

PUBLIC DEFENDER NEWS

CHIEF’S CORNER

Fifty years ago, the Supreme Court took up a case involving a man who was convicted for breaking into a pool hall. The Court’s ruling in that case lies at the heart of our core functions. As the end of 2013 approaches, it is fitting to recall the simple majesty of the Court’s seminal decision in Gideon v. Wainwright, 372 U.S. 335, 344 (1963):

“[R]eason and reflection require us to recognize that in our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him. This seems to us to be an obvious truth. . . . The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours. From the very beginning, our state and national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law. This noble ideal cannot be realized if the poor man charged with crime has to face his accusers without a lawyer to assist him.

On the same day in March, 1963 the Court affirmed that the right to counsel extends to a direct appeal. “But where the merits of the one and only appeal an indigent has as of right are decided without benefit of counsel, we think an unconstitutional line has been drawn between rich and poor.” Douglas v. California, 372 U.S. 353, 357 (1963).

Fifty years later, the fundamental right to counsel espoused in *Gideon* is not fully vindicated. Systemic failures impede our ability to meet the challenges posed by excessive workloads. These challenges can lead to a sense of frustration, despair or hopelessness. In her book *Ordinary Injustice*, Amy Bach examines how state criminal trial courts regularly permit failures of legal process, and how the participants – defense lawyers, prosecutors, and judges – become inured to the daily failures. “Ordinary injustice results when a community of legal professionals becomes so accustomed to a pattern of lapses that they can no longer see their role in them.”

Justice William Brennan, who was a member of the *Gideon* Court, had a simple antidote for this institutional malaise. As related in a speech recently given by commentator Bill Moyers, Justice Brennan was writing an increasing number of dissents toward the end of his tenure, while a member of the Rehnquist Court. When asked if he was getting discouraged, Justice Brennan smiled and said, “Look, pal, we’ve always known – the Framers knew – that liberty is a fragile thing. You can’t give up.”



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APPELLATE NEWS



Wade Zolynski,
Chief Appellate Defender

*“Happy New Year from the
Appellate Office!*

*May 2014 be filled with
acquittals and reversals!”*

YES, WE DO MATTER

*Kristine Kerr,
Region 9 Investigator*

Recently, I had to go to the Social Security office for records. I was helped by a younger gentleman that was one of Matt Claus’s clients way back in 2001. He had been charged when he was 18 with criminal possession of dangerous drugs with intent to distribute. Matt worked hard, and got him a deferred. He said that he now has an accounting degree, went to Iraq and served his country and now has a good federal job. He is still very appreciative of what Matt did for him and said he wanted to thank our office for the work that we do.

“It is said that no one truly knows a nation until one has been inside its jails. A nation should not be judged by how it treats its highest citizens, but its lowest ones.” – Nelson Mandela (1918-2013)

YOU MIGHT BE A PUBLIC DEFENDER IF:

James Reavis, Region 5 Assistant Public Defender

When you call a good friend or family member and their phone number is disconnected, you scowl at them.

You laugh on the inside whenever you hear anyone complain about how busy they are.

When discussing the death penalty, instead of saying “They put Mr. Smith to death” you say without thinking “they killed Mr. Smith yesterday.”

You are no longer shocked that people blow 0.25 BACs.

After a long, stressful week of upset clients, judges that throw your motions to the side, snide comments from other lawyers, and no one returning your phone calls, you sleep like a log, knowing that you’re the one fighting the good fight.



CHIEF'S CORNER CONTINUED FROM PG 1

I am proud to note that the staff, investigators and attorneys of OPD are heeding Justice Brennan's approach. Joan Burbridge in Missoula obtained "not guilty" verdicts on charges of assault with a weapon and resisting arrest. Joe Zavatsky joined Region 11 in Miles City in September, and in November got acquittals on PFMA and assault in his first jury trial. In Helena, Brady Smith, ably assisted by Jennifer Hudson, had her third hung jury in a row; Jon King obtained an acquittal on a PFMA charge in his first jury trial; and then Jon and Brady obtained a dismissal due to insufficient evidence during a jury trial on a stalking charge. Steve Williams got an acquittal on criminal endangerment.

