

12-4-2014

## A Giant Leap for the Montana Law Review

Jim Nelson

*Justice, Montana Supreme Court (Retired)*

Follow this and additional works at: [https://scholarworks.umt.edu/mlr\\_online](https://scholarworks.umt.edu/mlr_online)

**Let us know how access to this document benefits you.**

---

### Recommended Citation

Jim Nelson, *A Giant Leap for the Montana Law Review*, 75 Mont. L. Rev. Online 1, [https://scholarship.law.umt.edu/mlr\\_online/vol75/iss1/1](https://scholarship.law.umt.edu/mlr_online/vol75/iss1/1).

This Article is brought to you for free and open access by ScholarWorks at University of Montana. It has been accepted for inclusion in Montana Law Review Online by an authorized editor of ScholarWorks at University of Montana. For more information, please contact [scholarworks@mso.umt.edu](mailto:scholarworks@mso.umt.edu).

## A GIANT LEAP FOR THE *MONTANA LAW REVIEW*

**Jim Nelson\***

The Editors in Chief of the *Montana Law Review* asked me to write a piece to kickoff the new *MLR* website. Specifically, I was asked to comment on one or both of the student notes referred to on the website: *State v. Cooksey* and *Montana Cannabis Industry Association v. State of Montana*. I agreed to do that. But there was more I wanted to say and the Editors very graciously gave me the liberty to write what I wanted.

Law review pieces are typically compartmentalized, and I'll endeavor to follow that format, although this is certainly not a scholarly article. In turn, I want to talk about the importance of the new website to the law review; the importance of new blood; the importance of student notes; and why the law review should be important to the courts.

### I. THE IMPORTANCE OF THE NEW WEBSITE TO THE MONTANA LAW REVIEW

Several years ago the *MLR* established an Advisory Board composed of lawyers, academics, and members of the judiciary. I was one of the original Board members. Our mission was to offer our combined experience and advice to the Editors and Staff of the *MLR*, propose articles, suggest speakers for symposia, etc.

At our first Advisory Board meeting I immediately noticed the students' desire to bring the *MLR* into the 21st century; to make the *MLR* more user-friendly and relevant to the bench and bar; and to make the *MLR* available and useable in a digital medium. The new *MLR* website is the latest iteration of that effort and has features you need to explore. Why is that important?

Law reviews should be an important part of every research project, every brief, and every court opinion. A well written, on-point article or note is golden. But law reviews are expensive to subscribe to; they take up a lot of book shelf space; and for the most part they sit, gathering dust, out of sight and out of mind. A valuable resource lost.

And so, to the extent that a law review is immediately accessible from one's computer or electronic device, costs little or nothing, and is comprehensive and easy to use, a valuable research resource is regained. That's the importance of the new *MLR* website: it places a valuable resource at the fingertips of the practitioner, clerk, or judge.

I will tell you that the Editors and Staff of the *MLR* are committed to this project. They are constantly thinking up new ways to improve the

---

\* Justice, Montana Supreme Court (Ret.)

*MLR* and there will be more to come! And that brings me to my next point.

## II. THE IMPORTANCE OF NEW BLOOD

In my more than 40 years as a lawyer and a Justice, I can tell you without equivocation that three things are necessary for the survival of any public or private institution: a relevant mission, institutional memory, and new blood.

The *MLR* has always had and still has a relevant mission. Institutional memory has been handed down from Editors to Editors (although the current Editors have actually reduced some of that to writing) and through the excellent faculty advisors. It is the new blood though, the new student Editors and Staff, that gives the *MLR* its vision and vitality. It is the law students, born of the electronic and information age, that are bringing the *MLR* off the shelves and into the computers and devices of the bench and bar. It is this injection of new blood that is giving the *MLR* a new face, a new presence, and a revitalized utility.

I have had the privilege of teaching at Montana's Law School. I will tell anyone who has not enjoyed that experience that I never cease to be amazed at the knowledge, intuitiveness, and inquisitiveness of Montana's law students. If you, the instructor, are not well prepared and on your toes, you will fall flat on your face. And the Editors and Staff of the *MLR* are the cream of the crop; they are the top shelf bottle of new blood. And so to my next point.

## III. THE IMPORTANCE OF STUDENT NOTES

As I stated above, my writing project here started with a request that I review the two student notes published in the Winter 2014 Issue. One article, by Caitlin Boland, discusses *State v. Cooksey*, 286 P.3d 1174 (Mont. 2012). The second article, by Thomas J. Bourguignon, discusses *Montana Cannabis Industry Association v. State of Montana*, 286 P.3d 1161 (Mont. 2012).

Both notes are well researched and well written. Each author did a professional job of fairly and accurately analyzing the facts and the majority and dissenting opinions. Most importantly, however, each author did an admirable job of discussing how and why the majority and the dissent went astray in certain respects.

And that, I suggest, is the real value of student notes. Very bright law students focus on one court opinion and tear it apart, for the good and the ill. (I've commented tongue-in-cheek that the students come in after the battle and shoot the wounded). If read, student notes will give practitioners a leg up, a new approach, and a new argument on their next case that involves the same or a similar issue. And if read by the court,

judges and Justices find out what they did right as well as what they did wrong. My opinions have been both praised and criticized in student notes, and there hasn't been one from which I did not learn some valuable point of law. It was a student note criticizing the Court's discussion of personal autonomy privacy in *Gryczan v. State*, 942 P.2d 112 (Mont. 1997) that lead to a more thorough discussion of that concept in *Armstrong v. State*, 989 P.2d 364 (Mont. 1999). Student notes matter! The two referenced above are excellent and should be read by practitioners, judges, and Justices dealing with similar issues. And so, to my final point.

#### IV. WHY THE MONTANA LAW REVIEW SHOULD BE IMPORTANT TO THE COURTS

I can say from experience that law review articles and notes are underutilized. Bound volumes tend to sit on shelves. Clerks will research cases and treatises and judges and Justices will cite those cases and treatises but neglect law reviews.

I think this is unfortunate because, as noted above, a well written, relevant law review article or note is golden. It will have been better written and more thoroughly researched than most treatises—and, unfortunately, most court opinions, also.

And, of course, that should be the goal of every judge and Justice: to write clearer, better researched, and more authoritative opinions, dissents, and concurrences. After all, court opinions are the life-blood of the law. Indeed, in most cases, they *are* the law.

I have always believed that an opinion should explicate the law, apply it to the facts, and resolve the issues before the court in a manner that can be understood by the best attorneys in the state and by the worst—because both will be reading those opinions in the future.

But there is another important reason for writing the best opinions possible. As every lawyer and every judge and Justice knows, we teach law students using court opinions. Every parent would have a fit if their children were being taught from text books that were poorly written, poorly researched, inaccurate, and vague. Yet, as every law professor knows, we sometimes teach law students from opinions that are just that. And not surprisingly, the students are not above pointing out every flaw.

Courts are overworked but we now have the best electronic research tools available in the history of law. We need to include law review articles and notes in that toolbox. We must not continue to allow these valuable resources and repositories to be lost.

And so, I am back where I started. The brightest law students at Montana's Law School are bringing the *MLR* off the dusty shelves and into the computers and devices of every practitioner, judge, and Justice

who is willing to use this valuable resource. The *MLR* features great articles and pointed student notes.

The new *MLR* website has a great deal to offer. It will continue to evolve. It is accessible and user-friendly. And given a chance, it will become an important tool that will enable us all to be better professionals in our chosen field. It is a giant leap forward for the practice of law in Montana.