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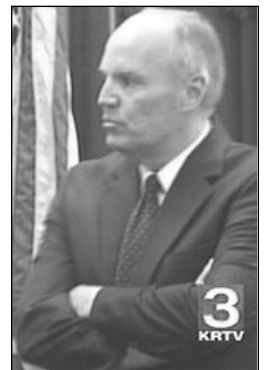
The sleeper of the Senate

*Montana Bar
member's huge
role in the
next Congress*



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the happiest
of holidays*

— the State Bar staff



Brant Light
is named
new chief
prosecutor
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PRESIDENT'S MESSAGE

Brave new blog

We post, you comment

Chris Tweeten

I have a confession to make: I don't like computers. Part of the reason is that I never properly learned to type. I also don't have a very good grasp on how computers work. It's not a case of lack of training, particularly. I've taken training programs in WordPerfect, MS Word, Excel, the list goes on. None of them have been particularly successful in making me a competent computer operator.

I think the trouble is that I don't find the operation of computer software to be particularly intuitive. For me, maneuvering through a webpage is usually a timewasting series of fits and starts. The reverse arrow is the most frequently used icon in every program I've ever used. Too often I have to humiliate myself by calling on one of my sons to explain to me why the order I want to place at *landsend.com* simply won't go through.

For all my clumsiness, I have found some computer applications that I can make use of. During the elections, I found some political blogs to be terribly amusing, although I could never work up the courage to post to them. I'm a bit more audacious when it comes to a message board for Grizzly football fans, since (a) the subject is not earthshakingly important (although don't tell that to most of the posters) and (b) it's almost all rank opinion and conjecture, so no matter how ridiculous the post no one can actually prove you wrong.

Even for a computer illiterate like me, these kinds of communication sites provide an opportunity for people with common interests to swap information, ideas, and opinions in a non-threatening environment. The ability to post anonymously or under a nom de blog allows for a degree of freedom that even regular conversation lacks.

RESEARCH, AND MY own personal experience, shows that people acquire and process information in different ways. People of my generation are often wedded to words written on paper. Certain politicians aside, many of us get a significant amount of our information from magazines and newspapers. Members of my sons' generation, in contrast, get almost all of their current information online. As an example, the State Bar offered some time back to provide a free copy of *The Montana Lawyer* to all

the students at the UM Law School. The students responded politely that they did not want a bunch of additional paper, but they would probably look at the material if it was simply posted online.

WITH ALL OF THE FOREGOING in mind, the State Bar will soon provide our members with a new medium in which to discuss, argue about, and possibly even to learn more about, matters pertinent to our profession.

Here's how the new State Bar blog would work:

- A handful of Bar members and staff, including some of the Executive Committee, will post their thoughts on the blog several times a week, we hope.

- You will have the opportunity to post a comment to the message by hitting the appropriate link below the message. The comment is visible to all readers of the blog.

- The comments may be signed, anonymous, or posted under an alias, such as an e-mail moniker.

- All original posts and subsequent comments will be monitored by Charles Wood, the Bar's communications director. In fact, all posts use your e-mail software, addressing your e-mails to Mr. Wood's e-mail.

- We don't guarantee that your comments will be posted – not if they are nasty, libelous or lacking any thoughtfulness at all (although comments should be relatively brief). Comments that dissent from the blog's original message, however, are very welcome. Constructive debate is what we are seeking.

THE BAR STAFF and Executive Committee have put the blog out for test-driving by, among others, law students and younger lawyers. It will become operational in early January.

My New Year's resolution is to post something to the blog at least once a week. I hope you will visit it, feel free to post comments, participate in the discussions, and let us know how we've done with the blog and what we can do to make it more useful.

You can e-mail your blog-improvement suggestions to cwood@montanabar.org. ○

Montana attorney joins project seeking to improve . . . Criminal defense in China

By **James Park Taylor**
Missoula attorney
writing from China

In January of this year I had the good fortune to travel to Geneva, Switzerland, on behalf of the Mansfield Center at The University of Montana to meet with Karen Tse, the CEO and founder of International Bridges to Justice (IBJ). Karen is a graduate of UCLA Law School and Harvard Divinity School, a former public defender, and the 2008 recipient of the ABA's International Human Rights Award. We reached an agreement with IBJ to assist in developing criminal-defense clinics in law schools in China [Mr. Taylor is in China now doing just that].

Clinical legal education is still new to China, and criminal defense clinics are even newer. Our current project has eight participating Chinese law schools, and we will expand the project to 16 schools by the middle of next year.

The project is being conducted in conjunction with the Chinese Committee on Clinical Legal Education, the umbrella organization for clinical education in China. Over the next few months, I will describe some of the problems and challenges to legal reform in China, and to the best of my ability give you my perspective on what it's like for a practitioner from Montana to be participating in that reform.

THERE ARE MANY NGOs that have helped to bring attention to human rights violations around the world. Some of the attention has been productive in helping institute change, some of the attention has hardened government positions. IBJ has a different approach to ending human rights abuses. Karen's idea to change the world is simple; "Let's stop complaining and get to work." IBJ's mission is:

In recognition of the fundamental principles of the Universal Declaration of Human Rights, International Bridges to Justice (IBJ) is dedicated to protecting the basic legal rights of ordinary citizens in developing countries. Specifically, IBJ works to guarantee all citizens the right to competent legal representation, the right to be protected



James Park Taylor

If an attorney in China becomes too aggressive in investigating a case, there is a possibility the attorney will be prosecuted for interfering with the case.

from cruel and unusual punishment, and the right to a fair trial.

To carry out this mission, IBJ works with the criminal justice systems of many countries to assist them with implementing the country's own laws. Currently IBJ has projects in China, India, Vietnam, Burundi, Cambodia, Rwanda, and Zimbabwe. They are careful not to engage in political activities in its host countries, instead, the focus is to offer training and assistance to those attorneys representing the indigent in criminal cases.

IBJ's vision is that effective defense counsel for the poor is a powerful tool to help end torture and to enhance the rule of law. IBJ's activities are intensely practical, with training and technical assistance offered on basic and universal criminal defense advocacy skills, tailored to the legal system of each country in which it operates.

Rather than criticizing governments, IBJ focuses on helping attorneys that are doing the day to day criminal defense work for the poor around the world.

IBJ first came to China in 2001, and since then has worked with a number of Chinese government agencies, universities and lawyers organizations. IBJ's idea is to foster reform at the grassroots level by training lawyers and law students in advocacy skills, and to foster reform at the national level by working with policy makers.

CHINA FACES MANY obstacles to implementing criminal justice reform. First among those obstacles is the size of the country. China is home to more than 1.3 billion people, but has fewer than 150,000 lawyers. Their present legal system is 30 years old, and is continuing to evolve. China does provide the right to counsel, but only for certain types of cases: death penalty offenses, juvenile crime, and cases in which the accused is blind, deaf, or mute. All other cases only receive counsel if the court decides to make a discretionary appointment, and if there is an attorney available. Even if an attorney is appointed, it is an uphill battle to obtain

More LAW IN CHINA, Page 14

The Eddleman case

County attorney steps aside after denying federal charges

Neighboring county attorneys and the Department of Justice have agreed to help the Carbon County Attorney's Office with cases after Carbon County Attorney Robert Eddleman took leave from his post under a cloud of four federal cocaine charges, the *Billings Gazette* reported.

Eddleman, 50, of Red Lodge, and co-defendant Terri Jabs Kurth, 43, of Billings, pleaded not guilty to maintaining premises for the distribution and use of cocaine and cocaine distribution.

"I deny (the charges) vehemently," Eddleman told reporters on Dec. 9 after pleading not guilty at his arraignment in Billings. "I will work and I plan on fighting these charges." He said the Carbon County commissioners approved his request to take a leave of absence from his job while the case is pending.

"I amazed at the support that I have received," Eddleman said. "I can tell you that my faith, my family and my friends will be the rock that I stand on while fighting these charges."

Meanwhile, Attorney General Mike McGrath has called on Eddleman to resign his county-attorney position.

U.S. Magistrate Judge Carolyn Ostby arraigned Eddleman and Kurth together, the *Gazette* said. The judge followed the recommendations from the pre-trial services officer that Eddleman and Kurth be released without bond until trial. The release conditions include prohibitions against having firearms, consuming alcohol and from having contact with 16 witnesses. Judge Ostby also ordered the two to surrender their passports.

Bozeman attorney Brian Fay represented Eddleman and Kurth for the arraignment. Kurth also has retained Billings attorney Robert Kelleher Jr. The federal Drug Enforcement Administration and the Montana Division of Criminal Investigation conducted the investigation.

Carbon County Commissioner John Prinkki said on Dec. 9 that the County Commission has agreed to Eddleman's offer to take a leave of absence without pay, the *Gazette* reported, noting that the details of the leave were still being worked out. Prinkki said the Commission didn't want criminal cases to be prejudiced by Eddleman's involvement. Commissioners consulted with the Attorney General's Office and with legal counsel through the Montana Association of Counties, he said.

"The offer Bob has made probably works best for the county and himself," Prinkki said. There are few mechanisms for removing an elected official without a recall election, which can be time-consuming and expensive, Prinkki told the *Gazette*.

According to the *Gazette*, Assistant U.S. Attorney Joseph Thaggard alleges that Eddleman and Kurth, an interior designer, associated with a cocaine trafficker identified in the indictment by the initials DB and stored and used the drug at their homes in Red Lodge and Billings from January 2004 until Sept. 11 this year. Eddleman and Kurth hosted parties at their homes at which they used cocaine and allowed their guests to use it, the indictment said.

The alleged cocaine trafficker mentioned in the indictment, Domingo Baez, 39, of Billings, pleaded not guilty Dec. 4 after being charged in a separate indictment. Baez is charged with one count of conspiring to possess cocaine for distribution and two distribution counts. Baez

remains in custody.

Mr. Thaggard filed notice that he intends to seek increased penalties against Baez because he has three felony drug convictions in Illinois. The increased penalty could double Baez's possible sentence, the *Gazette* said.

