new recipe, or enjoying Montana's beautiful outdoors with his wife Sarah, and their two young children.

Burns joins Helena's Doney Crowley law firm

Doney Crowley P.C. is pleased to announce that Benjamin C. Burns has joined the firm in Helena as a senior associate attorney.

Burns attended college at Montana State University and received his Bachelor of Science degree with honors. He then moved to Miami, Florida to obtain his Juris Doctor from the University of Miami on a scholarship. Prior to joining Doney Crowley, Burns ran his own defense firm for several years litigating civil and criminal matters. He is admitted to practice in Montana and Federal Courts, active in the local bar association, and serves as an executive board member on the Montana State Bar Technology Committee.

Payne joins as associate at Netzer, Krautter & Brown

The law firm of Netzer, Krautter & Brown, P.C. is pleased to announce that Ryan Alexander Payne has joined the firm's Sidney office as an associate attorney.

Ryan Payne attended the University of South Carolina, where he received a degree in political science. Payne earned his law degree and an MBA degree from the

University of Montana. During graduate school he focused on corporate, transactional, bankruptcy and aviation matters. He also studied comparative law and Mandarin in Shanghai, China. He has previously interned with Gulfstream Aerospace and is currently working on his private pilot license.

Payne's practice will be focused on real estate and business transactions with an interest in building a niche practice in aviation law.

Peabody joins as associate at Judnich Law Office

The Judnich Law Office is proud to announce that attorney Eric Peabody has joined the practice as an associate attorney in the firm's Bozeman, Montana office. Eric has extensive experience in family law and criminal law matters and will focus his practice on those areas of law for the Bozeman and Missoula areas. Eric graduated from the Michigan State University College of Law in 2018, and joins his father, brother and fiancée as attorneys practicing law.

SUBMITTING MEMBER NEWS ANNOUNCEMENTS

The Montana Lawyer welcomes news from members including announcements of new positions, advancements, honors, appointments and publications. There is no charge for Member News submissions.

If you have news you would like to submit to the Member News section, you can email it to editor@montanabar.org. Please direct any questions to the same address.

We will include firm name, location, the change that is being announced, attorney's name, law school, practice areas, and a high-resolution photo.

**Willstein****Burns****Peabody****Riley****Payne**

THE AGONY OF DEFAULT: MINIMIZING LOSSES IN A TENANT DEFAULT



Matt Mellott, CCIM/SIOR
SterlingCRE Advisors

Economic downturn?
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and help your clients get
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A D V I S O R S

As economic conditions deteriorate and rate hikes start impacting the bottom line for many businesses, lease default becomes a very real fear for landlords and tenants.

Whether you represent a tenant or a landlord, finding a solution becomes imperative when a default is looming - or has already occurred. The most important thing in any default situation is to be proactive. Bad news is like milk: it won't improve with age.

Tenant defaults can cause a significant financial burden for the landlord. But, defaulting on a lease doesn't mean just failing to pay rent. It can mean the tenant has failed to fulfill all of their obligations under the lease agreement, including things like maintaining the property in good condition, managing snow removal, or even locking the building on schedule. When money gets tight, tenants must keep on top of maintenance. Even a minor slip and fall claim can cause a major disruption in the tenant/landlord relationship. Something more serious, like a burst pipe from improper heating, can create a crisis for both the tenant and the landlord.

If a tenant defaults on payments or other obligations, the landlord may be entitled to damages. These damages may include unpaid rent, the cost of repairing any damage caused by the tenant, and legal fees incurred in pursuing the tenant for payment. However, it's important to note that landlords also have a responsibility to mitigate their damages. This means that they must

take reasonable steps to minimize the financial impact of the tenant's default. One option is to try to re-rent the property to minimize lost rent.

Another option is to work with the tenant to restructure the lease. This could involve altering the lease terms, such as changing the payment schedule or reducing the rent. The landlord and tenant would need to come to a mutually agreed-upon arrangement and document any changes in writing. It's important for both landlords and tenants to carefully review and understand their rights and obligations under the lease agreement. If there are any disputes or issues, it's always best to try to resolve them through mediation before a situation enters lawsuit territory.

One restructuring method is to "blend and extend" a lease agreement. That means a short-term waiver of rent can be amortized over the remaining life of the lease. In that way, a landlord can help a tenant without hurting their own bottom line. But, that may require an extension of the existing lease term. The blend and extend strategy can be complex, but may get landlords and tenants through a rough patch.

Of course, the best way to avoid such a scenario is a clearly defined set of remedies outlined in the initial lease. Employing a skilled brokerage to review or help write a lease at the outset of a tenant/landlord agreement can save time and money.

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Lawyer groups give lifetime achievement award to founder of Montana Law Week

Most Montana Lawyers over the past 30 plus years have read the Montana Law Week newsletter rounding up notable court cases in the state. The man behind those familiar blue pages is not quite as well known.

But three of the biggest lawyer organizations in the state attempted to remedy that in late 2022 by presenting Frank Adams with a lifetime achievement award. Adams accepted the award from the Montana chapter of the American Board of Trial Advocates, The Montana Trial Lawyers Association, and the Montana Defense Trial Lawyers at ABOTA's annual meeting in December.

Adams, who founded Montana Law Week in 1984, said the award was the honor of a lifetime coming from such an elite group of Montana lawyers.

In accepting the award, Adams said that, his second career running Montana Law Week came about after he was fired by the Great Falls Tribune as the chief of its Capitol Bureau — ironically, he said, because he was focusing too much of his time writing about the courts.

Adams said that after he left the Tribune, a friend suggested he write a political newsletter. When he later mentioned to Sharon Morrison, wife of then Montana Supreme Court Justice Frank Morrison, that he was considering writing a newsletter she beamed, "Oh good, that's just what we need, a legal newsletter!"

Adams said it was slow going at first — the inaugural issue went out to all the state's lawyers, with no paid subscribers.

After that first issue, he received a call from Judge Marvin Sorte of Wolf Point — who had been reversed by the Supreme Court in a case featured in the first issue. When he returned the call with some trepidation, the judge nonchalantly told him, "Oh, I just wanted to subscribe." It was the publication's first paid subscription, and Adams was overwhelmed.

New subscribers averaged about one per day for a while until, as word spread, suddenly subscriptions exploded.

Most of the original subscribers who



Frank Adams, right, receives his award from Paul Haffeman of the Montana Chapter of the American Board of Trial Advocates. (Photo provided)

are still practicing still receive Montana Law Week, Adams said, and new ones still join all the time.

HONORS

Prinzing Jones welcomed as new member of ABOTA

Natasha Prinzing Jones is the newest member of the Montana Chapter

of the American Board of Trial Advocates.

Prinzing Jones was inducted into ABOTA at the group's annual meeting in December.



Prinzing Jones

JEST IS FOR ALL

BY ARNIE GLICK



"I think that I have found the duck I want to spend the rest of my life with . . . but just to be safe, do you prepare pre-mating agreements?"

New book delves into early life of secretive Copper King Marcus Daly

Helena lawyer Brenda Wahler's second book, "Marcus Daly's Road to Montana," is scheduled for release on March 6.

Born in 1841 to tenant farmers in Ireland, Daly moved to New York as a boy. Having learned the big city's harsh lessons,



Wahler

he traveled west to the gold and silver mining camps of California, Nevada, Utah, and Montana. Then, a spectacular discovery in the Anaconda mine made him one of Montana's Copper Kings, famed for his machinations in state politics and shaping Butte into the "Richest Hill on Earth."

