

Big-Time Impact In The Big Sky State

It takes me five minutes to get to work if I drive, ten or so if I walk. . . . I can drive my kid to school in the morning . . . and he can walk over to the office afterward. . . . I've coached my kid's soccer team for ten years." Such are the pluses of small-town law practice, notes James Goetz of six-lawyer Goetz, Madden & Dunn in Bozeman, Montana (population: 22,000).

Goetz, 48, a lifelong fisherman and skier raised in nearby Ennis, could revel just in perks. The surprise is his practice. In breadth, results, and rewards, it rivals many on the beaten urban path.

A generalist trial lawyer, Goetz has litigated Montana's highest impact constitutional and environmental issues. The list of construction projects slowed or stopped, special legislative sessions forced, and state constitu-

James Goetz has made his name—and a tidy living—in Bozeman, Montana, taking on what one admirer calls “lost causes that turned out to be not so lost.”

tional precedents established by Goetz cases is impressive.

According to the *Great Falls Tribune*, “few people, even governors and [state] senators, can match his record.” From wilderness protection to equitable school funding, Goetz's causes could be called liberal-populist.

Raves Goetz's Yale University Law

School classmate Zygmunt Plater, an environmental law professor at Boston College Law School: “[Goetz has] carried the highest level of metropolitan practice . . . to Montana.”

And made big-city money, too. “We're a commercial firm,” Goetz stresses, “not a public interest firm.” He and his two partners, commercial litigator William Madden, Jr., 43, and

aviation and products liability plaintiffs lawyer Theodore “Russ” Dunn, 52, agree that their incomes have varied by a factor of seven from one year to the next. Two lawyers practicing at Goetz's level in Montana say that a yearly average of \$200,000 is a reasonable guess. The partners decline comment on the estimate.

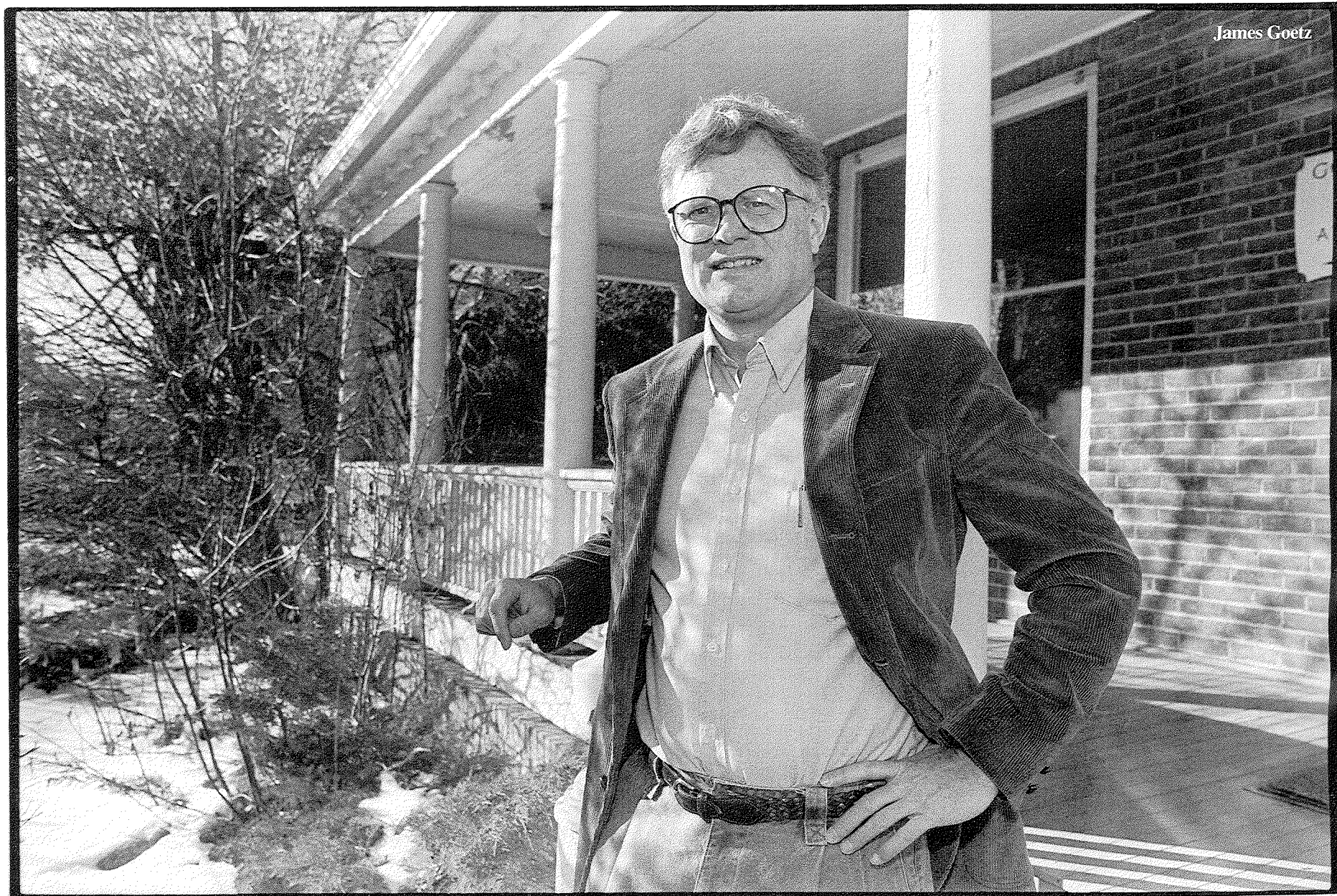
Goetz, sitting in jeans and knit tie at the firm's office, a restored three-story brick Victorian built for a Bozeman blacksmith, seems sure he has the best of two worlds: “There are very few people whom I'd trade my practice with.”