Eddleman, a former Montana Supreme Court candidate, began his legal career in 1995 and was elected Stillwater County attorney the following year. He left that job and campaigned unsuccessfully for the state Supreme Court in 2002 against Supreme Court Justice Bill Leahart. Eddleman also has worked in private practice and as staff attorney with the Yellowstone County Public Defender's Office. He was named Carbon County attorney in June 2006 to replace Kemp Wilson, who resigned for health reasons and died this year. Eddleman ran for election and won.

If convicted, Eddleman and Kurth face a maximum of 20 years in prison and a \$1 million fine. They also could forfeit any property used in the alleged crimes, including their houses in Red Lodge and Billings and a Lincoln Navigator owned by Kurth.



Billings Gazette photo

Carbon County Attorney Bob Eddleman and Terri Kurth leave the federal courthouse in Billings after their arraignment on cocaine charges

Max

State Bar of Montana member is now seen as *the* pivot point in the U.S. Senate

After this article appeared on the American Prospect magazine's website on Nov. 6, Sen. Max Baucus voted for the \$700 billion bank bailout, but voted against the \$15 billion bailout of the auto companies, one of only four Democrats to do so. He also became the first congressman to put forth a written health-coverage plan for the upcoming Congress.

By Ezra Klein
American Prospect magazine

At 3:45 p.m. on the first day of the Democratic National Convention, Max Baucus – arguably the most consequential legislator in America – is not preparing for his big speech. In fact, he won't be giving a speech. Nor is he holding court in one of the Pepsi Center's sumptuously appointed luxury boxes. Rather, he's a good 40-minute hike up Denver's main drag, camped out in the back room of a dank little bar called City Grille ("Good Value. American Food. Great Place."). His aides are folded into the booths, swirling the melting ice in their glasses. I'm in the bar for 10 minutes before I even know they're there.

Baucus is chairman of the Senate Finance Committee. Staffers like to say that the committee is responsible for all the money the government raises and half of what it spends – and that's not too far from the truth. It is the only Senate committee able to construct new funding streams, which gives it incredible authority over the country's social-policy architecture. It has control over taxes and trade, Social Security and Medicare, health reform, and unemployment benefits. Even a carbon-pricing bill would probably need its sign-off.

"Everyone in Congress always worries they'll end up on the Subcommittee for Acoustics & Ventilation," jokes Sen. Ron Wyden, a Finance Committee mem-

ber. "The Senate Finance Committee is the opposite. It's the forum where the biggest financial decisions of our day come, and we have to figure [out] how to tackle them."

For that reason, the leadership of the Finance Committee has traditionally produced legislative giants. Russell Long. Bob Dole. Bob Packwood. Lloyd Bentsen. Daniel Patrick Moynihan. These men were darlings of the Sunday talk shows. They rivaled the power of



Max Baucus could ensure a progressive social-policy agenda, or he could be its biggest roadblock.

the majority and minority leaders of the Senate, and they were tapped to fill presidential tickets. Max Baucus, however, is not a giant. He is a polite man with sensible silver glasses and a gentle handshake. He is roundabout in conversation, and punctuates his points by raising his eyebrows and smiling slightly, as if pleading with you to agree with him. He has served five terms as a senator from Montana, a state with one of the smallest populations in the union. Insofar as he has any national profile at all, it's as a Democratic apostate. He partnered with Republican Chuck Grassley to craft President George W. Bush's first tax cut and angered the Democratic leadership by refusing to consult them before the bill's markup. He further infuriated his

party by helping Republicans pass the Medicare prescription-drug bill even after they had locked the Democratic leadership out of conference committee. He voted for the 2005 bankruptcy bill. For his sins, *The Nation* has branded him "K Street's Favorite Democrat." This magazine termed him "Bad Max." The *New Republic* editorialized that he should be stripped of his chairmanship.

These are all facts about Baucus. But these are also facts: In 2005, when Bush seemed all but politically invincible, Harry Reid put Baucus in charge of the Democratic effort to block Social Security privatization. Baucus creamed Bush. Privatization never even came up for a vote. In July, the Senate was gridlocked over how to trim Medicare spending. Inaction would have triggered an automatic 10.6 percent pay cut to doctors and likely have caused many to stop treating Medicare patients, throwing the program into crisis. Democrats sought to slash reimbursements to private insurance companies that were charging 120 percent more per beneficiary than Medicare. The fix was blocked, in part by Grassley, the ranking Republican on the Finance Committee and Baucus' good friend. So Baucus cut Grassley out of the process, taking the bill directly to the floor and setting the stage for Sen. Ted Kennedy's dramatic return to the Senate, where he cast the decisive vote.

THIS IS THE uncomfortable reality that will face the next administration. While most reformers have been obsessed with the policy details of the presidential campaign – health-care mandates or simple subsidies? tax cuts or credits? – much of the success of the next president's agenda will, in truth, rely on the actions of one of the most experienced, inscrutable, and unpredictable politicians in the country. Over the next two years, Max Baucus could

The Federal Deposit Insurance Corporation (FDIC) has announced that effective immediately client funds deposited in IOLTA accounts are eligible for unlimited deposit insurance coverage. All funds in an IOLTA account, regardless of size, will now be insured in full by the FDIC as part of the Temporary Liquidity Guarantee Program (TLGP).

The State Bar of Montana last month joined the ABA and other national law groups to complain about an interim eco-

IOLTA 'gap' removed from new FDIC Rule

nomic relief rule released Oct. 23 under TLGP, which did not provide for full coverage of IOLTA funds (see November *Montana Lawyer*). The consequence was that a client's total funds in one financial institution including the amount in an IOLTA exceeding \$250,00 were eligible for insurance only if they were moved to a "non-interest bearing" deposit transaction account.

The FDIC has now clarified the rule to fully guarantee funds for IOLTA accounts until at least Dec. 31, 2009.

prove a progressive legislative giant. Or he could be Bad Max.

WHAT SO UNNERVES most observers is that Baucus is not a creature they easily recognize. If he were a self-interested dealmaker like Alaska's Ted Stevens or a raw opportunist like former Sen. John Breaux, dealing with him would involve nothing more than an assessment of his interests. If he were an impassioned crusader – even in the wrong direction – that would at least be a familiar archetype. But if Baucus is impassioned, he keeps it to himself. In this, he maps easily onto the culture of his committee, which is not traditionally friendly terrain for ideologues. Rather, it has housed many of the Senate's most famous moderates and amassed a reputation as a bipartisan redoubt within an increasingly polarized Senate. "We were there to represent a national constituency," recalls former Sen. Dave Durenberger, who served on Finance from 1978 to 1994. "The agenda was just too big, the jurisdiction too broad, and the agenda was too heavy for one party to carry."

Baucus is, in many ways, a throwback to this lost era of bipartisan civility. Like Durenberger, he arrived on the Finance Committee in 1978, when it was chaired by the legendary Russell Long (when Republicans took control in 1981, Bob Dole, the new chair, quipped: "So who's going to tell Russell Long?"), and served among moderate dealmakers like John Chaffee and Lloyd Bentsen. This bipartisan tradition is why, though the committee has not proved immune to the polarizing trends that have seized Congress, it remains a relatively functional institution.

But the committee's bipartisanship is the result of more than simple high-mindedness. The reality is it cannot indulge gridlock. Elsewhere in the Senate, the battles are over new legislation. If bills are killed, the downside is that something doesn't happen, and no one really notices. But the Finance Committee deals in mandatory money, expirations, and reauthorizations. These are bills that must be passed. If they fail, something stops happening – say, 35 million children get kicked off the State Children's Health Insurance Program – and the voters cry out.

Moreover, on Finance, progress is often profitable. Elsewhere in Congress, there's a certain political logic compelling the minority to obstruct legislative progress. Doing nothing is preferable to handing the other side an accomplishment. On Finance, however, the symbolic politics dissolve. When you're responsible for raising massive revenues and passing necessary legislation, modifying the process is more attractive than grinding it to a halt. As one former Baucus staffer puts it, "In the health world, it's often a good-versus-evil battle over the role of the government. The tax world is more like whoever's at the table, we'll make a deal and get you something." That can mean wresting a small benefit for a home-state interest, or it can mean ensuring attention to a cherished issue.

That's also what gives the finance chairman his power. Like other chairmen, he has the normal levers of committee control: He can schedule hearings, markups, and votes. He can write the first draft of legislation. But the breadth of the committee's jurisdiction means it goes further than that. The

chairman may pick a vote for the Medicare bill because the member is desperate to protect a priority in the tax bill. "Baucus is very good at that," says one top former committee staffer, "at going to members and finding out what they need and what they want. He gets bombarded by members with pet issues. Every time he walks on the floor he comes back with 12 sticky notes. And he looks at that as a key way of putting legislation together. By the end, he has his staff assemble what everyone wants together on a single piece of paper so he can see it all."

BUT MANAGING all those sticky notes, and preventing bills from getting bogged down in the deal-making, demands a lot from the chair. "The adjective that every chairman wants in front of their name is 'tough,' and it is rarely true," says Lawrence O'Donnell, who served as Daniel Patrick Moynihan's chief of staff. Baucus is not known as tough. In fact, he's generally been understood as scared – a senator paralyzed by an acute awareness of his own political mortality. Montana has voted for the Republican candidate in nine of the last 10 presidential elections. In 2000, Bush took the state by 25 points. For much of that time, Baucus was the only Democrat elected statewide. Survival was rarely assured, and so he has developed a political style suited to appeasing a skeptical electorate with a conservative bent.

His appetite for pork – and his skill at wresting it for his state – is so legendary that the *Washington Post* branded him a "High Plains grifter." As one former Baucus staffer put it to me, "He's like the city councilman for the state of

Montana." And, he's well known for his tendency to break with the Democratic Party. In 2001, he was so instrumental in passing Bush's tax cut that he stood behind the president at the bill-signing ceremony, a visual that featured prominently in his 2002 campaign ads. (In 2003, however, Baucus voted against the second round of tax cuts.) He voted to repeal the estate tax and earned a 70 percent approval rating from the Chamber of Commerce.

