

Making his mark

Attorney James Goetz has had an impact on public policy

Story and photos by STEVE SHIRLEY
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BOZEMAN — His name is not a household word in Montana. He has never run for public office. Yet attorney James Goetz has touched the lives of most Montanans with his work.

During 20 years as an attorney, Goetz (pronounced like gets) has been a significant shaper of public policy in Montana. Few people, even governors and senators, can match his record. For example, Goetz has:

- Derailed construction of the Libby re-regulating dam on the Kootenai River.
- Assisted low-income Montanans in preventing cutbacks in welfare benefits.
- Persuaded the Supreme Court to invalidate the voters' 1986 approval of the initiative that would have allowed legislators to set limits on liability and court awards in civil lawsuits.
- Won access for sportsmen to navigable streams flowing through private property.

One of his most significant victories came earlier this year when the Montana Supreme Court scrapped the state's school-financing system. That ruling, and rulings from other cases in which Goetz has been involved, have prompted special legislative sessions.

"In terms of public policy, he's had a great impact on Montana," said Frank Morrison Jr., a Helena lawyer and former Montana Supreme Court justice.

The 46-year-old Goetz, who has the look of a college professor with his horn-rimmed glasses and tousled hair, likes it that way.

"I like to do impact work. It's more important than other types," Goetz said recently as he leaned back in his chair in his office in a refurbished brick house in Bozeman.

It is here that Goetz prepares his cases, bent over an oak roll-top desk. He is surrounded by antiques, leather-covered furniture, an oriental rug and turn-of-the-century photos of the blacksmith who formerly lived in the house.

From an autographed black-and-white photo hanging on the wall, William O. Douglas, the late U.S. Supreme Court justice, watches over Goetz as he works. Douglas was a maverick known primarily as an outspoken environmentalist and defender of civil liberties. Much the same can be said of Goetz, who considers Douglas one of his heroes.

Douglas' law office probably looked this way



Goetz taught constitutional and environmental law at MSU. He began to take on environmental cases in his spare time. He challenged the proposed Ski Yellowstone and Big Sky ski resorts, he went after former Interior Secretary James Watt's proposed oil and gas leases in the Bob Marshall Wilderness, and he handled the first Montana Environmental Policy Act case before the Montana Supreme Court.

One of his favorite cases was the challenge to the proposed construction of a re-regulating dam near Libby on the Kootenai River. The U.S. Army Corps of Engineers did not take him too seriously until he got an injunction to stop the \$251 million project.

He originally attacked the project on the basis it didn't comply with the National Environmental Policy Act, but then he discovered that the dam had never been authorized by Congress. He

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ultimately won the case in the Ninth Circuit Court of Appeals.

"It was a great case because we had limited resources" compared to the Corps', said Goetz, who represented sportsmen.

Brian Gallik, one of Goetz' new law partners, said Goetz' is well known for his pioneering environmental law work at places like the University of Oregon Law School, from which Gallik recently graduated.

Despite an early focus on environmental law, Goetz handles a variety of cases. "Intellectually, I like to move around," he said. "I describe my practice as eclectic."

In addition to the dam case, Goetz is particularly proud of his defense of a Livingston man charged with possessing and selling amphetamines. Goetz took over the case after

sculpture on Goetz' desk that has a few gold teeth and eye sockets filled with tiny photos of Richard Nixon and Billy Graham.

The office reflects the unassuming — though somewhat whimsical — nature of Goetz. He is not the back-slapping, gregarious type who runs for public office. Rather, he has made his mark on public policy in Montana courtrooms.

"He understands under the 1972 (Montana) Constitution the power that shifted to the court system," said Rick Bartos, Gov. Stan Stephens' legal counsel and the attorney who opposed Goetz in the school-funding lawsuit.

What is the key to his success in the courts? Even critics agree that he is a good attorney.

Senate President Jack Galt, a Martinsdale Republican and rancher who was on the losing side in Goetz' stream-access case, considers Goetz a "hell of a good lawyer" but misguided in his philosophy.

The Martindale-Hubbell directory of the nation's lawyers gives Goetz its highest rating. The book, "Best Lawyers in America" for 1989-90, cites Goetz for his work on environmental cases and business litigation. The book includes only 76 of Montana's 2,000 attorneys.