“AN INTELLECTUAL STREET PERSON”

“Who's his publicist?” jokes an admirer, Helena attorney and former state supreme court justice Frank Morrison, Jr., when a reporter calls about Goetz. Goetz is wry but hardly colorful in person or in court. He insists that his taste for big issues has spawned his relatively high profile and adoring press, rather than the other way around. Either way, Goetz's career has neatly fused the mainstream appeal of the college fraternity president and high school athlete with the iconoclasm of the flannel-shirted 1960s hippie, all three of which he has been.

Goetz sported long hair and lumberjack attire in 1968, when the 25-year-old Yale Law graduate drifted back to Montana. “I don't know what I had in mind,” he says.

He supported himself by teaching undergraduate political science at his alma mater, Montana State University



in Bozeman. He dabbled in public interest law—first representing himself, when after needing two tries to pass the Montana bar exam he unsuccessfully challenged in state court the diploma privilege that exempted in-state law grads from the test. Later, representing a disappointed fellow supporter of Senator Eugene McCarthy's 1968 presidential race, he successfully sued in federal court to reapportion Montana delegates in the Democratic national primary.

Judge Morrison, then a Helena solo practitioner, recalls that Goetz quickly seemed to be "at the forefront of every unpopular cause. [He was] kind of an intellectual street person."

In 1972 Goetz, part of a Yale Law generation that produced many of the country's leading environmental lawyers, among them the founders of the National Resources Defense Council, got what he calls his "baptism by fire" in that field. Former NBC anchor Chet Huntley, backed by Chrysler Realty Company and the Burlington Northern Railroad, proposed what is now the Big Sky ski resort near a primitive area in the Gallatin National Forest outside Bozeman. Goetz took up the fight of his friends in the National Forest Preservation Group against the development *pro bono*. "They weren't getting an accomplished trial lawyer," he says. "It was kind of a self-study program."

In federal district court in Butte Goetz challenged the developers' pending land exchanges with the federal government on the grounds that the land the government was ceding was worth more than what it would get, and that potential mineral deposits in the government tracts barred such a trade under federal law. That tack failed.

Then, in the fall of 1972, Goetz convinced the district court to enjoin the construction of the planned federal highway leading to Big Sky, arguing that a highway must lead to an existing settlement. Ultimately the developers built their own road, and Big Sky (where Goetz, no sulker, has skied) flourished.

Goetz started full-time solo law practice that year. His performance in the losing Big Sky battle and subsequent smaller wins caught the establishment's eye, notes Joseph Gary, of counsel at Bozeman's Landoe, Brown, Planalp & Kommers, who was on the Big Sky backers' legal team. "This is kind of a conservative community," Gary says. "But . . . a lot of lawyers [soon] got a lot of respect for him."

FROM REASONABLE TO PHENOMENAL

Leavening *pro bono* and reduced-fee environmental suits with small commercial cases and criminal defense, Goetz says he was "doing reasonably well" financially by 1975, when Madden, a liberal Cornell Law School graduate, joined the firm.