In Region 4, we filed motions in the two courts of limited jurisdiction in Lewis & Clark County for caseload relief. While we did not prevail, we have appealed the decision to the district court. The situation in Region 4 was the subject of a recent newspaper article in Helena¹, and has been addressed by the Sixth Amendment Center, a non-profit organization which studies and reports on issues relating to the right to counsel². The motions and briefs are available on the OPD website.

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We have several changes to note. As many of you know, Eric Olson is leaving OPD at the end of the year. Eric has ably served OPD and its clients in a variety of roles since the agency's inception, and his contributions cannot be measured. Peter Ohman will take over as training coordinator. He leaves Region 8, where he has served as regional deputy with distinction for a number of years. I look forward to working with Peter to build on the training platform Eric developed.

I am pleased to announce that Annie DeWolf accepted my offer to replace Peter as the new Region 8 Deputy Public Defender. Annie has served as staff attorney in the Bozeman office, and the clients of Region 8 will continue to be well-served with Annie running the office.

Finally, Dick Phillips, the managing attorney of the felony staff in Billings, is leaving OPD for the lure of retirement and the promise of more time with grandkids. Dick, thanks for your many contributions to the attorneys, staff and clients you've helped over the years.

¹ <http://helenavigilante.com/archives/11693>

² <http://sixthamendment.org/montana-state-public-defender-files-motion-to-decline-new-cases/>

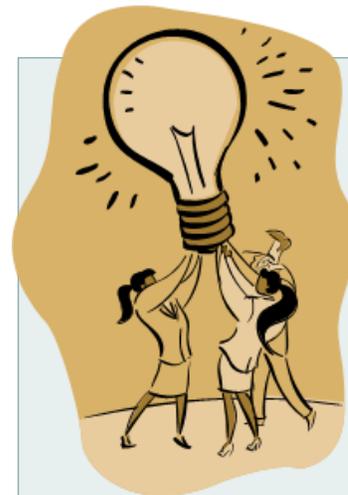
Bill

CONTRACTOR CORNER

Bill Hooks

In the 2013 Legislature, OPD asked for a hefty appropriation to boost contract attorney rates. Our request was rejected. The legislature approved a \$1.20 per hour rate increase for each fiscal year of the 2015 biennium. This fall, the Contract Committee, chaired by Public Defender Commissioner Chuck Petaja, with Commissioners Ken Olson and Fritz Gillespie, recommended that the contractor rate be increased by \$2 per hour, effective with the January 2014 month of service. The full Commission approved the recommendation. The Commission will consider a rate analysis and financing options in an effort to find ways to raise the contractor rate further.

OPD is in the process of hiring a new contract manager, and we hope to announce a decision in the near future.



Office managers were invited to create mottos for OPD at their November Communications Meeting. The suggestions ranged from inspiring to frivolous:

- OPD - Helping those who need it the most!
- The best offense is a good defense, Office of the State Public Defender
- OPD: Real attorneys helping real people
- OPD - Commit a crime and we'll give you our time!
- OPD – to serve and protect, with courage, honesty and integrity
- O - Optimism
P - Pride
D - Dedication
- OPD - Allotta work for nothing!
- No need to fear, OPD is here!
- OPD - Don't flee, we'll work for free!
- And Justice for All.

Thank you all for your contributions!



17 WAYS TO BECOME INDISPENSABLE

1. Do work that matters, not work that is easy
2. Monopolize a particular skill
3. Be willing to go the extra mile
4. Remember that your job is to make your supervisor's job easier
5. Master a language that's not required of your position
6. Be productive, but don't make it a race
7. Monopolize an important relationship
8. Be a thought leader
9. Be a team player
10. Add value to every transaction
11. Be committed
12. Stay current with technology and trends
13. Have a good attitude
14. Continually improve your oral and written communication skills
15. Always try to offer solutions
16. Be consistently reliable and trustworthy
17. Keep in mind that no one is truly indispensable

JRJ LOAN REPAYMENT DEADLINE IS JANUARY 10

The John R. Justice law school loan repayment program is accepting applications from public defenders employed by OPD through January 10. If you have eligible loans, you may wish to apply. Click the link to the RFP below for information on eligibility and the application process.

JRJ was enacted to encourage qualified attorneys to choose careers as prosecutors and public defenders and to continue in that service. JRJ provides loan repayment assistance for eligible public defenders and state prosecutors who commit to continued employment as public defenders and prosecutors for at least three years. Approximately \$52,133 will be available. Once approved for loan repayment, there is a rebuttable presumption that a beneficiary will be given priority consideration to receive funding during the second and third years of the three-year service agreement, depending on the availability of funds. Renewal is not automatic and there is no obligation to renew a benefit or to renew such benefit in the same (or greater) amount previously received by a beneficiary.