Also helpful is the fact that Baucus never enters an election underfunded. "One of the rewards I was told about before I selected the committee," says Durenberger, "was someone said, 'You have to run for re-election. This is the best place to raise money.'" Much of Baucus' cash comes from the industries most affected by his committee's legislation. According to the Center for Responsive Politics, this cycle has seen Baucus raise almost \$800,000 from securities and investment firms, \$565,000 from the insurance industry, and \$462,000 from the pharmaceutical industry. Ninety percent of his funds have come from out of state. In total, he's raised more than \$10 million. (Some of which has gone to the Democratic Senate Campaign Committee; Baucus bragged to me that he had more than doubled the target contribution set by Sen. Chuck Schumer.)

Meanwhile, Montana itself is changing. Where Baucus was for two decades the only Democrat elected statewide, his Senate colleague Jon Tester and Gov. Brian Schweitzer were swept into office in the last two cycles and both are considered models of a new type of outspoken, politically confident Western Democrat. Where Republicans used to view Baucus as a vulnerable target, this year they couldn't even find a credible opponent to challenge him.

BAUCUS IS A fifth-generation Montanan. But ask him what pushed him into public service, and you find the answer half a world away. "I took some time off from college to hitchhike around the world," he recalls. "I met interesting people, and I learned that there were challenges everywhere that showed the need for people of goodwill to go to work. So when I came home, I determined to try to do what I could to

help address some of the challenges that we face, here in America."

After finishing law school at Stanford, Baucus spent three years as a lawyer at the Securities & Exchange Commission. He moved back to Montana in 1971 to serve as the executive director of the state's Constitutional Convention. In 1972, he was elected to the Montana House of Representatives. In 1974, he won a close primary and election for Congress by walking 600 miles up and down the district, knocking on doors. By 1978, he was a U.S. senator. He was 36.

At the time, the progressive tradition in Montana politics was still a live force. But not long into the Reagan years, early in Baucus' career, Montana began to look like just another right-wing Western state, in which Baucus's tip-toe survival was the single exception. Now that Montana Democrats have roared back, Baucus is the sole figure who connects the earlier progressive era with that of Schweitzer and Tester. But in being of so many political periods, Baucus is not quite of any of them.

Rather, at this point, Baucus is of the Senate. With about 30 years of seniority, Baucus is one of the more experienced members of the chamber. But though he has many relationships, he has only a handful of friends. "Max was not an easy person to get real close to," says Durenberger. "I remember we traveled to South America with [Sen. Lloyd] Bentsen for two weeks and Max had his nose in a Tolstoy book the whole time and then when we got off the plane he went jogging. He's his own person." ("It actually wasn't Tolstoy," says Baucus. "It was *The Iliad*.")

Baucus does have one incredibly important relationship: his partnership with Chuck Grassley, the Finance Committee's ranking Republican. Even on a committee known for its bipartisanism, the relationship between Baucus and Grassley is surprisingly close. Observers talk often of their unofficial co-chairmanship, where each makes the other a central player no matter who actually holds the gavel. Many credit their closeness to a certain symmetry of temperament and self-conception. Both have a reputation for that slight shadow of insecurity and resentment that comes from not being the flashiest or most graceful or most eloquent guy in the

room. Musing on their relationship, Baucus says, "We're both from sugar states, you know, farm-ranch back-grounds. And sure, everyone's got [an] ego in the Senate, but I tend to think we don't wear our egos on our sleeve, like some others do. That makes it easier for us to work together."

And they often do, frequently to powerful effect. Baucus and Grassley worked together on the State Children's Health Insurance Program reauthorization and expansion (like Baucus, Grassley has a tendency to break with his leadership, and he crafted the SCHIP compromise against party opposition and his own president's veto threat) and were able to construct a bill with hefty bipartisan support. They joined together to build Bush's first tax cut and to craft the Senate version of the Medicare prescription-drug benefit. Their partnership creates a workable process in a committee that can't afford gridlock.

BUT BAUCUS'S HABIT of coming to agreement with not only his committee's ranking Republican but also the Republican Party has often led to sharp tensions with the Democratic Caucus. Baucus has always been moderate, but no more so than red-state senators like Blanche Lincoln of Arkansas or Ben Nelson of Nebraska. When Baucus ascended to chair of the Finance Committee, however, his tendency to cut a deal with the Republicans rather than stand with the interests of the Democratic Party caused no small amount of controversy. In particular, Baucus found himself butting heads with Majority Leader Tom Daschle, who also served on the Finance Committee.

The key event was the 2003 Medicare vote. The original Senate bill had broad bipartisan support, including from such progressive luminaries as Ted Kennedy. But the version of the bill passed by the House of Representatives was a demonstration of Tom DeLay's ability to wield raw partisan power. The two chambers met in conference committee to come up with a final bill, but Republicans largely locked Democrats out of the process. Only Baucus and John Breaux – two Democrats known and mistrusted for

More BAUCUS, Page 22

Members can now use tools on Bar website

The State Bar of Montana staff has been busy this year implementing the login area on its website (www.montanabar.org), which will allow members to:

- Pay for dues online.
- Register online for State Bar CLE events and the Annual Meeting.
- Check your personal information such as address, Bar number, etc.
- And more!

To access the area as a member:

- Go to www.montanabar.org and click on the Login button at the top of the homepage

■ **UserName:** first name and last name (no spaces; example JohnSmith)

■ **Password:** the letters of your first and last name, a two, zero and your bar number (ex: JS201234). Members will be able to change their password once logged in.

Over the coming months we will continue to update you on new features or issues with this area.

Please be aware this is a new element to the website, so we appreciate your patience while we work out any glitches. If you have any questions or difficulties accessing your login area, please contact Jill Diveley at (406) 447-2211 or e-mail her at jdiveley@montanabar.org.

7 lawyers will serve in 2009 Legislature

2 are new to legislative scene

Seven Montana attorneys have been elected to the 2009 Legislature, which goes into session on Jan. 5. And they include two new faces.

The number of attorney matches the record-low number of seven in the 2007 Legislature. Since *The Montana Lawyer* has been keeping track starting with the 1999 session, the number of lawyers has been as high as 14 (2001 and 2003 sessions). Montana continues to be one of the states with the lowest number of attorney-legislators.

Attorneys in the 2009 Legislature are:

Senate

● **Jim Shockley**, Republican from Victor, will serve in his third term in the Senate after serving three terms in the House. He will be chair of the Senate State Administration and the Senate Ethics committees, vice chair of the Senate Judiciary Committee, and a member of the Senate Fish & Game Committee.



● **Jeff Essman**, a Republican from Billings, will serve his third term in the Legislature. He will be chair of the



Senate Taxation Committee and serve on the Committee on Committees, Local Government, and Rules committees.

● **Larry Jent**, a Democrat from Bozeman, was re-elected to his second term in the Senate. He has served three terms in the House. He has been appointed to the Senate Judiciary, Fish & Game, and State Administration committees.



● **Jesse Laslovich**, a Democrat from Anaconda who was chair of the Senate Judiciary Committee and Senate Ethics Committee in the last legislative session, was re-elected to his second Senate term. Although his party has lost its committee chairmanships this session, he will serve on the Senate Judiciary, Highways & Transportation, Local Government, and Rules committees.



House

● **Ken Peterson**, a Republican from Billings, is serving his second consecutive term in the Senate, after having served in the Legislature previously. He is appointed vice chair of the House Judiciary Committee and will be a member of the House Fish, Wildlife & Parks Committee and the Human Services Committee.



● **Anders Blewett** (Alexander Blewett IV), a Democrat from Great Falls who was admitted to the State Bar of Montana a year ago, was elected to his first term in the Legislature in November. Mr. Blewett will serve on the House Judiciary and Natural Resources committees.



● **Mike Menahan**, a Democrat from Helena, was elected to his first term in the Legislature. He will serve on the House Judiciary, Local Government, and Natural Resources committees.



Group Benefits Trust is launching new wellness initiatives

By the State Bar's
Group Benefits Trust

The State Bar of Montana Group Benefits Trust (GBT) will introduce in 2009 a new worksite wellness and health promotion initiative. The trustees selected Matria Healthcare to provide an extensive array of benefits to the GBT membership and covered spouses.

The Group Benefits Trust provides medical insurance to more than 200 Montana law firms covering more than 2,100 lives.

The Trust's new program is called WellnessWorks and includes the following services:

- Wellness assessment (health risk assessment).
- Healthy-living programs.
- Population-based health action activities.
- Web-based health and wellness resources.
- Incentive tracking and program management tools.
- Nurse-based decision support and referral.
- Telephonic wellness and health coaching program.
- Telephonic chronic disease management program.
- Onsite blood screenings.
- Tobacco quitline.

New or improved benefits for 2009 include:

- Annual dental exam paid at 100 percent up to \$100.
- Colonoscopy benefit paid at 100

percent up to \$1,000.

- Mammogram benefit paid at 100 percent up to \$150.

WHILE ESTIMATES vary (some experts say up to 70 percent), there is no doubt that a significant portion of the cost of health care is attributable to a person's lifestyle and therefore to modifiable behaviors.

Here is what the GBT trustees have put together to help you better understand your current health status. If you decide there is no time like the present to begin to live a healthier lifestyle, these are the resources that are now available to you to help you get started:

- Biometric screening through It Starts With Me – a complete blood count, comprehensive metabolic panel and lipid panel for you and your spouse, if covered on the GBT

- A health risk assessment (HRA) – 100% confidential – you are the only person who will see your results, again your spouse is encouraged to take advantage of the HRA

- A \$20 Visa gift card is sent to each GBT participant who completes the screening and another \$20 card, to those who complete the HRA – \$40 available to each covered person and to each spouse

- You are able, should you choose, to avail yourself of a health coach

through Matria Healthcare.

ABOUT 85 PERCENT of the GBT's premiums go to pay for the medical care our plan participants receive. If the membership is able to achieve an overall improved state of health, we will be successful in holding the GBT premiums down.

Now the best news of all – if your firm has at least 60 percent of its employees, lawyers and spouses complete both the health-risk assessment and the biometric screening, your firm will have a premium holiday this July.

Our goal is not to have 60 percent of the GBT adult membership participate in WellnessWorks, it is to have 100 percent participation. Please visit with your agent about the WellnessWorks program and take advantage of what it can do for you and the employees at your firm.