Morrison, who heard Goetz argue many cases before the court, considers him the state's premier constitutional lawyer. "If I had a constitutional case, I'd hire him," Morrison said.

Goetz has a strong background in constitutional law from teaching the subject for 20 years at Montana State University. He also has a reputation for intelligence, hard work and commitment to cases.

"He intimidates people," said Billings lawyer Gerald Neely, a longtime friend and occasional courtroom adversary. "He's sharp and he works hard. ... The law is about 90 percent butt power and 10 percent brain power. Jim is not lazy."

"He really dedicates his heart and soul in these cases and he's well prepared when he goes to court," Bartos said. "He also knows how to put on a good show and tell a story."

Goetz, who was on the debate team at Ennis High School and at MSU with Neely, is not a swashbuckling orator. His presentations are low-key but relentless. "He makes the complex understandable," Morrison said.

Goetz also uses wit as a weapon. In 1987, he asked the Montana Supreme Court to invalidate the election results of the liability initiative approved by voters in November 1986. Goetz challenged the argument by initiative supporters that a two-word error in the ballot measure's text was not enough to distort the election results.

Goetz referred to another ballot measure to abolish the state's Salary Commission. If the words Salary Commission were changed to Supreme Court, he told the justices, it would have made a big difference in the election results. He then quipped that maybe it would not be a bad idea to abolish the court, bringing muffled chuckles from the judges.

Some court watchers believe Goetz' success is partly due to the Montana Supreme Court's progressive leanings in the early 1980s.

James Lopach, a University of Montana political science professor, has criticized the court for overstepping its bounds. He said the court created new constitutional rights when it should have deferred more to the judgment of legislators. He said Goetz is a capable lawyer

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who exploited the court's judicial activism, adding that Goetz will now "have to adjust his advocacy" because the court is becoming more moderate.

Goetz disputes Lopach's analysis. He said the Supreme Court's conservative members joined the other justices in rulings on such key cases as school-funding and welfare benefits. No one would claim those conservatives were activists, he said. The court has simply interpreted the Constitution, he said.

Goetz tends to agree with Morrison's analysis that Goetz has benefited from a state Constitution that's among the nation's most progressive. Morrison said Goetz is, in effect, a conservative because he generally asks the courts to make strict interpretations of the Constitution. "He's conservative in the true sense of the word," Morrison said. "He's very cautious, very circumspect."

The son of a school superintendent and a housewife, Goetz grew up in Ennis and Ismay, a small eastern Montana town. In high school in Ennis he was the all-American boy: class valedictorian, senior class president, athlete, a member of band and chorus.

But Goetz was ready to rock the boat after enrolling at MSU in 1961. He was instrumental in persuading the university to drop its policy requiring mandatory ROTC for undergraduates. He refused to don the green beanies freshmen were forced to wear as an initiation rite. And he criticized MSU athletic programs in columns he wrote for the student newspaper. Football players were unhappy with this Ennis upstart.

"These big guys were running around looking for him and asking where is this 'Gotez' guy," said his college friend Neely. "They wanted to paint his head green."

Goetz avoided the paint job. But he was a green young man coming out of college. In search of a new experience, he set out in 1965 for Yale University Law School, where Douglas had taught 30 years earlier.

Goetz' first constitutional law professor was Robert Bork, the controversial jurist whose Supreme Court nomination was rejected by the Senate in 1987. Bork worked students like a drill sergeant, Goetz said, but was a top-notch teacher, as were other faculty members. Goetz enjoyed Yale and the East but always planned to return to Montana.

After coming back in 1968, Goetz failed the bar exam the first time around. It was based on the law's nuts and bolts, while his Yale schooling emphasized the theoretical.

Ironically, the first lawsuit Goetz ever filed was against the Montana Supreme Court challenging the bar exam.

Goetz claimed the court's bar exam was discriminatory because it wasn't offered until October for students who did not attend the University of Montana Law School. UM students automatically were admitted to the bar after graduation in June, so they got first crack at jobs. Goetz lost the case, but it set the stage for the Montana Supreme Court's later decision to end UM students' diploma privilege and set up a more professional exam.

After passing the bar exam on his second try,

the Montana Supreme Court upheld the man's conviction on a 5-0 vote.

Convinced the man was convicted on the basis of a faulty search warrant, Goetz took the case all the way to the U.S. Supreme Court and finally back to the Montana Supreme Court. The Montana court eventually reversed its original decision by a 5-0 vote.

