

# THE ATTRACTIVE NUISANCE

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## The President's Message

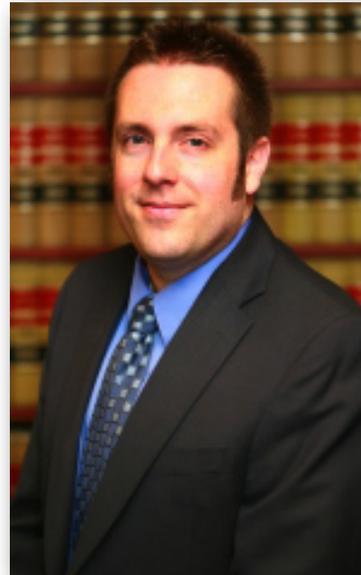
*By Brian Joos, Esq.*

**Last** week in Helena, I had the good fortune to represent our local bar association at the state's bar leadership conference. While I am delighted to report that the current president of the Montana Bar also went to Duquesne University for law school (she graduated before my time there, but still, Go Dukes!), the highlight of the conference came from Chief Justice Mike McGrath, who presented some stunning findings to those assembled. Montana courts, he reported, processed 350,000 cases last year, with district courts processing a record number: in excess of 50,000 cases. They continue to see increases in filings as they experience deep budget cuts. What this causes, Justice McGrath told us, is backlogged courts, particularly in civil matters. While the Courts must give criminal cases, child abuse or custody cases, mental commitments and youth court cases priority under our body of laws, the building contractor trying to resolve a contract dispute or the small business trying to collect a bad debt too frequently experiences long delay. In other

words, he said, small businesses and working people pay a disproportionate share of the price.

Many of us know this to be true. On behalf of such clients, I have had dispositive motions pending before various Courts for time periods measured in years. When a financial institution client, under constant pressure from regulators and auditors, asks me how long this matter or that matter will take to resolve, the only honest answer I can give is "I have no idea." It is a difficult thing to explain to a client why his or her case seems to be forgotten, why he or she paid legal fees and abided by deadlines only to sit and wait for so long, and why there is nothing I can do to get a ruling. The old cliché that justice delayed is justice denied is absolutely true.

Justice McGrath's key answer to this problem is judicial accountability; he wants to publish statistics for each Judge demonstrating to the public the percentage of each Judge's cases are resolved within prescribed



## Upcoming:

May 6, 2013

Suicide Prevention  
by Mike Larsen

“acceptable” time frames. For civil cases, this means two years, or 730 days. While I do not doubt that such an approach has value, I think that it should be paired with other efforts because it’s also important not to place the whole problem in the lap of our overworked, understaffed, and underpaid judiciary. But it is nonetheless encouraging that this issue has finally attracted the attention of people in positions to do something about it, like our Chief Justice, and that others are thinking about it in new ways as a result of the conference.

Also encouraging is how well our local bar stacks up against what other local bars are doing across the state. Many of them struggle just to get a bit of attendance at meetings or to pull together a yearly social event. Most do not have a newsletter, and many do not have law day activities or active pro bono programs like we do. Some local bars once had these things, but have now fallen into disorganization. We are very fortunate to have such a dedicated and involved membership in the Flathead, and I would like to thank each and every one of you for every bit of engagement you have with the local bar. But now is no time to get complacent and pat ourselves on the back too much. Dedicated volunteers do not frequently serve forever, and as the saying goes, many hands make easy work. So it’s crucial now as much as ever that we continue to seek to recruit new people to help out and to encourage long-time members to re-connect with us. If you’re on the fence about coming to lunch this month, I say do it and bring a friend; you’ll get a CLE credit and you’ll have taken the first step in helping us continue our tradition of a strong local bar.



Brian presenting at the BLI



Have a suggestions for a MYSTERY PROFILE in an upcoming newsletter? If so, please contact Kim Christopherson at 752-1100 or at [ktc@talktomylawyer.biz](mailto:ktc@talktomylawyer.biz)

## **State Bar Trustee's Report**

**ADVANCED TRIAL ADVOCACY PROGRAM AT UM:** May 27 – 31, 2013, is the 25<sup>th</sup> Annual Advanced Trial Advocacy program at the University of Montana. The program is a week long, intensive and hands-on course in trial advocacy. During the week, attendees will see demonstrations from seasoned attorneys and judges from around the state. In addition, they will practice their own trial advocacy skills and receive critiques from the faculty. The week culminates in a mock trial, with attendees preparing and presenting voir dire, opening and closing statements, and examination of lay and expert witnesses. Enrollment is limited to 36 and registration is on a first-come, first-enrolled basis. The cost is \$1,200 plus an online registration fee and includes instruction books and materials, continental breakfast and brown bag lunches. Additionally, the program provides 31.25 CLE credits – that's over two years worth of CLE credits! Having attended the program in 2009, I can attest that it is time and money well spent. Register online at: <http://www.regonline.com/Register/Checkin.aspx?EventID=1214947>.