LAW FIRMS all across Montana – including very large organizations like Crowley Law Firm headquartered in Billings, Browning Kalecyk, Berry & Hoven in Helena, and Garlington, Lohn & Robinson in Missoula – combine with smaller firms from Libby to Scobey, to maximize the Bar membership's purchasing power and to provide a stable outlet for lawyers, their family members and employees, to purchase quality medical insurance coverage.

The GBT is a stand-alone entity, sponsored by the State Bar of Montana, but managed by a group of trustees, including several Montana attorneys. ○

Bar to hold its Law School for Legislators Jan. 6

The State Bar of Montana, UM School of Law and the Legislative Council will present the Law School for Legislators in the House chambers on Jan. 6, begin-

ning at 8 a.m.

The half-day schooling on the Montana Constitution and other legal matters affecting the making of laws is the fifth since the Law School for Legislators began in the 2000 Legislative Session. Designed for new legislators, the event during the 2007 Session drew 85 out of 150 legislators.

Speaking at the Jan. 4 Law School will

be Justice Jim Rice; District Judge Jeff Sherlock; Greg Petesch, code commissioner and director of the Legislature's Legal Services Office; Maylinn Smith, director of the UM Indian Law Clinic; Terry Janis, Indian Law Resource Center; Sarah Bond, Attorney General's Office; Chris Tweeten, Bar president and Attorney General's Office; and Mike Meloy, Helena attorney.

Summary of Dec. 5 Board of Trustees meeting

The following is a summary of the Dec. 5 meeting in Helena of the State Bar Board of Trustees:

Special guest – Chief Justice-elect Mike McGrath presented a discussion of the Judicial Branch's budget and legislative issues. He said the Court's proposed budget for the next biennium is finalized and presented to the Legislature by the Governor's office. He said the following Court proposals have made the governor's proposed budget:

- The addition of part-time staff to the Supreme Court to do appellate mediation.

- Some of the money proposed for the Court's Self-Help Law Center and for the drug court program. He said additional money will be requested for both programs by the Court during the legislative session.

Mr. McGrath said the Court also will propose the addition of "five or six judges or special masters" to the district courts, and a pay increase for district judges. State Bar President Chris Tweeten said that Montana lawyers should discuss such issues with their local legislators.

Search for Law School dean – Bar President Chris Tweeten, who is a member of the University of Montana search committee to find a replacement for Law School Dean Ed Eck, said he is working to widen the search to include applications by Montana lawyers, not just applications from law-school academics. He said there are about 30 law schools across the country who also are looking for new deans. He said he expects UM to receive 50 to 100 applications for the UM deanship, and is encouraging attorneys to apply.

Dues and Pro Hac Vice increase petition – Mr. Tweeten said the Montana Supreme Court is "very sensitive" to the need for a decision on the Bar's dues-increase petition to be made before the Bar's 2009 dues statements are mailed out on March 1. He said the Court is set to make the decision within a few days after the 90-day public comment period ends on Feb. 17.

Bar budget for 2009-2010 – State Bar staff provided the

Board with two proposed budgets for the 2009-2010 fiscal year, which begins April 1. The first budget presumed that the Supreme Court would approve the Bar's requested dues increase; the second budget was balanced presuming that there would be no dues increase. The Bar Executive Committee recommended that the second proposal – figuring in no dues increase – would be the best one to approve at this time, with revisions made in April if the Supreme Court approves the dues increase. After a long discussion, the Board agreed and adopted the second proposal.

Montana Justice Foundation report – *Damon Gannett*

Mr. Gannett said that the economic crisis, with its extremely low interest rates, is taking a toll on the IOLTA (Interest on Lawyer Trust Accounts) program which helps fund the Foundation. He said that although \$500,000 in IOLTA revenue was budgeted for the coming year, the projected revenue now is in the \$400,000 to \$420,000 range thanks to economic indicators. He also said the Foundation is holding a series of fund-raising luncheons across the state.

Office of Discipline Counsel report – *Shaun Thompson*

Mr. Thompson said complaints about Montana attorney are down this year. He said there have been about 300 public complaints filed against Montana lawyers by Nov. 30 this year, compared to about 350 last years.

He also discussed the recent Montana Supreme Court decision rejecting the *Billings Gazette's* request for lawyer-discipline records of public-sector attorneys. He said the Court's decision to entertain proposals about the opening of lawyer discipline files could have major effects on Rules 20 and 26 of the Montana Rules for Lawyer Disciplinary Enforcement. Mr. Thompson also outlined a number of other amendments he may propose for the disciplinary-enforcement rules.

Lawyer Assistance Program report – *Mike Larson*

Following on the ODC report above, Mr. Larson said he feels that the Bar's Lawyers Assistance Program, now that it has become even more active, has helped lower the number of complaints against attorney by helping many of those attor-

The Montana Supreme Court set Feb. 17, 2009, as the deadline for comments about the State Bar's petition for a Bar dues increase.

The increase would raise dues by \$50 for both active and inactive members. The Bar, which already had taken some member comments, requested a further comment period for the Court. The new 90-day comment period ordered by the

Comment period for Bar dues increase ends Feb. 17

Court began on Nov. 18, the day the order was signed.

Comments may be submitted by the State Bar membership and the public to the

clerk of the Supreme Court at PO Box 203003, Helena MT 59620-3003 by Feb. 17.

Find the dues increase petition and the comment period court order at the home page of www.montanabar.org

Ms. Brandborg said that on one recent day, she received phone calls about three Montana attorneys who “walked away from their practices.” She said the Bar and its LAP program are having to clean up an average of one such law practice a month. She said that the clients of those attorneys have, for the most part, been understanding if there is an addiction or mental-health issue – “They (the clients) just want their money back.” Mr. Larson said a new lawyer support group is now operating in Billings.

Mr. Manos said that the Bar's equal justice coordinator, Ann Gilkey, is resigning effective Dec. 19 to take the position of chief legal counsel for the state Office of Public Instruction. The Bar will seek an attorney to fill her position because the position now deals with some character and fitness issues.

Mr. Sullivan said that Abigail Houle, the VISTA member who is coordinator of the Committee's Law-Related Education Center, is working with the State Law Library and the Supreme Court's Self-Help Law Program to produce a citizens' guide to the operation of Montana's courts.

She said the Section is helping the Law-Related Education Center roll out a “We the Jury” lesson plan and mock trials for Montana high schools.

Ms. Bessey said that the Section is working to have courts establish paralegal fees as a component of fees awarded to attorneys. The Section also will try to have a definition of “paralegal” accepted by the Legislature. ○

NOTICE: Your 2008 Lawyers' Deskbook & Directory is out-of-date! There have been more than 1,000 attorney address changes in the past year, plus changes to judges, rules, committees and commissions and more. The *2009 Lawyer's Deskbook & Directory* has all this information in a new, completely reorganized format that makes it easier to find what you are looking for. Included are state and federal courts, law-related organizations, local District Court rules, Rules of Professional Conduct, sample fee agreements, the most current and comprehensive listing of State Bar of Montana attorneys, a useful legal resource guide, law firm section and more! And now, you can get a Mid-Year update of the book on CD. Use the order form below to order your copy(ies) today.

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click on the Bookstore tab.

Upcoming CLE seminars for Montana lawyers

January 14 Billings – Holiday Inn Grand

Advanced Employment Law 6.0 CLE credits. Presented by the National Business Institute, (800) 930-6182

January 15 Wolf Point – Roosevelt County Senior Center

Indian Wills 3.0 CLE credits. Presented by Montana Legal Services Assn., (406) 248-7113

January 16 Big Sky – Huntley Lodge

Annual CLE & Ski 10.0 CLE credits, including 1.0 Ethics credit. Presented by the CLE Institute of the State Bar of Montana, (406) 447-2206. See details on program, speakers, and registration at www.montanabar.org under CLE / Upcoming CLEs

January 20 Kalispell – Red Lion Hotel MT

Changes in Civil Procedure / Estate Planning Developments 3.0 CLE credits. Presented by the UM School of Law, (406) 243-4311

January 21 Great Falls – Heritage Inn

Changes in Civil Procedure/Estate Planning Developments 3.0 CLE credits. Presented by the UM School of Law, (406) 243-4311

January 22 Bozeman – Holiday Inn

Changes in Civil Procedure/Estate Planning Developments 3.0 CLE credits. Presented by the UM School of Law, (406) 243-4311

January 27 Miles City – VA Auditorium

Stalking Crimes 13.50 CLE credits. Presented by CNADA, (406) 234-0542

January 30 Bozeman – GranTree Inn

Montana Water Law Conference 6.75 CLE credits, including

Other web & phone CLEs for Montana credit are:

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

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

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

.50 Ethics credit. Presented by the CLE Institute of State Bar of Montana, (406) 447-2206. See details of program, speakers, and registration at www.montanabar.org under CLE / Upcoming CLEs

February 13 Fairmont Hot Springs

Annual Real Estate CLE Presented by the CLE Institute of the State Bar of Montana. Details will be mailed to Bar members.

February 14 Palau, Micronesia

Employment Law 15.0 CLE credits, including 5.0 Ethics credits. Presented by the State Bar of Montana and CLE & Sea, (406) 677-6789

February 20 Bozeman

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

LAW IN CHINA, from Page 5

justice for the client.

There are three distinct phases of a criminal prosecution in China: the investigation stage (in which the police have control of the case), the prosecution stage (in which the prosecutor has control of the case), and the trial stage. Attorneys are most frequently appointed only at the trial stage, often just a few days before the trial begins.

There are about 5,000 full-time legal-aid attorneys, not nearly enough to represent all those charged with crimes. If the case is sent to a private attorney, the

amount paid to the attorney may not cover the actual costs the attorney will incur.

If the attorney becomes too aggressive in investigating the case, there is a distinct possibility the attorney may be prosecuted for interfering with the case. When the case goes to trial, witnesses will rarely appear, there are no rules of evidence that apply and only a very general statutory authority defining what evidence is allowable.

Although the number of attorneys in China is increasing, the percentage of indigent defendants that receive legal representation appears to be decreasing. The most recent statistics available (reli-

able statistics about Chinese criminal-justice information are difficult to obtain) indicate that only slightly more than 9 percent of those accused of a crime receive counsel.