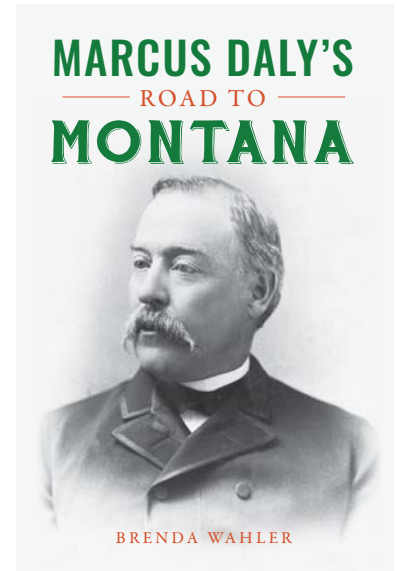
In the book's preface, Wahler notes that very little is known about the secretive Daly's first 40 years before he helped found the Anaconda Copper Mine. His wife,

Margaret, burned Daly's business papers upon his death and destroyed their private letters before she died, and many of his business colleagues did the same.

Montana historian K. Ross Toole, who wrote the only scholarly biography of Daly, noted his frustration about the lack of materials documenting Daly's early life. He expressed "the hope that subsequent research may one day fill the gaps." While acknowledging that her book, by necessity, is filled with hypotheses and speculation, Wahler hopes it helps to fill in some of those gaps.

Wahler's previous book, "Montana Horse Racing: A History," included two chapters devoted to Daly and his passion for horse racing. She plans a third book that will examine Daly's life from 1883 to 1900, as he built two empires: one of copper and the other on the horse racing turf.

A 2002 graduate of the University of Montana School of Law, Wahler is a fourth-generation Montanan with a



Marcus Daly's Road to Montana, 274 pages, is available in hardcover, paperback and Kindle editions. It is published by History Press.

lifelong interest in horses and history. She has shown horses, taught riding and judged horse shows. She owns Wahler Equine, an education and consulting business.

Holland & Hart

Holland & Hart congratulates Bailey Nickoloff on their admission to practice in Montana and welcomes them to the firm's Billings office.

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Court approves changes to Montana CLE rules

The Montana Supreme Court has approved changes to the Montana Rules of Continuing Legal Education. The changes were suggested by an ad hoc committee the court formed in May 2022 to review the Commission of Continuing Legal Education petition for changes to the rules.

The ad hoc committee focused the scope of its work on Rule 4A (Active

Member Minimum MCLE requirements), Rule 6B (Accreditation and Accreditation Standards), and Rule 8 (Presumptive Accreditation).

The court approved the new rules at its public meeting on Feb. 14.

You can read the new rules and the ad hoc committee's rationale for the changes at www.montanabar.org/news.

The committee consisted of K. Paul

Stahl, chair of the CLE Commission; the Honorable Leslie Halligan, Fourth Judicial District; Pamela Bucy, chief disciplinary counsel; Mary Sheehy Moe, CLE Commission member; Helena attorney Aislinn Brown, representing the State Bar's Board of Trustees; and Missoula attorney Colin Stephens.

Online public records search portals now available for district courts and courts of limited jurisdiction

The Montana Supreme Court is pleased to announce a public records search engine is now available for District Courts and Courts of Limited Jurisdiction. The search portals are found at: <https://courts.mt.gov/Courts/portals>.

The portals allow anyone to search for a court case, by a party name, or review a court calendar. Courts on the Full Court Enterprise case management system are active on the system. As each court transitions to the new case management system, it is added to the portal.

Documents are not available on the system and must still be requested from

each clerk's office.

"We are thrilled to finally have a functional public access portal for trial courts. Litigants and others with a need for court information can access it without having to visit the local court," said Court Administrator Beth McLaughlin. "Clerks' offices across the state are incredibly busy and the portal will save courts valuable time as well," said McLaughlin.

A training video and the full set of access rules are available on the site. The public access portal is part of a multi-year project to add electronic filing and upgrade trial court case management systems throughout Montana.

Burman, Sullivan appointed to Commission on Courts of Limited Jurisdiction

The Montana Supreme Court has appointed the Honorable Kerry Burman and Greg Sullivan to open positions on the Commission on Courts of Limited Jurisdiction.

Burman is the commission's new member-at-large for a term ending June 30, 2024. She replaces the Honorable Holly Frederickson, formerly the justice of the peace member, who has retired. The Honorable Kelly Moantooth, previously the member-at-large, is the new justice of the peace member for a term expiring Feb. 28, 2027.

Sullivan is the commission's new city attorney member for a term ending June 30, 2026. He replaces Jeff Hindoen, who has resigned his position.



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BECOMING A LEADER

Leadership ability is a skill
that anyone can develop

By The Honorable Russ McElyea



Practice and experience are key to lifelong journey of developing into a better leader

Tell me, what is it you plan to do with your one wild and precious life? –Mary Oliver

This article explores fundamental principles of leadership. Although directed toward lawyers, the principles discussed here are applicable to many situations.

Lawyers often face challenges where success requires a team of people working toward a common objective. The need for leadership skills may arise in the practice of law, when volunteering for a non-profit, or coaching your kid's sports team. Regardless of context, leadership ability increases the probability of a good outcome.

Many people avoid positions of leadership because they don't feel qualified, but any thoughtful person can become a good leader. Like most skills, leadership ability must be developed over time. Although some people have natural aptitude, the best leaders have a passion for learning and a willingness to fail and try again. No one is born an Olympic skier, and acquiring leadership skills, like learning to ski, is a choice. The study of leadership is a lifelong pursuit and with experience you'll develop your own set of leadership principles.

Communication

Communication is essential to good leadership. Effective leaders understand that teams don't function well without defined expectations. For that reason, a good leaders establish clear goals and a set of values to be used in reaching those goals. When combined, goals and values become a vision for the future that

shows a team where they're going and how to get there. Articulating a compelling vision is a prerequisite for successful leadership.

As an example, a lawyer wants to build the most successful intellectual property law firm in the state and seeks to achieve this objective through hard work, great customer service, and uncompromising integrity. Here, the leader's vision is a single goal combined with a set of values that define the organization and the people within it. The leader's vision is the first step towards success.

Communication of values must be included in a leader's vision because most people want to be part of an organization that stands for something beyond simply getting the job done. That's why clearly defined values are just as important as clearly defined goals. Communication of carefully selected values provides a team with a sense of purpose and increases feelings of ownership.

Leadership requires open discussion of difficult topics. Approaching difficult conversations directly, and with patience and kindness, is less likely to put people on the defensive and leads to good solutions. Kindness is not weakness, nor is a sense of humor. Use both.

Decision-making

Good leaders are decisive. They worry about the consequences of inaction more than making a bad decision. Paralysis is often caused by fear. Although many decisions are consequential, good leaders don't avoid or postpone decisions based on fear. Fear can be reduced by gathering facts and improving your

understanding of context. If the prospect of a big decision stresses you out, then gather more information, focus more intensely on unintended consequences, and think creatively about alternatives.

Make decisions swiftly once you have sufficient information to act. The timing of a decision can be as important as the decision itself. Delayed decisions rarely get easier, and delay can become an excuse for avoidance of responsibility. Competent people lose respect for a leader who habitually puts off important decisions.

While some decisions must be made swiftly, it's also important to avoid impulsiveness when time permits a thoughtful approach. A leader who doesn't understand the difference between being impulsive and being decisive breeds mistrust and erodes their team's confidence. Being decisive doesn't mean every decision needs to be made instantly.

Team Building

An effective leader doesn't have to be the smartest person in the room. Great leaders build organizations around capable people. They aren't intimidated by high performers and recognize that a competent team is crucial to accomplishing big goals. Great leaders recruit smart, motivated people; supply them with a clear vision, and watch amazing things happen.

Good leadership requires a demonstration of trust in the ability of others. Once you have good people, set clear, realistic, and ambitious metrics for performance, and get out of their way.

“ Good leaders are decisive. They worry about the consequences of inaction more than making a bad decision. Paralysis is often caused by fear. Although many decisions are consequential, good leaders don't avoid or postpone decisions based on fear. ”



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You won't communicate trust if you are constantly intervening in everyone's daily routines. Giving them space to operate independently shows you have faith in their abilities. High performers want responsibility and love to be held accountable because accountability supplies proof of success and confirms your faith in them was justified.