**STATE BAR AWARD NOMINATIONS DEADLINE:** May 15, 2013, is the nomination deadline for the William J. Jameson Award, the Karla M. Gray Equal Justice Award, and the George L. Bousliman Professionalism Award. The William J. Jameson Award recipient is selected by the Past Presidents Committee and is the highest honor bestowed by the State Bar of Montana. The George L. Bousliman Professionalism Award is bestowed upon an attorney or law firm that has established a reputation and tradition of professionalism as defined by Dean Roscoe Pound, "pursuit of a learned art as a common calling in the spirit of public service." The Karla M. Gray Equal Justice Award is selected by the Access to Justice Commission and is intended to honor a judge from any court who has demonstrated a dedication to improving access to Montana courts. If you wish to nomination an attorney, firm or judge, you may obtain nomination forms by visiting <http://www.montanabar.org/associations/7121/files/2013Gray.pdf>.

Additionally, the Neil Haight Pro Bono Award nomination deadline is July 1, 2013. Selected by the Justice Initiatives Committee, the Neil Haight Award is intended for an attorney who has provided outstanding pro bono services. More information, as well as the nomination form, is available at <http://www.montanabar.org/associations/7121/files/2013Haight.pdf>.

**CLE REPORTING DEADLINE:** Annual CLE Affidavits will be mailed out to Bar members on April 15, 2013. They must be postmarked by May 15, 2013. Attorneys may attend and report CLE up until May 15<sup>th</sup> without penalty. Contact Kathy Powers, MCLE Administrator, with any questions on CLE credits or reporting. She can be reached at (406)447-2207 or [kpowers@montanabar.org](mailto:kpowers@montanabar.org).

## Suggest a CLE Topic

Your EC is busy planning CLE luncheons for September, October, and November. We are working on setting up presentations about tax issues for general practitioners and about the ins-and-outs of our new State Supreme Court. If there are other topics you would like to see covered at an upcoming luncheon, please contact us and let us know.

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## News About Members

**Ramlow & Rudbach, PLLP** has moved into a new office located at 401 Baker Avenue, Whitefish, Montana 59937. Their phone and fax remain the same: 406-862-7503 (Phone); 406-862-7530 (Fax). The four attorneys practicing there are James Ramlow, Karl Rudbach, Angela Vaninetti and Christina Larsen.

**Jeff Ellingson** has joined Kaufman, Vidal & Hileman, P.C. at their office located at 22 2nd Avenue West in Kalispell.



## Montana Justice Foundation

The MJF Board currently has two open seats, and the Nominations and Governance Committee is seeking your input. The open seats come from State Bar Area A (Flathead and Lincoln Counties) and from Yellowstone County; however, suggestions from any area of Montana are welcome.

If you have a suggestion, please send it to [kkuykendall@mtjustice.org](mailto:kkuykendall@mtjustice.org) by Tuesday, May 7 and include a brief biography. Thanks.

## News from State-Side

### LEGISLATIVE WRAPUP

This year's legislative session happily lacked the drama of 2011. The State Bar had far less work to do this session in opposing bills which targeted attorneys and the Courts. This session, we again supported the full judiciary budget (which passed despite various amendments to reduce it). This was about the only bill we supported. The State Bar Executive Committee met weekly (by telephone) with our two paid lobbyists, to create the "Bill Watch List." This list and the positions taken are summarized in each *Montana Lawyer* with the last report on page 6 of the April issue. We do not lobby on any bill on which members might disagree. Mostly, we monitored selected bills while taking no stance. Several we opposed, including HB252, which provided a storage center in the Secretary of State's office for notary journals (the State Bar has always opposed the notary journal). This bill passed. We opposed HB290 which would have allowed the jury to judge facts *and the law* of a case in a verdict. We opposed a repeat proposal to increase the fee (to \$500.00) and complicate the requirements for district judge peremptory disqualification. This bill, SB85 was tabled in committee. We opposed SB152 which proposed a Constitutional amendment to revise qualifications for Supreme Court Justice Candidates. This bill tabled in committee.