On the other hand, China has come a very long way with its criminal justice system in just a very short period of time. In only 12 years, China has established more than 3,200 legal-aid centers to help the poor with their legal issues. These centers offer free legal assistance in a variety of cases including civil law, administrative law, and criminal cases. China recently amended its Lawyers Law, giving attorneys expanded access to clients in custody. Many academics,

STATE BAR CALENDAR

January 5

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

January 6

Law School for Legislators, 8 a.m.-noon, State Capitol, Helena

January 9

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

January 16-18

29th Annual CLE & Ski, Huntley Lodge, Big Sky

January 20

Group Benefits Trust conference call, 10 a.m.

January 30

Water Law CLE, Gran Tree Inn, Bozeman

February 6

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

February 13

Real Estate CLE, Fairmont Hot Springs

February 20

Bench-Bar Conference, Bozeman

February 27

Oil & Gas CLE, Holiday Inn Grand Hotel, Billings

Coming January 30

On the Water Front The annual Montana water-law CLE

By the CLE Institute of the State Bar of Montana
at the GranTree Inn in Bozeman, Montana

6.75 CLE credits, including 0.5 Ethics credit

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The program & registration brochure has been mailed to State Bar members, or check CLE:Upcoming CLEs at www.montanabar.org, or call (406) 447-2206

Topics include:

- Stream setback ordinances
- New historical consumption use formula for change applications
- Water-quality issues
- Adjudication issues and water-right fundamentals
- Ditch easement issues
- Water commissioners and the enforcement of water rights

lawyers, and jurists, are committed to continuing reform of their criminal justice system. As reform takes place in China, however, it will be at China's pace and according to Chinese ideas of justice.

IBJ is one of many groups working to advance the rule of law throughout the world, and is interested in building a network of attorneys committed to the rule of law. The organization offers many opportunities for lawyers to partic-

ipate as volunteers in its reform work, and can be contacted through its website at www.ibj.org.

JAMES PARK TAYLOR is director, *Criminal Clinical Legal Education Project*, *International Bridges to Justice*; acting *China Program director*, *International Bridges to Justice*; and co-director, *Mansfield Legal Reform Initiative*. He has written several articles for *The Montana Lawyer on international law*.

Virginia Bar says 'no'

The Virginia State Bar Oct. 17 roundly rejected a proposal that would have required lawyers in private practice who represent the public to obtain or maintain professional liability insurance with specified minimum policy limits. The proposal was defeated on an 11-60 vote by the bar's governing body.

State Bar of Montana Bookstore

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

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Landlord-Tenant Disputes

Author: Klaus Sitte, director of Montana Legal Services

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City attorney on front line of growth in Whitefish

By **Lynette Hintze**
Kalispell Daily Inter Lake

Thick skin. Lawyers need a lot of it sometimes.

No one knows that better than Whitefish City Attorney John Phelps. As the legal counsel for a resort town that's seen unprecedented growth in the past decade, Phelps often has been on the front line of controversy.

Neighbors mad at the city.
Developers mad at the city.
Rich people mad at the city...
"You can't please everyone," Phelps said with a smile.

Most recently, Phelps has had his hands full with the "doughnut" lawsuit, filed by the city of Whitefish against Flathead County over the county's dissolution of the 2005 interlocal agreement that gave Whitefish planning control in the two-mile doughnut surrounding the city.

The city is waiting for the Montana Supreme Court to rule in the case, probably sometime next year.

AS CONTROVERSIAL and heated as the doughnut controversy has been, it's not the worst battle Phelps has fought on the city's behalf. The 1998 annexation lawsuit was worse.

"That's the angriest I've seen local citizens anywhere," Phelps recalled about the city's decision to annex five neighborhoods around Whitefish. "Angry citizens would call the city manager and tell him I should be fired."

While some of the 475 affected property owners were willing to be annexed, the opposition was huge. A group of property owners opposed to the annexation sued the city, but ultimately lost their fight when the state Supreme Court ruled in the city's favor.

"When the Supreme Court said we did everything right, then things died down finally," he said.

Phelps has represented the city on all kinds of issues, from the city suing sign companies over illegal billboards to the recent Walton lawsuit over regulations for construction on steep slopes.

After a district judge sided with the city on seven claims made by William and Theodora Walton – who were denied



Kalispell Inter Lake photo

John Phelps in front of Whitefish city hall.

a permit to build on a steep slope and argued that Whitefish's interim critical areas ordinance was arbitrary and too restrictive – a jury later found the city violated the Waltons' right to equal protection. The judge later denied the city's motion to throw out the lawsuit, and it is now at the state Supreme Court for a final decision.

"By and large, the city has been vindicated by the courts," Phelps said, "which means the council is making good decisions. We've had good councils."

Phelps said he is sometimes baffled by lawsuits filed against the city because they challenge "legal principles that are so well-established." He pointed to the recent lawsuit against the city over an illegal billboard in the Greenwood Trailer Court as an example of a case where the city clearly had the law on its side. In that case trailer-court owner Dennis Rasmussen and In Sight

Advertising sued the city, arguing that the sign company's right to equal protection was violated because there are several other off-site signs within the city that haven't been removed. A U.S. District Court judge ruled the city had the right to remove the sign.

"I knew that lawsuit wasn't going to go anywhere," Phelps said.

Being a city attorney doesn't win many popularity contests, he has learned, because there often are people, sometimes lots and lots of people, who don't agree with the city's decisions. The recent case over Mrs. Spoonover's ice-cream sign angered many citizens who felt the ice-cream shop owner should be allowed to keep a colorful mural the city says is advertising and exceeds her allowed sign space.

Phelps said during the ordeal that the city has denied requests from other businesses wanting to use artwork to promote their products. It was a matter of fairness and following city law, he maintained. From the city's point of view, even though the mural was attractive, "it's just another sign."

PRACTICING LAW wasn't something Phelps considered until he was a senior at Wichita State University in his hometown of Wichita, Kan. He majored in psychology, minored in sociology and had a keen interest in anthropology. He loved the social sciences but was at a loss about how to make a living with them. "I was almost ready to graduate from college and I thought, 'What should I do with myself?'" he recalled.

It was around the time of the Watergate scandal and attorneys constantly were in the news. It piqued Phelps' interest. "I wanted to bring about positive social change," he said.

After quizzing one of his brothers, who already had become an attorney, Phelps enrolled in the law school at the

University of Kansas.

"It was very challenging, because it was very dry," he said about studying law. "It wasn't stimulating for me like psychology was. And the competition was fierce."

But Phelps had developed a disciplined work ethic early on in life, attending a Catholic grade school taught by nuns and then a small all-boys Catholic high school taught by Jesuit priests.

"All the stories you hear about nuns are true," he said with a laugh. "They were disciplinarians. It was a good learning experience." He was a serious student, perhaps even "a little bit of a nerd."

Phelps grew up in a middle-class Midwestern family; his father worked for the telephone company all his adult life, his mother was a stay-at-home mom for five children.

"Of the five kids, we have three lawyers, one architect and one with an MBA in international business," Phelps said. "There was never any question that we'd go to college."

PHELPS' FIRST job was at one of the largest law firms in San Diego. His goal was to establish his law career somewhere in the West, where he had fond memories of family vacations in Colorado.

Phelps got a workout at the San Diego firm, delving into corporate, labor and business law, litigation, and "a smattering of different disciplines."

"They insisted on us getting experience," he said. "They trained me."

He met his wife-to-be, Melisa, while he was in law school. She was a civil engineering student at the same university. They got married after he finished law school.

After 3-1/2 years at the San Diego law firm, Phelps took a job in 1981 at a small firm in the ski town of Truckee, Calif., about 10 miles from Lake Tahoe. There he began developing a public-agency practice within the firm, doing legal work for a number of districts that served the unincorporated town.

It was in Truckee that Phelps honed his expertise in municipal law. By the time the Phelpses moved to Whitefish in 1994, their family included a daughter, Katy, and son, Matthew. They now have

a granddaughter, too.

Phelps went to work for Whitefish attorney Fritz Royer and later took over the firm while Royer eased into retirement, still dabbling part time in law.

At the time, the Hedman, Hileman & Lacosta firm had the contract for the city of Whitefish's criminal and civil work.

When that firm's civil attorney moved away, they looked to Phelps.

"They contacted me and invited Fritz and me to join [the firm] and we did, so I took over the city's civil work in 1995," Phelps said.

Phelps spent about 40 percent of his time representing the city of Whitefish during the first few years. He also worked part-time as the city attorney in Eureka for 10 years.

When the city of Whitefish created its own legal department three years ago, Phelps moved to City Hall and assumed the full-time position. "Whitefish gradually needed more and more legal work done," he said.

Phelps found the issues in Whitefish to be similar to those he had dealt with in Truckee. Both are progressive ski-resort communities dealing with the pressures of rapid growth.

ESTABLISHING HIS law career in Whitefish fulfilled Phelps's quest to live an active outdoors lifestyle in the West. He and his wife are avid hikers and backpackers and enjoy working with horses on their small ranch just east of Whitefish.

He's involved in a long list of civic activities, currently serving on the board of the Whitefish Community Foundation, Bob Marshall Wilderness Foundation, Haskill Basin Watershed Committee and Flathead Valley Community College. He's the president of the Whitefish Rotary Charitable Fund, the nonprofit arm of the Whitefish Rotary Club.

Phelps also is a Court Appointed Special Advocate, but hasn't had as much time as he'd like to devote to CASA. "I hope to become an active CASA again when things slow down," he said.

With the whirlwind of growth that's swirled around Whitefish in recent years, "slow down" are words Phelps hasn't had time to consider. ○



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Supreme Court issues new Montana Code of Judicial Conduct

The Montana Supreme Court released its new Montana Code of Judicial Conduct in an order on Dec. 12.

The new rules for judges will take effect on Jan. 1, 2009.

The code is the result of the work of a commission established by the Court in June 2003. At that time, the order said, the Court observed "that Montana was the only jurisdiction in the nation which continued to subscribe to the Canons of Judicial Ethics." The Court established a Commission on the Code of Judicial Conduct to study and consider the adoption of a version of the American Bar Association Model Code of Judicial Conduct.