Ask other people's opinions but don't confuse leadership with consensus building. Consensus building can be a valuable leadership skill but constantly seeking consensus may prevent you from becoming a good decision maker and dilute your effectiveness as a leader. Not every person with an opinion merits your attention or needs to be pleased. Obtain points of view from trusted associates with relevant knowledge and include your toughest critics when possible. Creating an echo chamber filled with people who agree with you may be comforting, but doing so degrades the quality of your decisions, discourages honest communication, and hurts team morale.

Accountability and Mistakes

Take responsibility for your actions. Taking responsibility for your mistakes makes it easier to ask for accountability from others and shows you don't expect everyone to be perfect.

It's never too late to make a good decision. Sometimes a decision appears good when made, but poor in hindsight. When that happens, reversing a bad decision is a great way to take responsibility for your mistakes and encourages your team to do the same. Perpetuating a poor decision erodes your credibility and encourages your team to conceal their mistakes.

Hire people with strong personal ethics. Passionate, honest, fair, friendly, and humorous people are more effective. Once you have these people, help them succeed when they make a mistake. Everyone makes mistakes and good people often make big ones. Diagnose the causes of failure rather than allocating blame. Using failure as a learning opportunity makes everyone better at

their jobs, earns you gratitude, and cultivates entrepreneurial spirit.

Conversely, a culture of fear and blame promotes concealment of mistakes and a reluctance to take risks or be creative. Good people know when they've messed up. Forgive them, teach them, encourage them to try again, and let them know they haven't lost your trust.

Mistakes and poor performance aren't always the same thing. An honest mistake, especially one committed because someone didn't know better, should be treated in the manner described above. Dishonesty, on the other hand, should never be tolerated. You can forgive a dishonest person, but you can't afford to have one on your team.

Success and Recognition

Give your team credit. You're going to be perceived as successful whenever your team succeeds, so make sure they are recognized and appreciated. Humility and thankfulness go a long way. Your job is simple. Build an awesome team and give them credit for achieving the organization's goals. Everything else will take care of itself.

Be constantly on the lookout for opportunities to enrich the lives of your co-workers. Young leaders often think their team works for the boss. Mature leaders recognize they serve the team and devote themselves to providing resources, recognition, encouragement, and whatever else their people need to succeed.

Make sure your team understands you appreciate the need for a balanced life away from work. Good leadership is invariably accompanied by curiosity, a devotion to learning, an appreciation for play, the need for introspection, and a commitment to making the lives of others better. You are measured by everything you do. Out work and out play everyone. It will inspire others to do the same.

Accept that good people can be poor performers. Reward and recognize high performers and never hesitate to eliminate poor performers. Both actions are essential to good morale, but the latter is critically important if you hire good people. Tolerance of chronic poor

performance, irrespective of cause, is one of the greatest mistakes a leader can make. Sometimes an underperforming person is simply in the wrong job or the wrong organization and they need a change. Help them find a new path.

Never apologize for success if you lead with integrity. Disparagement of success sends a confusing message to your team.

Work is a dominant part of our lives, so work should be fun. Figure out a way to make work fun because happy people are productive and creative, and they set high standards for themselves.

Other Leadership Ideas

Be calm under pressure. Strong leaders learn to manage fear and function calmly when stress is high. Composure is contagious, just like anxiety. When the boss is calm, everyone is calm. Every organization faces tough times. When that happens, find something to be grateful for and teach your team to do the same. Gratitude and thankfulness diminish anxiety and promote clear thinking.

Don't gossip about your team and don't tolerate gossip from others.

You may inherit significant problems from your predecessors. Blaming your predecessors for the problems you inherit reduces your credibility no matter how valid your criticism might be. Focus instead on developing a plan to solve those problems. Then execute on the plan relentlessly until the problems you inherited disappear.

Be on time. Being late doesn't show you're important, it shows you're disrespectful and disorganized.

Do what you promised, especially when it hurts.

Don't worry about being liked. Focus instead on results. Friendship may be a byproduct of good leadership, but it's not the objective. Leaders who value being liked over getting the job done will never earn the full respect of their team or peers.

Never run a meeting without an agenda. Never conclude a meeting without an action plan and a clear assignment of responsibility for execution of

MORE LEADERSHIP, PAGE 27

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Paralegal Section marks 25th anniversary, announces officers, activities for 2023

The State Bar of Montana's Paralegal Section this year marks 25 years since it was first recognized as a section of the State Bar, and in 2024 the section will celebrate the 25th anniversary of the swearing in of its first 101 members. Today there are nearly 150 members in the Section.

The section recently announced its officers and Council members for 2022-2023. They are:

- Kathy Clark, Chair
- Sabrina Hallsten, Vice Chair
- Kirsi Parker, Secretary/

Treasurer

- Renee Wayne, State Bar Liaison
- Amanda Hewitt, Professional Development Officer
- George Bauer, Member-at-Large – Council member
- Sara Godshalk, Voting Member

of the Montana Association of Legal Assistants – Council member

Membership is open to lawyers and to non-lawyers who meet eligibility criteria and qualification requirements as dictated by the section bylaws. The Section officers are voted in by the members annually. A council consisting of two members and the five officers that supervises and controls the affairs of the Section, subject to the provisions of the Constitution and By-Laws of the State Bar.

Section activities

The section has Zoom meetings as needed to pass along pertinent information related to the Section, the paralegal profession, the legal community, and scheduled events. There will be a CLE hosted by the Section in a hybrid format with the date and location to be

announced in the coming months. A Zoom “social hour” will be scheduled several times this year to get to know our members, solicit their input on what they want from the Section, and provide a platform for networking that is vital to our continued success as paralegals.

The Section's annual meeting is held at the same time as the State Bar's annual meeting in September, and will include a CLE seminar in the afternoon (at no cost) followed by a business meeting, and then a reception with food and beverages.

New to the Section is collaboration with the Montana Association of Legal Assistants. Both the Section and MALA will promote each other at CLE events, social hours, and annual meetings.

The section thanks all its members, and always welcomes new members.



NEW TO TRANSACTIONAL PRACTICE? DON'T KNOW WHERE TO FIND ANSWERS?

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- Employment law
- Encroachments
- Insurance coverage
- Land use
- Nuisances
- Partner/Shareholder/Member disputes
- Personal injury
- Probate and will disputes
- Professional negligence (architects, engineers, attorneys, etc.)
- Real estate disputes
- Soil and structural engineering
- Union contracts
- Water disputes

OUR REFERENCES

“I strongly recommend that Cory Gangle be considered as your mediator. Over the last few years, I served as a mediator for Cory in a series of complex litigated matters. I found Cory to always be extremely prepared. By working with Cory, I found that he has many of the attributes and skills necessary to be an effective mediator. These include his knowledge, experience, intelligence, patience, neutrality, optimism, respectfulness and professionalism. I know Cory will do great work”.



– Michael A. Viscomi, Esq.

“Over the past several years, I have had the opportunity to mediate many cases in which Cory Gangle was involved. Cory has evolved into an outstanding litigant in both his approach to resolution and demeanor. I believe Cory would be a very good mediator, studious, and balancing arguments to effect an acceptable resolution. I recommend Cory as a choice for your mediation”.



– Dennis E. Lind, Esq.

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Taking care of your well-being might include a need for a ‘digital detox’

By Sharon D. Nelson, Esq. and
John W. Simek

The Authors Are Detox Veterans

While that heading might seem a little silly, it is absolutely true that fighting digital addiction is a true battle. It took us a long time to realize how deep our addiction was – and winning our battle against the “drug-like” compulsion to be online was not an easy victory.

If you know you need a digital detox, we hope that what follows will be useful to you. And take heart, there are many of us who have now graduated from addiction to a MUCH healthier way of living!