Last Friday at the State Bar, Local Bar Leadership Institute meeting, Chief Justice McGrath personally thanked the State Bar for its visibility and presence at the legislature and its voice on key legislative issues affecting the bar and the judiciary. The lobbyists expense was a fraction of 1% of our annual budget in dues and the funds were well spent.

### CUBA DELEGATION

From February 23 - 28, 2013, a delegation of Montana attorneys travelled to Cuba for a trip sponsored by Professionals Abroad, Washington, DC, the Cuban Institute of Friendship with Peoples, Amistor Cuba, S.A. and the Cuban government. Attorneys from other states also attended. This was the first such trip allowed by the Cuban government. From Montana, Peggy Probasco, Ed Eck, Tim Geiszler, Julio Morales (who grew up in Cuba), Wilton Strickland and Matt Thiel attended. Matt, Julio, Tim and Peggy reported on their trip at the April 12 Trustee meeting. I recommend you visit with an attorney who attended, but their experience was enlightening. The written report is quite sanitary, but the oral report regarding standard of living, governmental influence and the "justice system" are still pretty stark. When we feel critical of our legal system and judiciary, we needn't look very far to appreciate what we have.

**ACCESS TO JUSTICE**

This is a quickly moving target occupying attention of local Bars, other state bar associations, the American Bar Association and the judiciary nationwide. In Montana, the Supreme Court consolidated committees and commissions into the new Access to Justice Commission which has over thirty members. There are numerous subcommittees, including a Pro Bono Admission Requirement Committee (studying a recommendation to require fifty hours of pro bono work before a law student graduate can become licensed) and a Committee on Self-Represented Litigants (pro se litigants). Judge Ortley and I are members of each. These subcommittees will report back to the parent Access to Justice Commission, which will then give recommendations to the Montana Supreme Court for possible rule amendments. My early view is that there are new, untried and unconventional ideas being forwarded. Some are worth discussing. Others should simply not be implemented. But I agree that discussion and careful consideration are at least worthwhile.

On the *pro se* litigant side, State Bar officers have met with local Bar leaders in each of the major cities this last year. No news; every community struggles with pro se litigants. Also unsurprising is that every community has a different angle for addressing the problem. Janice Frankino Doggett (State Bar Equal Justice Coordinator, who staffs the Access to Justice Commission) and I agree that this issue requires a state-wide solution. The subcommittee on self-represented litigants has struggled for agenda and purpose, but I am hopeful it can be steered into a direction which incorporates some of the better ideas from around the state. Again, these topics are a moving target and the problems and issues are changing more quickly than our ideas and solutions can be formed.

**CONTESTED ELECTIONS**

This year your ballot will show a contested race for State Bar Secretary/Treasurer. Bruce Spencer of Helena and Tammy Wyatt-Shaw of Missoula are each running. There are contested races for Trustee positions in Helena and Billings. Mark Parker of Billings, Montana is running unopposed for President-Elect. You're stuck with me and Marybeth Sampsel for another year.

**BAR SPONSORED LEGAL RESEARCH**

I chair the committee that is investigating a State Bar-sponsored legal research program. We are looking at proposals from *Fastcase* and *Casemaker*. *Westlaw* and *Lexis* declined to participate. The committee will likely make a recommendation to the Board of Trustees at their September meeting. If adopted, the program might roll out in 2014 and would provide free, online legal research to all Montana-licensed practitioners. Funding has not been determined, but if approved, would likely be paid for with a dues increase. We are looking at a variety of packages, but

the approximate cost to members would vary between \$8.00 and \$15.00 per month. This is a work in progress and nothing has been decided yet. Locally, Eric Hummel also serves on this committee.

### **ELSEWHERE IN THE NATION**

To repeat, the practice of law has changed more in the last five years than the previous fifty. It will change more again in the next several years than the previous five. We not only struggle to keep up with societal changes, such as the pro se litigation explosion, but technology is nearly obsolete once installed on your desktop. Add to this, the new wave of what I will call “protectionist rules”. For example, California has formed a task force on admissions regulation reform, some proposals include 250 hours of clinical experience in the third year of law school, fifty hours of pro bono service in the second and third years of law school prior to admission (similar to New York and what Montana is considering). The Washington Supreme Court has adopted a “limited license legal technician rule” to essentially license paralegals to practice law in limited cases. (Various legislative attempts in Montana to do the same have been turned back in each of the last five sessions.) California is considering an annual competency exam for attorneys age 70 and older.

