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Recommended Citation

Ford, Cynthia, "Ostby, Montana's First Female Federal Judge, Left a Lasting Impact on the Judiciary" (2017). *Faculty Journal Articles & Other Writings*. 122.
https://scholarworks.umt.edu/faculty_barjournals/122

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Ostby, Montana's first female federal judge, left a lasting impact on the judiciary

Editor's Note: This article originally appeared as the Foreword in the most recent issue of the Montana Law Review.¹

By Professor Cynthia Ford

Judge Carolyn Ostby, the first female judge in the U.S. District Court for the District of Montana, retired on Dec. 1, 2016. The University of Montana School of Law (as it was known when she attended and graduated), the Montana Law Review, the State of Montana, the federal judiciary, and the citizens of Montana and the world all have benefitted greatly from Judge Ostby's unique combination of intellect, compassion, and composure.

Judge Ostby grew up in Wolf Point, Montana, near her father's family's homestead. The three children in the Ostby family all valued education and achieved success in their own fields: Carolyn in law, Nancy (Aagenes) in naturopathic medicine and Alan Ostby in psychology. After high school, Carolyn left Montana to attend Macalester College in St. Paul, Minnesota, but returned for law school. Carolyn received her J.D. from UMLS in 1977 with High Honors. She was an editor of the Montana Law Review and received the SCRIBES (the American Society of Writers on Legal Subjects) Award, presented to the outstanding member of the Montana Law Review. One of the expressed purposes of the award is to "foster clear, succinct, and forcible style in legal writing." Judge Ostby's legal writing, both as a lawyer and as judge, shows the SCRIBES award met its mark.

Judge Ostby began her career as a law clerk to the legendary U.S. District Court Judge Russell Smith in Missoula. (The federal courthouse in Missoula is named after Judge Smith). Notably, two of UM's most prestigious faculty members wrote letters of reference supporting Carolyn's clerkship application: Dean Robert Sullivan and Professor Duke Crowley, neither known for his feminism. After her clerkship, Judge Ostby was selected to the prestigious Honors Program at the U.S. Department



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The Honorable Carolyn Ostby

of Justice in Washington, D.C., where she worked for two years before again returning to Montana.

In 1982, Judge Ostby joined the prominent Billings law firm then known as Crowley, Haughey, Hanson, Toole and Dietrich. At that time, "the Crowley Firm" had only one office, and fewer than 30 attorneys, but its five named partners all were themselves legendary icons of the Montana Bar and, collectively, were wise enough to lure her away from the DOJ. She was the fourth woman lawyer at the firm, and ended up being the only one who stayed on for an entire career.²

Judge Ostby was the consummate litigator: smart, fair, honest, and very prepared. She writes well and thinks better, both without any bombast. Among her many honors, she is a member of the American College of Trial Lawyers, "limited to only those trial lawyers who are unquestionably and eminently qualified, in addition to being regarded as the best in their state/province. Qualifications must include high ethical and moral standards, as well as excellent character..." Her practice included complex commercial litigation and natural resource litigation.

After 20 years in front of the bench in both jury and non-jury trials, in 2002 she was selected by the three federal judges in the U.S. District of Montana to sit on the federal bench as a Magistrate Judge. Fourteen years later, it is clear that the appointment of Judge Ostby was inspired. U.S. District Judge Gustavo A. Gelpí, Jr. summarized the importance of this job:

"The Magistrate Judge is the face of federal courts across the nation whenever a criminal defendant, his family and friends, and any victims first walk into a federal courtroom. Likewise, in an increasing number of civil proceedings, the parties will come to court for the first time to meet a Magistrate Judge in a mediation or other proceeding."³

Judge Ostby embodied the best possible face for the federal system to all who entered her courtroom: lawyers, staff, parties, victims, and the public as a whole.

"Throughout her distinguished career, Judge Ostby has set a fine example for others to follow. Although possessed of a sharp intellect and known for her exacting scrutiny of legal arguments, she is unfailingly courteous, fair, and reasonable, and treats every person who appears before her with dignity and respect," Chief Judge Dana Christensen observed when he announced her retirement.

Judge Ostby brought her whole self to each case, every day. In recognition of her attentiveness, ability, and judiciousness, many elected to forgo their right to ultimate resolution by an Article III judge and placed the merits of their cases in Judge Ostby's capable hands. Thus, she handled a lot of cases and handled them well, first working in Great Falls and later transferring back to her professional hometown of Billings. A quick survey of cases on WestlawNext for this year, 2016, alone, disclosed 13 opinions by Judge Ostby, reviewed by U.S. District Judge Susan Watters. In most of the cases, the parties did not file objections to Judge Ostby's determinations (but they still are reviewed for plain error). Objection or not, Judge Watters affirmed 100% of these, with only 1 minor change in 1 of the 13 cases.

Judge Ostby's impact is not limited to Montana. As a member of the federal judiciary, she was invited to join the very select Committee on International Judicial Relations of the United States Judicial Conference. As a committee member, she

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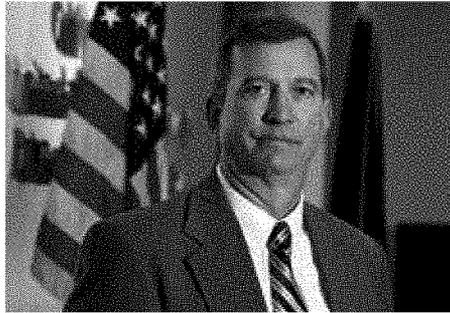
Cavan sworn in as US Magistrate Judge in Billings

Timothy J. Cavan was sworn in as Montana's U.S. Magistrate Judge in Billings on Thursday, Dec. 1.