History of the Legal Profession’s Focus on Lawyer Well-Being

A brief history is useful on this topic. We’ve talked about lawyer wellness for a very long time, but the first giant wave that got dead serious about lawyer well-being was the ABA’s 2017 report “The Path to Lawyer Well-Being.” After all this time, it’s still a good read – and of course lawyer well-being encompasses far more than digital detoxing.

In our own state of Virginia, we added “Comment 7” to our version of ethical rule 1.1 (Competence). The comment states: “A lawyer’s mental, emotional, and physical well-being impacts the lawyer’s ability to represent clients and to make responsible choices in the practice of law. Maintaining the mental, emotional, and physical ability necessary for the representation of a client is an important aspect of maintaining competence to practice law.”

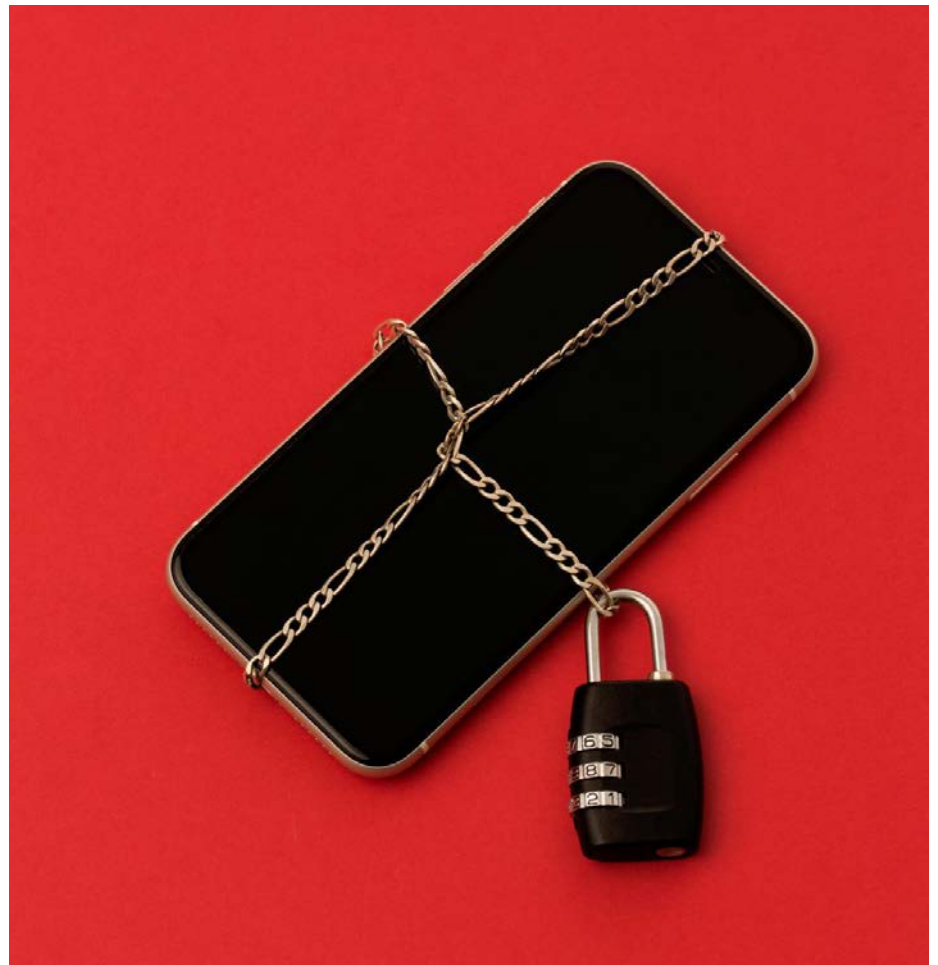
Amen. The Virginia State Bar also issued a report in May of 2019 entitled: “Proactive Wellness: How to Identify, Understand, and Mitigate Lawyers’ Occupational Risks.” Author Nelson had the privilege of serving on the Virginia State Bar Special Committee on Lawyer Well-Being which authored the report. Her particular emphasis was on – you

guessed it – digital addiction and digital detoxing. That report (and many like it across the country) are well worth reading.

Virginia issued an updated report in June 2022 entitled “The Occupational Risks of the Practice of Law.” Since we all solve problems by learning about the genesis of the problems and proven techniques for conquering the problems, the three resources above are a good place to start. Undoubtedly, your own state bar has many resources of its own.

The Smartphone: A Ball and Chain

Increasingly, we are tied to our smartphones. You have only to drive to work to see a scary number of people, lawyers included, driving while texting. We live in a world where research shows



MORE WELL BEING ARTICLES

See Meri Althausen’s ‘Practicing Well’ column (page 19) and Mark Bassingthwaite’s ‘Risk Management’ column (page 20).

that one-third of us are trying (not very successfully) to cut back on screen time. Our self-assessment tends to be that we are “burned out.”

Do you remember the terms “digital immigrants” – those who had no computers/smartphones in their youth and “digital natives” – those who can’t remember a day without them? Statistics show that the “digital natives” have a rougher time detoxing. The statistics indicate that 47% of lawyers detox

“sometimes.” But lawyers under the age of 40 are much less likely to detox. In fact, 76% never or seldom detox. So ... the younger you are, the greater your addiction to smartphones (which may extend of course to laptops/computers).

Overall, depending on the study you read, 20-40% of lawyers have a digital addiction problem. Our own experience with our lawyer friends suggests that the percentage may be closer to 40%.

Do We Need to Distance Ourselves from Our Smartphones?

We think the answer is a resounding yes! Studies have shown that we check our phones an astonishing 47 times a day. And 2/3 of us check our phones within 15 minutes of getting up. Half of lawyers sleep with their phone on their nightstand – or even in their beds!

Overall, more than half of our waking hours is spent staring at some sort of screen.

That brings us to the “3 Cs” Defining Addiction.

- Control – we cannot control our use of our computers or phones
- Compulsion - we are preoccupied with technology to the exclusion of many other parts of life
- Consequences – we continue our fervent use of technology in spite of negative social, physical and mental consequences

If the “3 Cs” are reflective of your life, perhaps it’s time for a change.

Symptoms of Digital Addiction (Many are Similar to Symptoms of Alcohol/Drug Addiction)

Let’s just make a list – no one will fit all, but if you see yourself in some, it should hit home.

- Loneliness or isolation
- Sleep disruption
- Inability to concentrate
- Headaches
- Feelings of being overwhelmed
- Anxiety, sometimes panic
- Stress
- Depression
- Burning eyes
- Exhaustion
- Inferior legal work product
- Poor time management
- Sore neck, back pain, etc.

How Do You Find Help?

Virtually every state has the equivalent of the Virginia Judges & Lawyers Assistance Program (see page for information about Montana’s Lawyer Assistance Program). These programs are wonderful resources, particularly if your addiction has become so serious that your health and/or your work are badly impacted.

The wonderful part of such programs is that they are confidential. These assistance programs don’t share information with the disciplinary folks so you can be candid about what’s wrong without being apprehensive about being disciplined by the bar.

The folks who staff the programs are familiar with the issues you are facing and have concrete suggestions for helping you unchain yourself from your addiction.

If you simply search online for “Digital Detox Retreats”, you’ll be overwhelmed. These retreats are now global! “Disconnect to reconnect” is an often used phrase – and it’s apt – we do indeed need to disconnect to reconnect - with family, friends, nature, and so much more.

Even your phone can be your friend. Two of the best things you can do to disconnect is use the software already on your phone to manage screen time. If you have an Android phone, go to “Settings . . . Digital Wellbeing” and set your time for work time or “me time.” If you have an iPhone, Go to “Settings . . . Screen Time” and set time limits for all your apps – while you are there, schedule downtime!

Tips for Digital Detoxing Success!