"The Court determined that adopting a version of the ABA Code would serve the current needs of Montana's judicial branch, provide uniformity, and provide access to a national database of decisions and ethics opinions," the December order stated.

The Commission was chaired by Justice Patricia Cotter and included as its members Chief Justice Karla Gray, Justice James C. Nelson, Justice John Warner, Hon. Katherine Curtis, Hon. Blair Jones, Hon. Karen Orzech, West

Rules for judges go into effect Jan. 1

Yellowstone attorney G. Lewis Scott, Bozeman attorney Richard J. Dolan, University of Montana Law Professor David J. Patterson, and Holly Kaleczyc.

The Commission's work was delayed while the ABA undertook a significant revision of the existing ABA Model Code of Judicial Conduct, the Court said. "It was the desire of the Commission to tailor the Montana Code as closely as possible to the ABA national code, as revised, while adapting it to the realities of the operation of the judicial system and judicial elections in the state of Montana."

Once the ABA Code was finalized, the Commission convened duly noticed open meetings on eight occasions, the Court said.

Ultimately, the Commission's recommendations for the Montana Code of Judicial Conduct were approved by the

members of the Commission, and then submitted for comment to the members of the judiciary and the members of the State Bar, with a comment period closing on June 18, 2008. Thereafter, the Commission revisited its recommendations in light of the comments received. Certain changes to the recommended rules were made as a result of

the comments, the Court said.

On the Judicial Branch website, at

<http://courts.mt.gov>

you can find:

- The Dec. 12 Court order with the new 2008 Montana Code of Judicial Conduct attached as Exhibit A.
- Comments to the rules, provided for interpretation and guidance.
- Concurrences and dissent.

The new Judicial Code also will appear on the mid-year update CD of the State Bar's 2009 Lawyers Deskbook & Directory, which is issued in June.

Judges, court clerks and judicial organizations in Montana will receive a copy of the code from the Court. ○

UM law grad earns award for 'courage'

Robert J. McCarthy, a 1988 University of Montana Law School graduate and a Montana Bar member since 1988, has been given the Oklahoma Bar Association's Courageous Lawyer Award for 2008.

Mr. McCarthy, a field solicitor for the Department of the Interior in both Oklahoma and California, was summarily fired by the department after he gave testimony last year in the long-running *Cobell v. Kempthorne* class-action suit that sought accounting of Indian trust funds held by the government. The action was filed in 1996 in the U.S. District Court for the District of Columbia on behalf of some 300,000 Native Americans for whom the government held trust funds derived mostly from leases of Indian lands and minerals over the

course of 120 years. Oklahoma is home to an estimated 53,000 of the plaintiffs.

As field solicitor, Mr. McCarthy was an attorney for the trustee with an obligation of loyalty to the beneficiaries of the trust. In this capacity, he was subpoenaed by the *Cobell* plaintiffs to testify in the liability phase of the trial. He testified, in part, that he had disclosed gross mismanagement to the secretary of the interior, later to the inspector general, eventually leading to audits that verified his claims. In further testimony, he identified a secret agency



Robert McCarthy

The cat who rules the courtroom

By **Meghan Lulf Sutton**
Great Falls attorney

Fort Benton City Court Judge A.E. “Evon” Anderson has a no-nonsense reputation. During his more than 18-year tenure, Anderson has heard everything, except maybe the hum of satisfaction. However, due to the Court’s newest staff member, the judge is now regularly treated to the sound, in the form of a purr.

OC (short for “Office Cat”), a nearly 15-pound orange tabby, was adopted by Police Chief John Turner in the summer of 2006. The cat first came to Turner’s attention when he became a board member of the Florence Dedman Animal Shelter & Foundation (the town’s no-kill animal shelter). Because OC was aggressive toward other cats, the shelter was forced to house him in his own kennel. Turner, who has arrested plenty of human charges in his line of work, explained: “I just felt sorry for him; it was like he was incarcerated.”

OC assumed his current duties after he was adopted and properly socialized by Turner. Because the Police Department and City Court are both housed in City Hall, not only does OC occasionally object during Anderson’s court proceedings, but he attends City Council meetings, as well. OC regularly “struts his form during council meetings [and] shares his opinions on important matters regarding the city,” said Turner. OC (whose preferred naptime nook is in a cabinet near the baskets for police reports) also “makes sure officers are on time with their subpoenas.” OC also likes to “tapdance on keyboards. When you see errors in officers’ reports, those are not officer errors, but OC’s addition,” claimed Turner.

document that acknowledged a new accounting system that was “nothing more than a database of disinformation.” His observation of lease mismanagement, he testified, was that “essentially, funds collection was on the honor system.”

In the wake of his disclosures, he was hounded out of the Interior Department and the federal service. He testified that he had been locked out of his office after his initial disclosures to the inspector general and was threatened with dismissal just one day after he notified the department that he had received the subpoena.

“Thanks in part to Mr. McCarthy’s selfless act of integrity, the court recently awarded the plaintiffs judgment in the amount of \$455 million,” the Oklahoma Bar said. “He truly exemplified the ethics of the legal profession by acting in accordance with the highest standards in the face of pressure to do otherwise.”



OC in his niche at the Ft. Benton city hall.

Turner’s affection for the cat is clear. The law enforcement head tolerates not only occasional vandalism (string and paper towels the usual victims), but the cat’s penchant for a “green, leafy substance,” as well. Turner bemoans the cat’s “substance abuse issues,” saying that although the cache of catnip is under lock and key, OC occasionally resorts to burglary. “He may need to go to rehab,” Turner sighed.

The judge’s feelings for the court’s most vocal litigant are less positive. “I get along with

it fine as long as it stays away from me,” Anderson chuckles.

OC is seemingly confident with his status as an adored courtroom fixture: after City Hall employee Kathy Buckingham thrice moved OC for this story’s photo-ops, the rotund cat’s patience ran out: he hissed and spat in her arms. “Oh, OC,” an undaunted Buckingham sighed.

Buckingham remained unscathed, which was a surprise to the author of this piece who insisted, while backing away, that she probably had just about enough photos. ○



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their moderate tendencies – were allowed in. It was a slap in the face to the bipartisanship Baucus and Grassley had worked so hard to maintain. Bill Thomas, then chair of the Ways & Means Committee, controlled the process, and he larded the legislation with health savings accounts, private insurers in Medicare, a prohibition barring the government from bargaining down drug prices, and much else on the conservative wish list.

The Democratic leadership in the Senate judged the situation a cruel farce and urged both Breaux and Baucus not to legitimize the process with their presence. As conservative congressional analyst Norm Ornstein said at the time, Democrats with any loyalty to their party would have said, "If you don't let in Tom Daschle – our leader, elected by the Senate to be in the room – then we're not going in the room." But Baucus and Breaux participated, and the bill passed.

The aftermath of the fight was rough. Many in the Democratic Caucus felt betrayed by Baucus, and there was talk of stripping him of his position on the Finance Committee. Daschle mused publicly about the need to impose more party discipline. But others I spoke to sided with Baucus. Their argument went something like this: The resulting legislation may have been deeply flawed, but it was also the largest entitlement expansion since the Great Society. It took government surpluses – most of which were being funneled toward tax cuts – and channeled \$400 billion toward enshrining a permanent drug benefit into Medicare. Restricting government from bargaining down drug prices and boosting payments to the private insurers in Medicare Advantage were grave but correctable failings. (Indeed, Baucus managed to slash payments to Medicare Advantage earlier this year.) By contrast, there's no promise that Democrats could have gotten the basic drug benefit later. Nor is there a promise that the absence of Breaux and Baucus would have killed the bill. And their participation in the negotiations did lead to some genuine concessions – the preservation of generous subsidies for low-income seniors.

"Did I like the way that Bill Thomas

conducted the conference committee?" asks Baucus. "Of course I didn't. But John Breaux and I went into that lion's den. We were fighting for a better result for widows and low-income Americans. And it's hard to pass up \$400 billion on the table for an entitlement expansion. Certainly, we wouldn't have the same opportunity today with our current deficits. And now we have the 2003 law as a start on which to build." The Medicare prescription-drug benefit is now a broadly popular bill, and though many Democrats speak of its reform, none speak of its repeal.

MEANWHILE, THE PAST few years have seen Baucus and the Democratic Caucus reknit their relationship. First, after Daschle was defeated in 2004, the mantle of leadership passed to Harry Reid. Where Daschle and Baucus had a tense relationship, Reid and Baucus have long been close. Both are reserved Western Democrats with a centrist streak. Baucus calls Reid an "excellent leader" and "one of my best friends." Reid is less hands-on than Daschle was and tends to delegate a fair amount of responsibility to his committee chairman. An example came in 2005, when Reid named Baucus the point man in the fight against Social Security privatization. Baucus turned in an unwavering performance. "It would've been easy at the onset to fudge that issue," says one senator. "But Max went out and said we weren't going to unravel the Social Security safety net in any shape or form."

When I meet with Baucus at the City Grille in Denver, he is eager to emphasize this chapter in his story. "When Reid put me in charge of stopping the privatization of Social Security, man that was fun. That was the right thing to do," he says. "I remember President Bush came to Great Falls, and I set up a meeting with seniors at the same time, just across town, just right in his face. I relished the opportunity just to beat down privatization flatly and squarely." His message is clear: I can fight.

Unbidden, Baucus then launches into a retelling of his fight in July to block the 10.6 percent cut in Medicare physician reimbursement. Here too, the message is clear. "I walked away from Senator Grassley," he says. "I tend to

work with Senator Grassley. But there comes a time when you just gotta say, 'Sorry.' These things get watered down too much, it's just not right, so I just broke with him on that and pushed through a Medicare bill that finally got 60 votes. We had to work hard to get those 60, because Grassley didn't agree, but that was the right thing to do. So when Ted Kennedy walked on the floor to cast the 60th vote, that's a moment I'll always treasure."

Later in the conversation, I mention to Baucus that some health reformers believe that the only way Democrats will ever pass health reform is to wall the process off from minority obstruction – in particular, from the filibuster. The way to do that would be to invoke the budget-reconciliation process, which allows legislation dealing primarily with the health of the federal coffers to be fast-tracked through 20 hours of debate and passed with a simple majority. The Clintons hoped to do this in 1994 but were blocked by Sen. Robert Byrd, the self-appointed guardian of the process.