Chief U.S. District Judge Dana L. Christensen presided over the proceeding, and U.S. District Judge Susan P. Watters administered the oath of office. He succeeds the Honorable Carolyn S. Ostby, who was Montana's first female federal judge. She retired effective Dec. 1.

Cavan, of Billings, was selected from a group of finalists compiled by a court-appointed merit selection panel. He comes to the court after serving most recently as an Assistant United States Attorney.

Cavan graduated with honors from the University of Montana School of



Casey Page/Billings Gazette

The Honorable Timothy J. Cavan was sworn in as U.S. Magistrate Judge on Thursday, Dec. 1.

Law in 1984. He began his legal career practicing civil trial law with the Billings

firm of Sandall, Cavan & Smith, where he became a partner in 1988. From 1996 to 2002, he served as assistant federal defender with the Federal Defenders of Montana, representing indigent defendants charged with federal crimes.

He worked in the United States Attorney's Office from 2002 until this year, serving as defense counsel in cases involving civil claims against federal defendants. He has been active in various community organizations and is a member of the Yellowstone County Bar Association, the Billings YMCA, Zoo Montana, Yellowstone Art Museum, and Yellowstone Public Radio. He and his wife, Michelle, have three grown children.

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has represented the third branch of our government in several nations where rule of law has not always been the rule, with the goal of assisting with the administration of justice worldwide. One of her first trips was to South Africa. Most recently, Judge Ostby returned from a whirlwind trip to Egypt, where she met with Egyptian lawyers and judges, and appeared on local television. Judge Ostby plans to continue her invaluable work with this committee even after her retirement.

With this litany of professional accomplishments, one might assume that Judge Ostby was entitled to a big case of "black robe disease." Nothing could be further from the truth. We know Judge Ostby to be amazingly extraordinary (the gushing is conscious); she thinks of herself as simply normal, just doing the best she can. My favorite story ever about the judge is a time when she came to Missoula to conduct a hearing and we had agreed to have breakfast before our workdays began. I suggested 7 a.m., but Judge Ostby asked for a delay so that she could finish washing and drying the sheets on her mother-in-law's guest bed. How many other federal judges, in Montana or anywhere, are that thoughtful?⁴

Judge Ostby was dedicated to her work, but she was not all about work. I can't discuss here that night at the cowboy bar, before the kids were born. I can report

on her dedication to her family, and her great pride in her stellar children, Paul and Helen. Carolyn was an early pioneer in the difficult arena of combining mothering with lawyering. She once packed up baby Paul and his nanny and headed across the country with senior partner Bruce Toole to take depositions in a large civil case. Later, when she was assigned to sit in Great Falls for five long years, she made the drive to Billings and back almost every weekend so that her family wouldn't have to relocate with her. As is her norm, she never complained about the toll the dual demands of career and family imposed: she just sucked it up and got 'er done, all the while making it look effortless (which it was not!). Now that Paul is a lawyer himself and Helen has been able to combine her education with the love for travel she inherited from her mother, Judge Ostby still remains actively supportive of both from her base in Billings.

There is so much more to Judge Ostby than work and family. She is a testament to work/life balance in the best sense. She keeps in touch with old friends (of whom I am one of many) and makes new ones easily. She is a patron of the Yellowstone Art Center, and an avid reader. She is an accomplished outdoorswoman and athlete. She has, and uses well: skis, a yoga mat, more than one good bicycle, a beautiful canoe, a gym membership, and backpacking gear. Now, as of Dec. 1, she will be able to put more of these to better use, without

worrying about all the cases on her desk.

The good news is that Judge Ostby's past record indicates that she will continue to contribute meaningfully to the bar and public of our great state and beyond: retirement simply marks the end of a chapter, not the end of the book. I can't wait to read the next chapter.

ENDNOTES

1 Professor Ford's Foreword was included in the **Montana Law Review's** most recent issue, Vol. 77, No. 2, featuring Hillary A. Wandler, *Spreading Justice to Rural Montana: Expanding Local Legal Services in Underserved Rural Communities*, 77 Mont. L. Rev. 235 (2016); Jordan Gross, *Let the Jury Fit the Crime: Increasing Native American Jury Pool Representation in Federal Judicial Districts with Indian Country Criminal Jurisdiction*, 77 Mont. L. Rev. 281 (2016); Paige Griffith, *Why Don't Punitive Damages Punish or Deter? Beyond the Constitution Toward an Economic Solution*, 77 Mont. L. Rev. 327 (2016); Lindsey W. Hromadka, *Conservation Easements & Renewable Energy: Why Conservation Values Should Embrace Wind and Solar*, 77 Mont. L. Rev. 367 (2016); Michael Pasque, *Putting Notice to the Rights to Know and Participate: Creating A Policy for the Montana University System Campuses*, 77 Mont. L. Rev. 387 (2016).

2 I left for Seattle, and then came back to teach; Laura Mitchell decided to devote herself to her twin girls; and Sherry Matteucci became the first female U.S. Attorney in Montana history

3 <http://www.fedbar.org/PDFs/A-Guide-to-the-Federal-Magistrate-Judge-System.aspx?FT=.pdf>, quoting **The Federal Lawyer** (May/June 2014).

4 If you, dear reader, ARE also a federal judge, I am sure that you (not your spouse!), too, change/wash/replace the linens when you stay at someone's home. If you haven't ever done that, there is always next time. Ditto for you law professors out there.