But some proposals have merit: the Washington State Bar now provides resources for selling and buying a legal practice in the State of Washington, anticipating a deluge of retiring baby-boomer lawyers. It includes step-by-step instructions for listing a practice for sale, and tips for transitioning the practice to a buyer. The Washington State Bar site now provides free, online listings of solo practices available for sale.

My goal is to keep you informed and to represent the interests of our rank and file members for sensible practice of law. Keep those cards and letters coming.

Respectfully submitted

*Randy Snyder*, 2012-13 President-Elect

## **Law Day Mock Trial – Success!**

Well, it’s official: the Law Day 2013 murder mock trial presented on Tuesday, April 29 in the Flathead County District Court was a smashing success! The jury delivered a verdict of “not guilty” to the delight of the defendant, Biggie B. Wolf. The only surviving victim, Miss Petunia Pig, was understandably distraught and still remains under her doctor’s care. So many people – too many to mention – were simply raving about the level of professionalism, use of appropriate humor, seriousness of the court process under the guidance of Judge Ortley, and the valuable education received by the students fortunate enough to be there. We have a

professional video of the entire proceeding. The Executive Committee will plan on how to use that video for schools, community organizations and other bar associations.

The back story of the Law Day 2013 project provides bit of some understanding of Law Day and how the NWMBA honored this day in our community. The national theme for Law Day 2013 is Realizing the Dream: Equality For All. The year 2013 marks the 150th anniversary of the issuance of the Emancipation Proclamation and the 50th anniversary of the inspirational words of Rev. Dr. King's I Have a Dream speech, one that continues to resonate and challenge us to live up to our national ideal of equality under the law.

It was in the vein of exploring equality under the law that the Northwest Montana Bar Association presented a mock jury trial, *State of Montana v. Biggie B. Wolf*, to show that even a Wolf can get a fair trial in Montana. The trial is a criminal case, based upon the classic children's tale, *The Three Little Pigs*. This murder trial was presented with humor and realism in the Flathead County District Court, with a real judge, real lawyers, real sheriff, victim, defendant, witnesses and, of course, a jury. Respect for the court, the courtroom, and the system was emphasized by everyone involved.

Students were selected from the jury pool to sit, deliberate and deliver a verdict in the murder case of *State of Montana v. Biggie B. Wolf* which is very loosely based on the children's classic tale, *The Three Little Pigs*. The only information the students had prior to the actual trial is a copy of a "newspaper article" describing the incidents leading to the trial. The effect of this "media coverage" was tested among the students to determine if their pretrial and post-trial opinions changed.

This project was based on the truly collaborative effort by all. Everyone was a star in the trial, although if NWMBA Oscars were to be awarded, it would be a very tough choice. The defense witnesses were realistic (Julianne Hinchey as a perky, "I'm just a little girl" Little Red Riding Hood adorned in a full length red cape; Stephanie Breck, Dr Wheeze N Sneeze, Board Certified Allergist, dressed in her white lab coat, serious glasses and severely pulled back hair; Brian Muldoon as Frank Lloyd Builtwright, a structural engineer (and a dramatic physical transformation, including "nerdy" jacket, pants, shocking socks and eye glasses and slicked back hair all pulled together with a weird southern accent) with knowledge of the construction of the straw and mud homes of Arnold and Ziffel Pig, deceased. And in a dramatic turn of events, the defendant, Biggie B. Wolf, accused of two counts of murder 2, waived his 5th amendment rights and took the stand to testify. Mr. Wolf (the inimitable Rich DeJana) made a very sympathetic witness even though he is a big bad wolf. Appearing with his head bandaged, snout gone (it was found at the crime scene), black gloves with no thumbs for paws, a long black furry tail, hops and limps, whimpers, whines and unidentifiable sounds from his mouth all added to the mystique of the defendant.

The state's expert witness was the very reliable and credible Sheriff Buford T. Justice (none other than Flathead County Sheriff Chuck Curry dressed as a country bumpkin sheriff, but skilled at describing the 911 call, the crime scene and crime scene photos). The state's key witness was the victim, Miss Petunia Pig, surviving sister of her brothers and neighbors, Arnold and Ziffel Pig. Miss Petunia Pig, portrayed by Kay Lynn Lee, was center stage as she cried, snorted and told her lively version of events with a very believable southern accent. She, too, dressed for court in a lovely ensemble including a pink hat, a print jacket and longer skirt with pink flowers and, of course, her "old lady" big gold handbag. Her outbursts (including crying and snorts) from the courtroom as the defense witnesses testified was something to behold, but quickly addressed by the judge.