But there's fair evidence that Byrd couldn't stop reconciliation now. Moreover, Congress in the Bush years normalized the procedure, using it for everything from tax cuts to drilling in the Alaska National Wildlife Refuge. But reconciliation remains an aggressive tool for something as controversial as health-care reform. (It's also an uncertain one: Republican opponents could use the rule that bears Byrd's name to mount a parliamentary challenge.) So I ask Baucus whether he could imagine running health care through the budget-reconciliation process. "Yes, I can," he says without hesitation. "The goal here is to get results. And not just results for the sake of results but principled results. And that means working with the other side where you get principled results and means maybe going to reconciliation to get principled results."

NEXT YEAR, Baucus's committee will have to accommodate a new president hungry for an early accomplishment. And Baucus is hoping to convince him to make it health reform. In June, Baucus assembled his whole committee in the Mumford Room of the James Madison Building for a daylong health-care conference called "Prepare for

Launch." The event began with Baucus standing before a projection screen that showed a space shuttle firing its way into orbit. "I think that video captures the essence of what we're trying to do today," said Baucus proudly. "Which is prepare for the launch of health reform."

In this, he is proving the opposite of the finance chair who last presided over a major attempt at health reform: Daniel Patrick Moynihan, who aggressively opposed Clinton's health-care plan in 1994. Moynihan went as far as to appear on Meet the Press to accuse Clinton of using "fantasy numbers" and

declare that "there is no health-care crisis." By contrast, Baucus has spent the last year holding a series of hearings meant to convince his committee and the country that there is a health-care crisis.

EZRA KLEIN is an associate editor at *The American Prospect*. His work has appeared in the *LA Times*, *The Guardian*, *The Washington Monthly*, *The New Republic*, *Slate*, *The Columbia Journalism Review*, and other outlets. He's been a commentator on MSNBC, CNN, NPR, and more.

COURTS

Lawyer-discipline records ruling leaves an opening

From the **Billings Gazette**

The Montana Supreme Court has declined to consider a petition filed by the *Billings Gazette* challenging a court rule that keeps some lawyer disciplinary records secret. But in an unusual move, the state's highest court invited the newspaper and the public to take part in normally closed-door meetings aimed at

revising the rule at issue in the case.

In an order issued on Nov. 26, a panel of five justices dismissed a petition filed by the newspaper earlier in November. The dismissal was without prejudice, which means it could be refiled.

The petition asked the Supreme Court to revise a rule written in the lawyer disciplinary procedures that shields some records from public disclosure. The newspaper argued that the rule violated the public's right-to-know guarantee in the Montana Constitution.

The case began three years ago, when

More DISCIPLINE RECORDS, Page 24

Court fund backs UM lecture series

The Attorney Admissions Fund managed by the U.S. District Court has donated \$50,000 to the Jones-Tamm Lecture Series Trust at the University of Montana's School of Law.

The gift was unanimously approved by the committee that administers the fund following a proposal by U.S. District Judge Donald Molloy, a member of the Committee. Other Committee members include U.S. Magistrate Judge Keith Strong, U.S. Clerk of Court Patrick Duffy, and lawyer representative Sean Goicoechea of Kalispell.

Mr. Goicoechea presented the donation to Dean Ed Eck on behalf of all of the lawyers in Montana who practice law in the U.S. District Court.

Judge Molloy's recommendation to the Committee noted that the ongoing lecture series "provides a significant benefit to the Bar, and there are few law schools in the country that can boast of a lecture series that has hosted five [U.S.] Supreme Court justices."

The donation comes from a fund that is composed of admission fees paid by lawyers to practice before federal court. Money from the fund may be used for activities that benefit the bench and bar in the administration of justice.

Earlier this year, the Committee approved the full funding of a three-day seminar for high school government teachers which focused entirely on the role of the judiciary in society. Clerk of Court Duffy said the seminar, known as the Montana Judicial Institute, will be an annual event. ○

ORAL ARGUMENTS

The following oral arguments are scheduled before the Montana Supreme Court:

January

■ Case No. DA 07-0752 – REVELATION INDUSTRIES, INC., formerly known as Revelation Engineering, Inc., Plaintiff and Appellant v. ST. PAUL FIRE & MARINE INSURANCE COMPANY, Defendant and Appellee.

Oral argument is set for Wednesday, Jan. 14, at 9:30 a.m. in the courtroom of the Montana Supreme Court, Helena.

■ Case No. DA 07-0751– JAYDON PAULL, Plaintiff and Appellant v. PARK COUNTY MONTANA, and STATE OF MONTANA, Defendants and Appellees.

Oral argument is set for Wednesday, Jan. 14, at 1:30 p.m. in the courtroom of the Montana Supreme Court, Helena.

■ Case No. DA 07-0478 - STATE OF MONTANA, Plaintiff and Appellee, v. DAVY LEE KENFIELD, Defendant and Appellant.

Oral argument is set for Wednesday, Jan. 28, at 9:30 a.m. in the courtroom of the Montana Supreme Court, Helena.

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

the newspaper sought the disciplinary records of Moira D'Alton, a former Billings deputy city attorney who was found to have violated rules for lawyer conduct while working as a city prosecutor.

Helena attorney Mike Meloy, who represents the newspaper in the case, praised the decision of the justices to invite public comment on a possible change to the Supreme Court rule, while also leaving the door open for the petition to be refiled.

The current Supreme Court rules allow lawyer discipline

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records to remain secret if the lawyer admits to violations before the filing of a formal complaint by the Office of Disciplinary Counsel.

The newspaper argues that the public has a right to know the details of misconduct by lawyers who work for the government. In previous rulings, the Supreme Court has found that information on misconduct by some public employees, such as police officers and teachers, must be released because the person holds a position of public trust.

While dismissing the petition, the justices said the newspaper's case has "arguable merit," but that it would be more efficient to dismiss the *Gazette's* petition and begin public proceedings aimed at revising the rule.

"Such an approach will eliminate the necessity of adversarial briefing in this matter, and streamline the proceeding while allowing input from the *Gazette*, the Office of Disciplinary Counsel, the Commission on Practice, the State Bar of Montana, and any and all other persons or organizations with an interest in this matter, as the rulemaking proceeds," the order states. Meetings to consider the rule change will begin within 60 days, the order states, and notices of the meetings will be sent to those with an interest in participating. ○

CRIMINAL LAW

County attorney will become state's new chief prosecutor

From the Lee Newspapers State Bureau

Brant Light, Cascade County attorney for the past 14 years, will take over in 2009 as the Justice Department's chief prosecutor and trainer for county attorneys statewide.

Light, a Democrat, will replace John Connor as Montana's chief criminal lawyer, who is retiring this month after more than 40 years at the Justice Department.

Montana's chief criminal lawyer handles certain felony prosecutions and helps train Montana's 56 county attorneys and their staffs.

McGrath, who is leaving the post at the end of this year after winning an election to serve as chief justice of the Montana Supreme Court, worked with Attorney General-elect Steve Bullock to select Light. "He [Mr. Light] has some great ideas about reaching out and providing training with prosecutors in our communities," Bullock said.

McGrath said he expects Light will focus about three-quarters of his time training the state's prosecutors, with the rest working on state prosecutions.

Light said he is excited for the new post, which will combine his lengthy career as a prosecutor in a busy office with his other work as a trainer and teacher.

Originally from California, Light first came to Great Falls in 1974 with the U.S. Air Force when he was stationed at Malmstrom Air Force Base. In 1986, he graduated from the

University of Montana School of Law and moved back to Great Falls to work as a deputy prosecutor in the Cascade County Attorney's office. Later he worked as justice court judge before being elected county attorney 14 years ago.

McGrath said Light's lengthy experience handling "lots of misdemeanors, lots of felonies," combined with his lawyer training experience, made Light stand out.

"He has run an office that has a very large caseload," McGrath said, adding that such experience will be valuable in training new county attorneys.

Light said that while "no one can replace" Connor, he is excited to take the office in new directions. He said he'd like to launch regional training programs and generally beef up the state-offered training for Montana's prosecutors.

Light said his family will stay in Great Falls, although he may work out of both Helena and Great Falls. ○

Billings lawyer is picked to lead area's defenders

Attorney David Duke started work on Dec. 9 as the new regional administrator for the state Public Defender's Office in Billings, the *Billings Gazette* reported.

Duke takes over from Kris Copenhaver, who left the job last month after leading the office for two years. The regional administrator for the state agency oversees indigent criminal defense services in Yellowstone, Big Horn, Carbon, and Stillwater counties.

"I selected him because of his experience and his compatibilities with my vision for this system," said Montana's Chief Public Defender Randi Hood. Mr. Duke will be paid \$80,000 a year to start, the *Gazette* said.

Mr. Duke previously operated a private law firm in Billings and also did legal work for the public defender's office representing juveniles in youth court, the *Gazette* said.

The *Gazette* also reported that Ms.

Hood has hired of another Billings attorney to work in the local defender's office as a supervisor. Roberta Drew will oversee attorneys handling misdemeanor cases.

Ms. Drew returned to the office early this month after twice having been fired by county officials when public defenders were county employees. Ms. Drew prevailed in a complaint alleging gender discrimination and retaliation by the county after she was fired in 2002. She returned to the office in 2004, only to be fired a second time. She also was reprimanded by the Montana Supreme Court and ordered to spend 30 days in jail by a state judge.

Ms. Hood said Drew was one of three candidates for the misdemeanor case supervisor. After interviewing the three candidates, one withdrew her application. Of the remaining two candidates, Drew scored higher on her interview and has the "experience and skills for the job," Ms. Hood said. "Frankly, people deserve a second chance." ○

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NEWS ABOUT MEMBERS

P. Mars Scott Law Firm in Missoula announced that three new associates have joined the firm



■ **Ronald A. Thuesen** has a bachelor of science degree from Rocky Mountain College and a juris doctorate (2002) from the University of Montana School of Law. He will concentrate in general practice at the Scott law firm with an emphasis on family law.