Applications are due January 10, 2014, at 12:00 PM Noon

To access the full Request for Proposals please click [here](#).



OFFICE 2013 FOR ONLY \$9.95!

The Microsoft Office Home Use Program is now available for Office 2013! However, if you purchase the 2013 version, it **replaces** your existing 2010 license (if you already have one), and is not an additional license. The home use program does allow for the software to be installed on two computers. Visit the OPD intranet site (myopd.mt.gov) for more information.



Home Use Program

Take Office home



LET'S BE CAREFUL OUT THERE!



Winter driving in Montana can be pretty challenging. Although we *are* Montanans, we are not immune to winter driving hazards. The Risk Management and Tort Defense Division (RMTD) has some suggestions on improving safety in winter conditions.

Avoid vehicle problems.

Make sure your vehicle has been inspected and serviced before

winter driving becomes a daily adventure. Replace wiper blades and maintain proper tire pressure throughout the season.

Avoid driving problems.

Check road conditions before you drive and avoid driving in bad weather if possible. (Call 511, check MDT's website or download their mobile app.)

Allow extra time, slow down and increase your following distance.

Remember you should follow at least 3 seconds behind the vehicle in front of you in ideal conditions, and an extra second or more for every hazard due to weather, road conditions, or driver condition. Braking distance is up to 10 times further on snow or ice than on dry roads!

Avoid skids by turning the cruise control off on slippery roads, and braking and accelerating gradually. To steer out of a skid:

Take your foot off the gas

Don't brake!

Look where you want to go

Turn the wheel in that direction

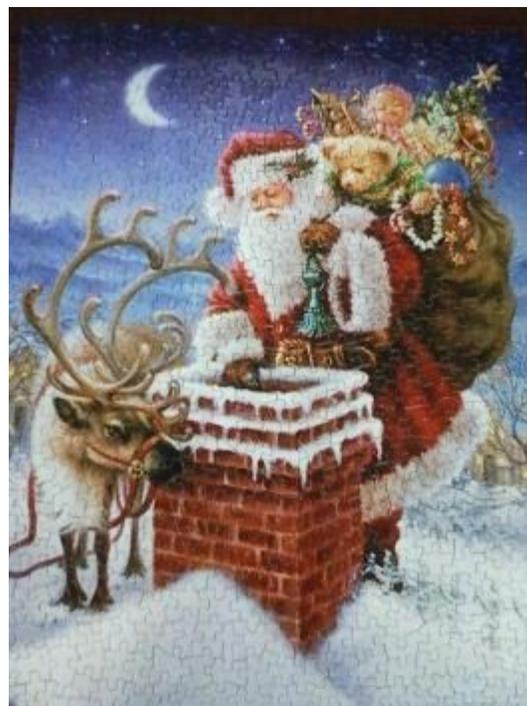
Using your gas or brake pedals are likely to make the skid worse, not better. If you learned to "turn into the skid," that's fine—these steps will often result in the same effect, without having to know which way you are skidding.

Avoid traveling problems. Don't get stranded—stick to major highways when possible, where roads are more likely to be maintained and other drivers will see you if you break down. Share your travel agenda/route with someone you trust, and check in when you arrive safely. Monitor radio stations for weather and road updates, and keep your gas tank over half full. Carry blankets, winter clothing, high energy food, and a charged cell phone with a car charger in case you are trapped in a storm.

Avoid vehicle exit/entry problems. Maintain three-point contact with the vehicle and the ground at all times when entering or exiting a vehicle (one hand and two feet or two hands and one foot). Fill a plastic bottle with sand or kitty litter (not salt or ice melt, which take longer to work) and carry it with you to sprinkle on icy ground between the car and your destination.

RMTD periodically offers courses throughout the state on winter driving skills. Watch for announcements for a class near you, or check their schedule at <http://rmtdweb.doa.mt.gov/rmtd/>

[RMTD CTIS TRAINING.training list](#)



*It was a slow week in some offices
Christmas jigsaw anyone?*



"And please take into account that my client was acting upon a double-dog-dare."