"It looked like a hopeless case when we started," he said. "It was kind of a remarkable turnaround."

Goetz goes out of his way to attribute much of his success to law partners William Madden and Russ Dunn, both of whom also are rated highly by Martindale-Hubbell. Portland attorney Jim Molloy said that, during his two and a half years with Goetz' firm, "there were many times when people were bouncing ideas off one another. Any profile of him would be incomplete without mentioning the others."

Among other things, the Goetz, Madden & Dunn law firm was unusual in pioneering the use of paralegals in Montana. The firm's paralegals research the facts of cases, allowing the attorneys to concentrate on legal issues and saving clients money. Some of their paralegals have gone on to become lawyers themselves.

At the laid-back law firm, paralegals also help fill out teams for Goetz' lunch-hour pickup basketball games. "One of the prerequisites for working here is you've got to be a pretty good basketball player," Gallik joked.

Off the basketball court and in the courtroom, Goetz has gained a reputation as a public-interest lawyer. It's one he wants to dispel.

As a young attorney, he handled many cases free of charge. He said he did so partly because he was trying to get as much legal experience as possible. Goetz still handles some cases free of charge, such as the Butte Community Union challenges of legislative restrictions on welfare benefits.

But he also takes on more big fee cases such as the school-funding lawsuit.

"I make a lot of money practicing law," he said. "I don't think a lot of people realize that."

His financial success is partly because he's branched into new fields such as business litigation. "I used to have this saying that I've represented rapists, pornographers and child molesters," he said. "I've even stooped to taking banks. But I draw the line at insurance companies. But I broke that rule when I took on an insurance defense case this past year."

Goetz conceded that he's "mellow" than he used to be. For example, he probably would not be as eager today to handle the case in which he challenged land exchanges necessary for development of the Big Sky ski resort.

Yet Goetz still considers himself a strong environmentalist, a civil libertarian and a liberal on most political issues. Because of his strong convictions, he does not duck controversy.

He once angered many Bozeman residents by defending former Catholic priest John Bauer's constitutional right to open adult bookstores in Bozeman and Helena.

Hard feelings still linger from Goetz' successful effort to get the Supreme Court in 1984 to declare that the public could make recreational use of streams up to the high-water marks and portage around barriers.

The case even caused friction in Goetz' law

See GOETZ, 3E



Lunch-hour basketball games offer a welcome break in the lawyers' day.

Goetz

From 1E

firm because of partner Dunn's disagreement with the broadness of the court's ruling. Goetz later was asked to represent a state agency in a related case, but turned down the offer in order to keep harmony in the firm.

Goetz is not yet in harmony with many landowners angered by the decision. Galt, the Senate president and rancher, said Goetz' efforts could backlash by prompting landowners to restrict public access to their property. (Galt has been the victim of Goetz' work in more than the stream access case. Goetz is currently suing the Galt family on behalf of the National Wildlife Federation to get trail access through Galt property to the Crazy Mountains.)

"He (Goetz) picks up on anything that causes conflict and builds on it," Galt said. "He's built a whole career on confrontation. He's won an awful lot of cases, and it will come back to haunt the state."

Said Goetz: "I'm a litigator. If you litigate big issues there's going to be conflict. I don't seek it out, but I don't shy from it."

Goetz said compromise efforts were made on the stream access issue. After a lower court ruled in favor of access, some legislators

prepared a compromise bill to define how access would take place. But Galt killed the bill in the Senate, Goetz said, and the case went on to the Supreme Court, resulting in broader access rights than the legislation spelled out.

Despite differences, Galt and Goetz still describe each other as nice people. Both were members of a Montana group that traveled to Russia five years ago.

Because he's so immersed in public-policy issues, Goetz seems a logical candidate for public office. But he's not interested. In fact, he shows a certain disdain for politicians. A sign in his office quotes e.e. cummings: "A politician is an arse upon which everyone has sat except a man."

Friends believe he'd be an excellent judge, but Goetz also has no interest in serving on the Montana Supreme Court. Of course, it would be a different matter if he could somehow follow in Douglas' footsteps to the U.S. Supreme Court.

Goetz has no particular long-term plans. He'll just keep making his mark as an attorney.

"I enjoy being the initiator and working in the courtroom," he said. "I really enjoy what I'm doing. I think I have the most interesting law practice around."