■ **Kerry N. Newcomer**, a 1980 graduate of the University

of Montana Law School, has substantial family law litigation experience. Mr. Newcomer has also served as a mediator, settlement master and appellate mediator. Mr. Newcomer is an advanced practitioner (Family Section) member of the Association for Conflict Resolution, and a full member with family designation of the Montana Mediation Association.



■ **Thorin A. Geist** received his juris doctorate from the University of Montana School of Law in 2007 and dual bachelors of arts degrees in Psychology and Justice from the University of Alaska Fairbanks in 2005. Mr. Geist will concentrate in general practice, with an emphasis in family law and personal injury litigation.



Marta N. Farmer has joined the staff of The Law Office of Carl White as an associate attorney. Ms. Farmer joins Carl White and senior associate Mark Mackin in the general practice of law in Havre, where they serve clients across North Central Montana. Ms. Farmer is a 2005 graduate of MSU in Bozeman and a 2008 graduate of Appalachian School of Law in her hometown of Grundy, Va. She was admitted to the State Bar of Montana on Oct. 7. Her practice will emphasize criminal, family, and contract law, as well as mediation.

Amanda R. Davenport Lenning has become an associate with the Billings law firm of Patten, Peterman, Bekkedahl & Green. Ms. Lenning grew up on a ranch near Forsyth, and graduated valedictorian of her class in Colstrip, where she played basketball and worked with her family on the ranch. She received a BA in Business Administration with an emphasis in accounting and finance from the University of Montana in 2004, and attended law school at Gonzaga University, where she was a member of the *Gonzaga Law Review*. Prior to her employment with the firm, Ms. Lenning clerked for Judge Gregory Todd. She is a licensed member of both the Montana and Wyoming State Bar Associations. Her areas of practice



include business law, corporate law, partnership law, business litigation and collections. Ms. Lenning can be reached at 252-8500 or alenning@ppbglaw.com.

Jim Elshoff, who practiced in Montana for 23 years, has been admitted to practice in the federal courts in Texas. He continues to teach criminal procedure at Texas State University — San Marcos, he teaches Spanish at a private school, and he has begun teaching ESL (English as a second language) to selected individuals. Also, he has been selected to serve as pastor of a Christian church in Austin. Mr. Elshoff authored the “Montana Family Law Handbook” and “Montana Criminal Law Casebook.” He remains licensed in Montana and is available for interstate referrals: jelshoff@earthlink.net.

Former Montana attorney general **Joseph P. Mazurek** will retire from the practice of law but will remain “of counsel” to the law firm of Crowley, Haughey, Hanson, Toole & Dietrich in its Helena office. Mr. Mazurek was raised in Helena and received a bachelor of arts degree in Business Administration from the University of Montana in 1970. Following two years of service in the Army as a 1st lieutenant in the Air Defense Artillery, he attended the University of Montana Law School and graduated in 1975. He served in the Montana Senate from 1981 through 1992 while engaged in private practice in Helena with the firm of Gough, Shanahan, Johnson & Waterman. He was elected attorney general in 1992. Following eight years as attorney general, Mr. Mazurek joined the firm in 2001, became a partner in 2002, and served on the firm’s executive committee until his retirement.

The law firm of Crowley, Haughey, Hanson, Toole & Dietrich has two new associates:

■ **Bruce F. Fain** graduated from the University of Idaho College of Law in 1990 with honors, where he was Judicial Survey editor of the *Idaho Law Review*. Since 1995, Mr. Fain has been with the firm Murphy, Kirkpatrick & Fain. His practice focuses on bankruptcy, commercial litigation, commercial transactions, employment, real estate, banking and construction law. He will practice in the Commercial Department in the Billings office.

■ **Stewart R. Kirkpatrick** graduated from Brigham Young University with a BA in History in 1983. Mr. Kirkpatrick obtained his JD in 1986 from Creighton University School of Law. He has been with the firm Murphy, Kirkpatrick & Fain since 1990. His practice focuses on health care, business and business associations, commercial, and real estate law. He will practice in the Commercial Department in the Billings office.

Andrew J. Nelson has joined the staff of the Federal Defenders of Montana as assistant federal defender. Presently a partner with Mudd Nelson law firm in Missoula, Mr. Nelson will begin his duties at the Missoula branch of the Federal Defenders on Jan. 5. Mr. Nelson is a 2000 graduate of the University of Montana Law School and has an honors degree



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in Political Science from the University of Canterbury in New Zealand. His undergraduate degree (BA Political Science, 1994) is from Northwestern University. He was previously an associate attorney with the law firm of Smith & Thiel in Missoula. Prior to settling into private practice, he was a law clerk to Justice Terry Trieweiler of the Montana Supreme Court. Mr. Nelson was a member of the Criminal Justice Act panel for the District of Montana for the past five years.

The Missoula law firm of Spoon Gordon announced that **Will Ballew** has become associated with the firm. Mr. Ballew as formerly with the Datsopoulos, MacDonald & Lind law firm. His practice will focus on general negligence, medical malpractice, and general commercial litigation. He is licensed to practice in Montana, Texas, and New Mexico. Mr. Ballew is a graduate of the University of Houston School of Law and Williams College. He is member of the board of directors for the Five Valleys Land Trust and the University of Montana Rodeo Team.

Vern Woodward and **Jo Messex Casey**, members of the firm of Hendrickson, Everson, Noennig & Woodward, announced the opening of their new office, **Woodward & Casey**, effective Jan. 1. The firm will be located at 10 N. 27th St., Suite 200, Billings MT 59101. The new phone number is 294-5585; fax 294-5586. The firm will emphasize criminal defense, family law, auto accident cases, and general civil litigation.

DEATHS

Sandy McCracken, Great Falls attorney

Former Great Falls attorney Cresap Story "Sandy" McCracken, 77, died of natural causes on Dec. 7 at his home in Highwood.


Mr. McCracken was born in Livingston. He was the great-grandson of Nelson Story, who was a founding father of the Gallatin Valley, and one of the first men to drive cattle from Texas to Montana through hostile Indian territory in the 1860s. Mr. McCracken was a lifetime member of the Sons and Daughters of Montana Pioneers.

Mr. McCracken was raised in Livingston and Bozeman, graduating from Gallatin County High School in 1949. During his high school years, he was on the Bozeman ski team. After graduating high school, he spent a winter working in Sun Valley. He joined the Marine Corps in 1951 and was stationed in North Carolina and California. Upon an honorable discharge, he went to college and law school in Missoula on the GI Bill, and worked nights for the Northern Pacific Railroad. After graduating from law school, he clerked for Justice James Harrison of the Montana Supreme Court.

Mr. McCracken was recruited in 1959 by the Great Falls law firm of Church, Harris, Johnson & Williams, where he practiced law until his retirement in 1992. He was the president of the State Bar of Montana in 1983-1984.

As an avid outdoorsman, Mr. McCracken also loved hunting and watching his hunting dogs work. He was one of the founding members of the "Ski Bums" and enjoyed the annual Ski Bum trips throughout the U.S.

Survivors include his partner, Marjorie Gray of Highwood, and two daughters.




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Community Foundation Guide offered to Montana attorneys

A newly published "Guide to Supporting Montana's Local and County Community Foundations" may be an interesting resource manual for Montana attorneys whose practices include wills, estates, and trust.

The Guide, produced by the Big Sky Institute for the Advancement of Nonprofits, lists 81 community foundations and local endowments across Montana that might be included in clients' bequests. Full contact information is given for each organization.

Copies of the Guide will be provided by the State Bar free to Bar members. They can be ordered by calling Robin Demaray at (406) 442-7660, by e-mailing rdemaray@montanabar.org, or by mailing in the State Bar Bookstore order form found in *The Montana Lawyer* each month (see Page 15 of this month's edition).

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Send classified ads to *The Montana Lawyer* magazine, P.O. Box 577, Helena MT 59624; or fax to (406) 442-7763; or e-mail to cwood@montanabar.org. Please include billing address. The deadline for the February issue is Jan. 25. There is no separate January issue.

Call (406) 447-2200 for more information.

ATTORNEY POSITIONS

COUNTY ATTORNEY: Prairie County, Terry, Mont., is accepting applications for the position of county attorney. Applicant must be licensed to practice law in Montana. This is a half-time position, salary \$41,625. Full benefit package included. Starting date would be approximately Jan. 12. Submit resume and cover letter to Prairie County Commission, PO Box 125, Terry MT 59349-0125 or call (406) 635-5575. Deadline for applications is Dec. 31 at 12 p.m.

ATTORNEY: Bozeman firm seeking attorney with 4-plus years litigation experience. Cases involve natural resources, business, construction, and general litigation. Performance-based compensation. Apply with writing sample and resume to wlf@law-advisor.com.

DEPUTY COUNTY ATTORNEY: The Hill County Attorney's Office is seeking a full-time deputy attorney. Must have JD from accredited law school, admitted to Montana bar or making admission. Experience in criminal law and trial experience is preferred. For a detailed job description, contact the Hill County Personnel Office at (406) 265-5481, ext. 239 or e-mail personnel@co.hill.mt.us. Salary depends on experience, plus benefits. Submit a letter of

interest, transcript, resume and references to the Hill County Attorney's Office, Hill County Courthouse, 315 4th Street, Havre MT 59501.

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ASSOCIATE: Brown Law Firm PC of Billings is seeking an associate with 1-3 years litigation experience. Please send a letter of application, resume, writing sample, law school transcript and references to Cindy Jam, Office Manager, Brown Law Firm PC, PO Drawer 849, Billings MT 59103-0849. All applications will be confidential. www.brown-firm.com.

ATTORNEY: Dawson County Domestic Violence Program is seeking a full-time civil legal attorney to work in Eastern Montana. Case load will be divided between family law and sexual assault cases. May participate in out reach and community legal education. Salary depends on experience. Send a resume and a sample of your legal writing. Applicants must be admitted to practice

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ASSOCIATE: Great Falls firm seeks full-time associate attorney interested in civil litigation practice. Prior experience preferred. All applications will be kept confidential. Please submit cover letter, resume, writing sample and transcript to Stephanie Hollar at Smith, Walsh, Clarke & Gregoire PLLP, PO Box 2227, Great Falls MT 59403.

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

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