Make a plan and stick to it. Rome was not built in a day and you won’t detox in a day. Wean yourself off the phone gradually. Give clients notice – an “away message” is a great help for emails, so (for instance), a client who sends an email after hours on Friday may receive a reply that you will respond to emails on a Monday. Most of us already use “away messages” when we go out of town, but why not use them simply to let clients know when they will hear back? Colleagues will receive the same message – you may want (or need) to have a method for them to contact you in an

emergency (e.g., via text).

Delete time-sucking apps – you know which ones suck all your time!!! At one presentation we gave, a judge stopped listening to us once he heard this tip and he deleted 84 apps from his phone on the spot. We got a wonderful note later from the judge telling us what a difference those deletions had made in his life. The “cure” can be different for different people, that’s for sure!

In a world where we get an average of 60-80 notifications per day, get rid of push notifications (anything you can see, hear or feel) so your train of thought is not continuously interrupted. For Androids and iPhones, just go to “Settings/Notifications” to make this happen.

Law Firms Have an Obligation to Help Lawyers Succeed in Digital Detoxing

Increasingly, law firms are noting that digital addictions is a problem for their lawyers – especially where the law firms themselves mandate employee online access. We are beginning to see law firms have guidelines for availability at night or during weekends – tiny steps today, but we hope they will grow as law firms appreciate the role they can play in nurturing lawyer wellness.

Final Words of Encouragement

Chinese philosopher Lao-Tzu said long ago, “A journey of a thousand miles begins with a single step.” Take that single step today and then keep on taking your journey away from digital addiction step by step.

We did exactly that – and it made all the difference in the world.

Sharon D. Nelson is a practicing attorney and the president of Sensei Enterprises, Inc. She is a past president of the Virginia State Bar, the Fairfax Bar Association and the Fairfax Law Foundation. She is a co-author of 18 books published by the ABA. snelson@senseient.com

John W. Simek is vice president of Sensei Enterprises, Inc. He is a Certified Information Systems Security Professional, Certified Ethical Hacker and a nationally known expert in the area of digital forensics.

Hoping to develop resilience in the face of failure? Try practicing a ritual to celebrate your ‘face plants’

New year, new ski story! This article is about mistakes, failures, and recovery rituals. In other words: how to have a face-plant-party.

’Tis the season that my family is back on the ski touring circuit taking our kids to various Freeride competitions and camps (with parents tagging along and definitely *not* crying as we look over the cliffs we’re about to push our children off...). In a Freeride competition, kids pick a line down a cliffy steep ski run and get scored based on their style, control, route, and general stoke. There are no gates and no skin-tight race suits, only jumps, bumps, and fist pumps! In a couple runs, I noticed my girls coming out of the shoot strong, then taking a tumble or missing a turn, then shrinking back to timid skiing after the mind-jostling mistake. But in this sport, even if the athletes fall, they can recover and ski a good line expertly to impress the judges with their ability to bounce back. Resilience is rewarded.

So, to help them to be driven by confidence in their ability to recover instead of fear of the mistake, we came up with a recovery ritual. This is a habit where as soon as a mistake hits, we *always* and *automatically* jump right into our recovery ritual before letting the doomsday thinking set in to ruin our next move. We practiced, workshopped a few options, and decided the obvious recovery ritual would be to throw a tiny face-plant-party at every fall. Step 1: Fall. Step 2: Gather equipment or get upright; Step 3: “Breakfast-Club”-style fist pump combined with yelling YEAAAAHHHHH!! Step 4: SKI ON!

We practice the face-plant-party

daily. Be it a dramatic fake fall through the front door of the house (fist pump!!), screwing up a recipe and ruining it (fist pump!!), a practice disastrous launch off a jump during free skiing (YAAASSS!), or messing up a test question (quiet internal woot*). These practice parties actually strengthen the pathway in our systems out of fight or flight and into recovery. Out of the lizard brain and into the thinking brain. Or out of the right-brain emotional hemisphere and back into the left-brain problem-solving hemisphere. So, when it really counts, and staying in fight or flight might ruin our performance, we’ve ritualized popping right back into the mindset where we need to be. (DOUBLE FIST PUMP!!) That’s resilience! Our goal now is to look forward to celebrating a mistake so much that we’re disappointed when we make it down the hill without falling. No more fear in the driver’s seat.

If by now you’re thinking “this isn’t the Montana Skier magazine, what does this have to do with Montana lawyers?” I will bring it back to law talk. What is your legal “face plant”? What mistakes are driving your behavior? What do you think you might screw up? And what triggers you into fight or flight, rumination, or ruins your next move? A ritual may be just the ticket to help conquer the fear and give you confidence that you can recover. They may not always involve a fist pump or even a holler, but you’d be surprised at what you can ritualize to get over a sticky situation. I learned my favorite ritual perhaps on day one of my clinic placement during

MORE PRACTICING, PAGE 27



MERI ALTHAUSER

Meri Althaus is an attorney of over 10 years practicing family law and mediation in Missoula. Her practice focuses on collaboration and solution-finding for her clients and their families. She also offers consulting services in workplace wellness, with a certification as a Workplace Wellness Specialist through the National Wellness Institute and as a Resilience and Thriving Facilitator through Organizational Wellness and Learning Systems.

“ A ritual may be just the ticket to help conquer the fear and give you confidence that you can recover. ”

Too risky to insure? Misconceptions abound about how to address attorney impairment

Multiple lawyers and firms have reached out to me over the years with concerns about impairment and wanting to discuss their options. In light of these conversations, and with a desire to put one significant misconception to rest, I have asked and answered several questions as a way to share what my response has been.

What is your definition of the phrase “lawyer impairment” and why is this definition important?

While I often define this phrase quite broadly, for the purposes of this article I am going to narrow it slightly. Lawyer impairment can encompass impairments that to varying degrees our society tends to stigmatize such as mental illness and chemical dependency. Lawyer impairment also includes long-term disabilities that can arise out of an accident or illness, or a terminal illness, for example, cancer.

This definition of lawyer impairment is important because any one of us can become impaired and we need to be more open and proactive about addressing impairment when it arises. The longer an impairment remains unaddressed, the more severe the impairment or its consequences can become.

Lawyers struggling with a mental health impairment are often quite resistant to seeking help due to a fear of being viewed as weak, crazy, or even dangerous; as unable to cut it as a lawyer; as different because there's something wrong with them; or of being told that their problem is self-inflicted so they should just get over it. Those struggling with a chemical dependency face similar fears.

Those suddenly dealing with a disability or terminal illness sometimes hide the truth due to embarrassment; a

belief that they have let others down and will be viewed as such; and a fear that they may no longer be competent or will be viewed as incapable.

When all of this is considered in the context of impact on livelihood, such feelings and fears can be a substantial roadblock to dealing with an impairment in a healthy way. It needn't be this way.

OK, so what is the significant misconception?

The one significant misconception is that there will be some type of negative repercussion if a firm's malpractice insurer somehow learns that one of its lawyers is impaired. Worries include being charged higher premiums, being denied continuous coverage, having someone forced into quitting the practice of law, being told how the firm must manage the situation in order to remain insurable, and the list goes on. The overriding concern is one of insurability.

Here's the reality. There is no truth to any of this. Malpractice insurance applications don't ask firms to disclose the number of firm attorneys who are currently struggling with depression, being treated for a terminal illness, or have an opioid addiction. The fact that one or more firm attorneys may have an impairment in and of itself doesn't matter. Should an insurer come to learn of an impairment, perhaps in the process of handling a claim, the concern will be whether the impairment is being responsibly addressed.