Counsel was so very serious and so very well prepared – State Attorney Travis Ahner's closing was compelling as was lead defense attorney, Nick Aemisegger, especially since the jury saw it his way. State co-counsel Stacy Bowman conducted an insightful voir dire of the jurors as well as the questioning of witnesses. Defense co-counsel, Emily Judd, directed difficult questions to the jurors during voir dire as well as expert handling of the direct and cross exams of some defense witnesses.

Judge Ortley, as always, displayed his terrific judicial demeanor at all times, to the extent that many forgot it was a mock trial and not a real murder trial. Flathead District Court Clerk Peg Allison delivered the jury selection explanation and smoothly and professionally conducted the seating of the 24 prospective jurors.

Joyce Funda, co-chair of the Law Day 2013, welcomed the students and their teachers by relating her experiences as a substitute teacher for middle school students with the mock trial project. She also addressed the students while they patiently stayed in the courtroom waiting for the jury to come back with a verdict. The students (not the jury) were polled before the trial commenced. Nine students had formed an opinion on the case based upon the "news article". After the proof closed and while the jury deliberated, the students were polled again. All nine had changed his/her opinion and everyone in the courtroom (except the prosecution team, of course) felt that Mr. Wolf should be found "not guilty" based upon the evidence.

Kim Chrisopherson, my very hard-working and diligent co-chair, was key to the success of this event. Thank you to the ushers who willingly assumed other duties cheerfully – Marybeth Sampsel who helped Stephanie Breck set up the lovely post-



trial reception in the lobby; Valori Vidulich, the industrious and conscientious time keeper; and, Jonathan Smith, the calm and competent courtroom bailiff. Brian Muldoon's idea of an advance newspaper article was a fundamental part of this whole concept and was wonderful. Stephanie Breck did double duty as an expert witness for the defense and social chair in charge of putting on a delightful post-trial reception enjoyed by all.

Following the trial and verdict, the Northwest Montana Bar Association hosted a reception with light snacks in the main hallway outside of court. The District Court judges, judges from other courts and the entire "cast" of the trial were invited to mingle with the students to discuss the process and exchange ideas.

A big thank you goes to Marcy Hall, Court Administrator, for working magic on freeing courtroom #3, and to all the various court personnel who either watched the trial or were gracious in letting it happen even though the court and the clerk's office continued to conduct business.

And, finally, to the NWMBA Executive Committee: thank you for letting Kim and I have the space and freedom to put this project together. The absence of micromanaging was refreshing and so very much appreciated.

By: Joyce Funda  
Co-Chair, Law Day 2013

## **Mystery Member Profile**

This local attorney graduated from Ashley Hall in Charleston, South Carolina, which is also the high school alma mater of Barbara Bush. Following college at the



University of South Carolina, our colleague moved to Marin County, California and worked in the health food store where Jerry Garcia did his grocery shopping. Then came law school at the University of Oregon and a job as the County Attorney in Jackson County, Oregon. This lawyer spent several years serving as a legal services attorney in three different states, including Montana, before opening a firm in

the Flathead in 2005. Our mystery person has been busy lately as the founder and architect of the Whitefish Trail.

Who is our mystery NWMBA member?

## **This Month's CLE Presentation**

This month, the Northwest Montana Bar Association is pleased to present Mike Larsen for our monthly CLE program. Mike is the director of the Lawyer's Assistance Program and his presentation will qualify as an hour of ethics credit and a SAMI credit. Remember, under the new rules - you are required to report ethics credits every year. Mike provides a great service for the attorneys of the state, and we're lucky to have him with us this month.

### **SUICIDE AWARENESS AND PREVENTION**

**A Presentation by the Montana Lawyer Assistance Program**

**To NW Area Bar Association: May 6, 2013**

**Approved for 1.0 hours Ethics/Sami Credit**

- Program Overview
- Why seek help?
- Definitions
- Suicide statistics
- Scope of the Problem
- Motivations
- Myths and Risk Factors
- Indicators and Predictors
- Important Questions
- Suicide after Natural Disasters
- Protective Factors/Risk Factors
- Rose's Theorem for Suicide Prevention
- Air Force Program as Model
- Do's and Don'ts of Intervention
- AID LIFE
- Confidentiality Protections
- Contact MLAP

Montana Lawyer Confidential Helpline:

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Mike Larsen, LAP Director: [mlarsen@montanabar.org](mailto:mlarsen@montanabar.org)

MAY 2013

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