Think about it this way. There's a huge difference between a lawyer who refuses to acknowledge he is an alcoholic and a lawyer who recognizes that a drinking problem exists and seeks appropriate help. Life happens, and

MORE RISK, PAGE 26



Mark
Bassingthwaighte

Since 1998, Mark Bassingthwaighte, Esq. has been a Risk Manager with ALPS, an attorney's professional liability insurance carrier. In his tenure with the company, Mr. Bassingthwaighte has conducted over 1,200 law firm risk management assessment visits, presented over 400 continuing legal education seminars throughout the United States, and written extensively on risk management, ethics, and technology. He is a member of the State Bar of Montana as well as the American Bar Association where he currently sits on the ABA Center for Professional Responsibility's Conference Planning Committee. He received his J.D. from Drake University Law School



The background of the entire page is a photograph of two people silhouetted against a bright, cloudy sky. They are standing on a dark, rocky mountain peak. One person is standing and leaning forward, while the other is sitting or crouching, and they appear to be holding hands or reaching towards each other. The overall tone is inspirational and supportive.

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UM law students help Innocence Project free wrongly imprisoned Billings man

By Phil Stempin
UM News Service

As part of their studies at the University of Montana, students in the Alexander Blewett III School of Law get hands-on experience working for clinics practicing law in a variety of fields. For most, these clinics provide valuable experience in the legal arena, but for some they become transformative, sparking a passion they will carry well into their future careers.

This year, Brandy Keesee a first-generation college student and first-year law student, and third-year law student Annabelle Smith were part of a cohort working with the Montana Innocence Project to free Bernard Pease, a Billings man wrongly convicted 40 years ago for murder.

"I came to [UM Law] because of its smaller community where people care," said Keesee. "Students at other schools will get to write papers about people like Bernard Pease; we get to actually help."

Pease was incarcerated based on forensic testing methods deemed invalid with modern DNA testing, explained MTIP Legal Director Caiti Carpenter.

"DNA testing was unavailable when Bernard was convicted of murder in 1984," Carpenter said. "[MTIP] originally took up Bernard's case in 2008, but at the time DNA testing was not considered new evidence."

MTIP worked with the state Legislature to amend Montana's DNA testing statute in 2015. This amended legislation allows modern DNA testing to qualify as new evidence of innocence. With this change in the law, MTIP saw an opportunity to move forward with Pease's case.

"There is a ton of legwork needed to overturn a wrongful conviction," said Carpenter. "Not only did we need to prove Bernard's innocence with scientific data, but we needed to prove to the Board of Pardons and Parole that people



UM law students Brandy Keesee, left, and Annabelle Smith were part of a cohort working with the Montana Innocence Project to free Bernard Pease, a Billings man wrongly convicted 40 years ago for murder. (Photo provided)

wanted him back in the community."

This is where Keesee and Smith came in, focusing on work that would otherwise not have funding to sustain.

"An email here, a phone call there. At first, it felt like these efforts weren't leading to a successful outcome," said Keesee.

Students interviewed family members, researched letters from the 1980s and '90s, wrote letters on Bernard's behalf, did legal research and helped file appeals.

"One thing that came into focus for me is the prejudices people who were incarcerated face," said Smith, who eventually wants to work as a prosecutor. "This experience has given me more perspective on what the accused are facing."

"There is very little sympathy or

empathy for the accused. It can be very isolating," said Keesee.

Working through these challenges ultimately paid off for Pease. He was granted release in November and lives in a prerelease center for the time being.

"We just kept doing the work that needed to be done," said Keesee. "It was incremental and systematic."

Some cases can take decades and not lead to anything. For MTIP and the UM law students, Bernard's case was very satisfying.

"It's not very often we see such fantastic results at MTIP," Smith said. "This is amazing."

To learn more about Pease's transfer to pre-release, check out the podcast "Unpacking Injustice" from the Montana Innocence Project.



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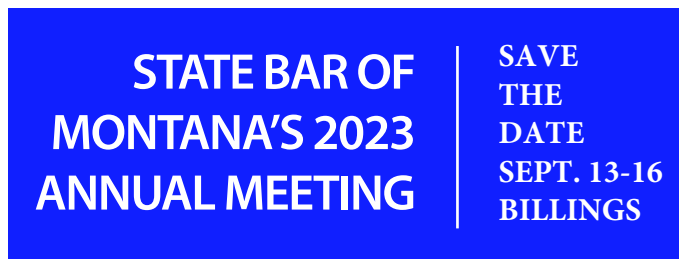
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UM unveils online resource about Montana Constitution

UM News Service

MISSOULA – Scholars from the Maureen and Mike Mansfield Center and Alexander Blewett III School of Law at the University of Montana recently created a central location for materials related to the Montana Constitution. This project serves as an open resource to scholars, students, lawyers, legislators and citizens.

“Many of these materials were out there already, but they were scattered around and weren’t easy to access,” said Robert Saldin, director of the Ethics and Public Affairs program at the Mansfield Center. “Now everything is connected in one easily accessible collection. It’s a real service to the state.”

Materials related to the current Constitution, and the 1972

Constitutional Convention that created it, are at the center of the collection. However, some materials date back to 1884, five years before Montana was incorporated as a state.

For the first time, the collection also publishes online the committee records of citizen testimony that generated most of the new ideas contained in the 1972 Constitution. The Montana Constitutional Collection consists of memos, proceedings, studies, papers and commentary surrounding the creation and adaptation of the Montana Constitution.

UM law professor Anthony Johnstone and Saldin were chatting last year about the 50th anniversary of the 1972 Constitutional Convention and thought it would be the perfect time to work together on the project.

“As scholars of Montana law and government, we felt we were well positioned to put together a collection of materials such as this,” Saldin said. “We wanted to contribute something to the state in conjunction with the [Montana Constitution’s] golden anniversary.”

Students and staff worked with Johnstone and Saldin on the collaborative research project. In particular, Wendy Walker, digital initiatives librarian at the Mansfield Library was invaluable in helping organize the documents into a cohesive collection. Undergraduate student Sam Sullivan played a key role in finding documents in various archives.

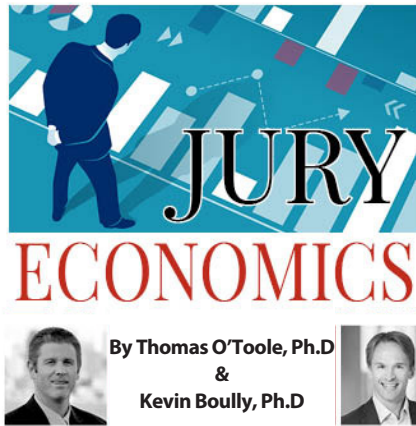
Finding the materials and organizing them in one location took about five months to complete, with almost a year of planning before it started.

Changing attitudes toward corporations highlight need to understand, identify bias

Many defense attorneys lament about what they believe is a continuing increase in the amount of damages jurors are awarding. The litigation industry continues to talk about the trend towards nuclear verdicts, with all kinds of theories and explanations for why juries are returning high-dollar verdicts. Many are left wondering if there is a jury left that can find for a corporate litigant. The short answer is, absolutely yes. However, research shows there may be some new and changing trends that inform the strategy for understanding and identifying bias against corporate litigants.

In the last few years, perceptions of banks, large corporations, and other institutions have grown increasingly negative. For some sectors of the jury-eligible population, opinions of large corporations were already highly negative, and had only a little room to get worse. There wasn't much room for change among liberal Americans in particular. For people who identify as politically conservative, however, the change looks quite different, and the changes may surprise you. Conservative jurors have historically held tort reformer and pro-business views and could be counted on in the deliberation room to slow the plaintiff's momentum against a large corporation or at least put some downward pressure on damages. New research suggests this may no longer be the case.

There is no doubt that the conservative narrative has changed in recent years, with distrust, anger, and conspiracy playing greater roles than ever before. We leave it to other analysts and longer-form publications to explain all the reasons in greater detail. We have seen this shift in values in our own research. In mock trials and focus groups going back a few years, we have noticed the disappearance of the tort reformer



By Thomas O'Toole, Ph.D.
&
Kevin Bouilly, Ph.D

or pro-corporate juror. Sure, we still see some here and there, but their numbers seem to be in decline. We more rarely observe the reliable pro-corporate voice from the prototypical conservative. What is happening?

Increasing Conservative Anti-Corporatism (CAC)

According to a new study by Pew Research Center, conservatives and liberal Americans share similar opinions about corporations' negative impact on our country, which represents a significant shift for conservatives. In 2019, 54% of Republican or Republican-leaning Americans reported that corporations have a positive effect on the country. That is a solid majority. By October of 2022, that number had shrunk by more than half, with just 26% reporting the same views only three years later. That is a dramatic shift in a very short period of time.

Oddly enough, from 2019 to 2022 there was a 2% *increase* in positive views of corporations among Democrats and Democrat-leaning. That is a stark contrast to the 28% *decrease* in the same opinions by Republicans and Republican-leaning. Where once you could bank on conservative jurors

having more pro-corporate attitudes than liberal counterparts, this new research shows that may no longer be the case.

A 2021 study by Gallup showed a similar trend, with a 17% decrease in Republicans who said they have a positive view of big business between 2019 to 2021. While there remain some important differences when evaluating political affiliation, at least some measures of anti-corporate bias are not among them.

Some of These Things Are Not Like the Others

At the same time, both liberal and conservative Americans distinguish among different types of corporations. Overall, Pew Research shows opinions of banks and technology companies have become more negative since 2019, with the data showing 9% fewer positive views of banks and technology companies alike. Yet, when you look at the decrease by political affiliation, this shines a light yet again on a conservative anti-corporate trend. For Republican and Republican-leaning, reports of banks' positive effect on the country dropped from 63% (2019) to just 38% in 2022 - a 25% decrease in three years' time. For technology companies, the drop from 58% to 40% - an 18% drop in three years - leaves conservative Americans a lot less positive about technology companies than liberals, who remained at 58% in 2022. Put another way, conservative views of both banks and tech companies have worsened in the last three years while they have changed very little for liberal-minded people.

The Consensus Oasis

These studies also show some consensus among Americans about a few

MORE JURY, NEXT PAGE

RISK

FROM PAGE 20

insurers understand that. It's the fallout of failing to appropriately address the issues that can result in adverse consequences with your insurance coverage, not the impairment itself.

Look at it from an insurer's perspective. Which firm would you rather insure: a firm that has a culture of zero tolerance for even acknowledging that someone might be impaired; or a firm that recognizes life happens and is culturally supportive of whoever might be dealing with an impairment?

I assure you the zero-tolerance firm is a much higher risk. Denial, intentional ignorance, and intolerance create conditions that allow potential problems to fester and multiply. That's high risk. Openness, empathy, and support leads to the exact opposite outcome. This is a far more acceptable risk.

Insurers are in the business of evaluating risk and you are in control of what that risk looks like. Stated another way, individuals and even firms are not always defined by the circumstances they find themselves in. They are more often defined by how they respond to the situation. Again, life happens. Rise to the occasion.

With this misconception put to rest, do you have any practical advice to share about dealing with an impairment?

Here is a little practical advice for dealing with an impairment:

1. Failing to deal with an impairment individually and as a firm has consequences. Should the legal interests of clients be adversely affected as a result, malpractice claims and disciplinary complaints may not be far behind. In light of this, my best advice is to do all you can to create an environment that seeks to prevent such a thing from ever happening. If not already in place, a firm culture that prioritizes well-being would be a great place to start.

2. In order for an individual to responsibly address an impairment,

recognize that some type of temporary or permanent transition may need to take place. As a firm, do everything you can to identify and work through the transition issues together. This is a time when the efforts of a team can make a huge difference for all involved. Issues to consider might include workload, file review, schedule changes, role changes, file handoffs, client contact, client introductions, conditions of remaining with the firm, conditions of returning to the firm after an extended absence, capturing any intellectual capital before the opportunity is lost, impact on the impaired attorney's income, necessary workplace accommodations, and the list goes on. A solo practitioner should work with a trusted colleague on many of these same issues.

3. Should you ever find yourself having to accept the reality that you have an impairment, don't try to go it alone. Reach out to and rely upon your personal support systems. Allow spouses, friends, family members, colleagues, and the like to be there for you. Be open to accepting their support, respect, and care. Your journey will be all the better for it.

Any parting words of wisdom?

A misconception that needlessly creates risk by preventing someone from prioritizing their health is a misconception that must be dispelled. My hope is that by correcting the record, this will lead to different and better choices. Individuals who might have been reluctant to seek treatment may feel more inclined to do so. Firms that have been unwilling or unable to acknowledge that their lawyers and staff do struggle with serious problems at times may now be more open to taking both proactive and responsive actions.

Lawyers and firms have wide latitude in how impairment can be addressed. Just know that it starts with 1) recognizing that impairments are common and 2) understanding that no one should have to work through the challenges of personal impairment alone.

JURY

FROM PREVIOUS PAGE

institutions. Small businesses and the military are generally well-regarded and political differences are tiny. About 80% of both liberals and conservatives have positive views of small businesses and about two-thirds of both political groups have positive views of the military.

When you slice the data to evaluate generational differences, some unexpected but additional consensus emerges. Age is completely irrelevant to reports that large corporations have a positive effect on the country, with approximately 25% of all four generational splits reporting that view. Proportions of Americans aged 18-29 were no greater than Americans 65+ to report large corporations have a positive effect on the country in 2022. The same pattern is true of opinions of banks and small businesses. This is another signal of the changing landscape - where older jurors have historically been "safer" for corporate litigants and younger jurors more "unpredictable." Now, the young liberal juror providing more moderate opinions than the holder conservative juror are in context.

The Punchline

This is important data to consider as you craft your jury selection strategy for cases involving corporate litigants. This research shows our once reliable stereotypes about the political leanings of jurors in these types of cases may no longer hold true.

Thomas M. O'Toole, Ph.D. is President of Sound Jury Consulting in Seattle. Kevin R. Bouilly, Ph.D. is Senior Consultant at Perkins Coie in Denver.

PRACTICING

FROM PAGE 19

law school, which works nearly any time you're put on the spot in court: "thank you for that judge, may I have two minutes to check my notes?" followed by a few deep breaths and thinking through the problem in peace. You can have a ritual walk when peak frustration is reached at your desk, a ritual closing and putting away of a file that's particularly

troubling (goodnight, file!), or even a "we-lost-big-time" office ritual that helps refocus your team on something positive (maybe bowling or axe-throwing!).

And finally, what I am not suggesting is bottling, stuffing, or compartmentalizing the negative emotions from your mistakes or skipping over the learning opportunity that can come from a loss. The last step of the recovery ritual is to find the time and a place to actually feel the sadness, remorse, or even

embarrassment that are the natural and normal consequences of mistakes and poor outcomes. It is vital that there be an outlet to process through those feelings. Because you had your face-plant-party you didn't let those feelings ruin the rest of your objectives in the moment, and the show went on, but the feelings are still there when the show is over. Let them be, debrief, and learn for next time.

I hope you'll reach out to tell me about your face-plant-parties!

LEADERSHIP

FROM PAGE 13

that plan. And don't confuse meetings with success. Meetings are only a means to an end. Attending or calling lots of meetings doesn't signify your importance or suggest you're making progress. Sometimes it suggests the opposite.

Every enterprise has many customers and stakeholders. Know the differences between them and understand their needs. Understanding should be obtained from direct personal interaction whenever possible.

Delegate aggressively but keep your leadership team small compared to the size of your workforce. Too many leaders create confusion, drive up costs, and prevent you from pushing responsibility downward where it belongs.

Leadership can be incredibly rewarding and incredibly stressful. Good leaders don't quit, they find a way. Ultimately, good leadership requires honesty, thoughtfulness, perseverance, and courage. Teddy Roosevelt had a great quote on leadership, which is paraphrased below:

"It is not the critic who counts; not the one who points out how the strong

person stumbles, or where the doer of deeds could have done them better. The credit belongs to the person who is actually in the arena, whose face is marred by dust and sweat and blood; who strives valiantly; who errs, who comes short again and again, because there is no effort without error and shortcoming; but who does actually strive to do the deeds; who knows great enthusiasms, the great devotions; who spend themselves in a worthy cause; who at the best knows in the end the triumph of high achievement, and who at the worst, if they fail, at least fails while daring greatly, so that their place shall never be with those cold and timid souls who neither know victory nor defeat."

Closing Thoughts

Talk less. Listen more. Ask questions. Challenge the status quo and embrace change. Model creative approaches to problem solving. Become an entrepreneur and innovate. Invent new paradigms. Be relentless in your quest for improvement of your team, your organization's processes, and yourself. Rest tomorrow.

Many of the suggestions in this article work better in some organizations than

others. Leadership techniques necessarily vary between for-profit entities, non-profits, schools, and government agencies. Variability between organizations and among people requires you to build a leadership style tailored for the organization you serve. Developing your own style also helps you build confidence which in turn motivates your team and produces results.

You may never become as effective as you want to be, but that shouldn't stop you from continuing to learn. The best leaders never assume they have all the answers and always strive to expand their understanding of the craft.



The Honorable Russ McElyea is chief judge of the Montana Water Court. He has 40 years experience leading for-profit, non-profit, and government organizations.

PRESIDENT

FROM PAGE 4

have opinions. This year, in Montana we can add lawmakers to the list, which is their constitutional prerogative to express via the legislative branch.

I remain thankful that, in Montana, our constitution places admission to the bar of this state and the regulation of the practice of law under an independent

and nonpartisan judicial branch, protected from partisan winds and debate by the bulwark of the separation of powers doctrine. As a lawyer and officer of the court, I think that's a good thing, and the State Bar remains committed to protecting that independent constitutional structure.

But a healthy debate does remind us to look at history and to remember why we do things the way we do. As

this legislative session moves forward, I know I remain proud of our attorney predecessors, giants like President Adams and Chief Justice Marshall. I am also proud to be a Montana lawyer and I thank you for the privilege of representing you as your president.

Please always feel free to reach out to me and let me know your thoughts.

Willey, 2015 Bousliman winner, dies at age 90

Montana lawyers lost a mentor, instructor, friend and colleague on Dec. 21, 2022. Charles W. Willey passed peacefully to his next classroom, having dutifully served as husband, lawyer and teacher for most of his 90 years.



Willey

"Chuck" joined the Montana Bar in 1959 after finishing first in his law school class.

He clerked for the 9th Circuit Court in California, then entered private practice,

serving as President of the Santa Barbara Bar Association. In 2015, he was honored with the State Bar of Montana's George L. Bousliman Professionalism Award.

When Chuck returned to Montana in 2000, it was to retire. Except he didn't. Chuck served as an adjunct professor at the University of Montana School of Law for most of the next 15 years, teaching conflicts, business organizations and real estate transactions before retiring again in 2015. He co-authored the 2006 Probate Forms Manual and wrote its 61-page explanatory section, and he also wrote Montana's only book on real estate transactions. He chaired the Bar's Business, Estate, Tax,

Trust and Real Estate Section for 10 years and spoke at the law school's tax institute for many years. Then at the beckoning of former students, he returned to teaching at age 83.

A colleague noted that Chuck didn't do email and hired a typist for his outlines, no small task. But beyond his service, no one could duplicate Chuck's easy manner, love for his students and tremendous humor. My favorite question at CLE's today is to ask a show of hands of former students. Many hands are raised. All have fond memories and good stories. We loved you; we're better attorneys because of you. We'll miss you.

Robert Grey Collins

Robert Grey Collins of Clancy died on Nov. 15, 2022. He was 75. Rob was born in Los Angeles.

Rob earned his law degree from the University of Southern California in 1976. He served as a land, natural resource, and environmental lawyer with the California Attorney General's



Collins

office, where he litigated, tried, and settled many significant cases. In 1991, he came to Montana to represent the State of Montana in its lawsuit against ARCO

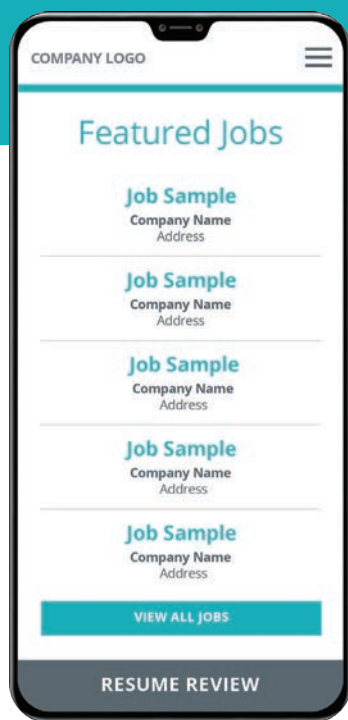
for recovery of

natural resource damages. He then led the newly created Natural Resource Damage Program until his retirement in 2015, pursuing natural resource damage claims for the Upper Clark Fork River Basin, including Butte, Anaconda, and Milltown sites; the Mike Horse / Upper Blackfoot site; and the Asarco smelter site in East Helena; among others. The settlements of these cases and claims resulted in recoveries totaling over \$660 million to be used for environmental remediation and natural resource restoration in Montana.





Memorial submissions

The Montana Lawyer will publish memorials of State Bar of Montana members at no charge.

Please email submissions to jmenden@montanabar.org using the subject line "Memorial." Memorial submissions are subject to editing.



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DEPUTY COUNTY ATTORNEY: The attorney in this position represents Flathead County in a variety of contexts. Depending on interest and qualifications, duties can include prosecuting criminal offenses, advocating in child abuse and neglect matters, representing county government in legal proceedings, and advising county officials on legal matters of concern to Flathead County. To see the full listing and apply, visit <https://flathead.mt.gov/departments-directory-resources/apply>.

DEPUTY COUNTY ATTORNEY – CRIMINAL:

Cascade County seeks an attorney to perform complex legal, professional and administrative work. The Deputy County Attorney (Criminal) initiates and prosecutes criminal cases through final disposition and provides legal counsel and advice on matters of criminal law and performs other related duties as required or assigned. Applications and full listing available at the Cascade County Human Resources Dept., <https://www.cascadecountymt.gov/223/Employment-Opportunities>

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ASSOCIATE OR OF COUNSEL: Doney Crowley P.C. seeks an attorney to join our team as an associate or of counsel attorney. Established by Ted Doney in 1987, the Doney Law Firm focuses on environmental/natural resource law, water law, civil litigation and administrative law. Ideal candidate will be an energetic, hard-working self-starter, with at least 2 years of experience, and licensed to practiced law in Montana. Should be , interested in, and ideally have experience in, complex civil litigation. Position is in-person at the firm's Helena or Red Lodge office, with flexibility for partial remote work. Sara Carpenter, Firm Administrator, Doney Crowley P.C., PO Box 1185, Helena, MT 59624; or scarpenter@doneylaw.com.

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ASSOCIATE ATTORNEY: Well-established, busy Bozeman law firm, E.J. Guza & Associates, seeks an associate attorney, preferably with at least 1 year of litigation experience. Our firm emphasizes a balance of life and work while maintaining a fast-paced, hardworking, professional atmosphere. EJGA has a diverse practice, including civil, construction, employment, contracts, municipal and criminal law. Requirements: Montana bar license (or qualified to apply for same), excellent communication skills, social skills, and work ethic. Salary D.O.E. Position available immediately. Submit cover letter, transcripts, references, resume to E.J. Guza & Associates, PLLC, Attn: Leslie Taylor, 25 Apex Drive, Suite A, Bozeman, MT 59718; or ltaylor@ejguzalaw.com

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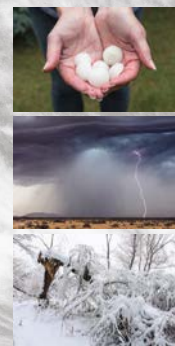
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CONSULTANTS & EXPERTS

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