Goetz kept earning respect as well. His 1978 defeat of a proposed U.S. Army Corps of Engineers power dam in Libby, Montana, for instance, furthered what Bozeman solo Larry Jent calls Goetz's reputation for "lost causes that turned out to be not so lost."

Representing the Libby Rod and Gun Club, Goetz argued in federal district court that the \$251 million facility hadn't been justified as required by law and wasn't authorized by

Congress. Even after the suit was filed, the Corps, unfazed, kept hauling material to the dam site. Goetz lost at trial but won in the Ninth Circuit.

James Posewitz, assistant to the director of the Montana Department of Fish, Wildlife, and Parks, says Goetz became "an intellectual resource for the environmental community. . . . He is not an organization follower, or joiner, or anything like that. But he knew how to take effective action."

It was the 1980s that brought Goetz and the firm real prominence and affluence. Key was the addition of scholarly personal injury lawyer Dunn, who, as co-counsel, had won a \$9.3 million verdict before moving to Bozeman from Alaska in 1980 and has

allow them to be choosy about work: "When a good, interesting case comes along, I like [to take] it."

FLOOR SHOW AT THE HIGH COURT

The populist streak in Montana politics has led to several of Goetz's meatiest public interest cases. Specifically, a 1972 state constitutional convention—from which professional politicians were barred—produced "one of the most forward-looking constitutions in the United States," according to Montana University law professor Larry Elison.

Among other things, the constitution extended antidiscrimination laws beyond areas of direct state action and

Goetz handles an eclectic mix of commercial disputes, private environmental suits, and the occasional class action and criminal case, but he says he's cut back on reduced-fee environmental work.

brought in five more million-dollar awards since. (A fourth partner, Brigitte Anderson, 33, joined in mid-decade and is now on a maternity sabbatical.)

"We've done what I would say is phenomenally well since Russ joined us," Goetz says. "That's really changed the practice and nature of the firm."

Former associate James Molloy, now a partner at Portland, Oregon's 19-lawyer Lindsay, Hart, Neil & Weigler, calls Goetz "an outstanding lawyer—I've not seen better," but stresses, "He also happens to be practicing with two outstanding lawyers." Molloy, who worked closely with Dunn from 1985 to 1988, says the partners "have a nice way of working together."

According to Goetz, that commonly means "brainstorming." Not more than twice a year, "if that," he says, will two partners formally work as co-counsel. Normally the partner contacted by the client handles a case. Dunn works in personal injury exclusively. Goetz and Madden handle an eclectic mix of commercial disputes, environmental suits for private parties—such as ranchers trying to prevent strip mining by those who own mineral rights to their land—the occasional class action or personal injury on contingency, and, rarely, criminal defense. "Everything except taxes and divorces," Madden boasts.

The firm, and Goetz in particular, generates "an enormous amount of paper," according to former state judge Gordon Bennett. Goetz is "an exhaustive preparation man," observes Bennett, echoing six other lawyers who have watched Goetz. "You can almost be critical of him [for overlitigating]. Good God, when he moves his artillery into position he's ready to level everything." Goetz, an evenings and weekends worker, says he does his own drafting.

Goetz echoes his partners in saying that the firm's finances and reputation

granted an explicit right to privacy. As an arguably ironic result of this democratic exercise, it was clear by the early 1980s that power had shifted toward the courts.

Seminal Goetz cases include a 1984 state supreme court decision granting nature enthusiasts access up to the high-water line to streams running through private property. Representing, for a reduced fee, a coalition of hunting and fishing clubs against a group of ranchers, Goetz won two cases at trial and on appeal, basing his arguments on the constitution's provision that surface and ground water is a public trust.

In a 1985 *pro bono* case Goetz got the state supreme court to overturn, on equal protection grounds, a state law restricting welfare benefits for the able-bodied. And in 1989, in a suit that forced the legislature back to Helena, Goetz represented, at his usual \$150 per hour, 68 school districts charging in state court that Montana's \$475 million school funding plan was inequitable. The trial and appeals courts agreed.

Goetz's rapport with Montana's supreme court has even let his whimsy peek out. In 1987, on behalf of a citizens group, Goetz and Madden challenged a law approved by referendum that would have repealed the state constitutional right to judicial redress for all injuries, thus limiting both access to courts and jury awards. Their *pro bono* attack on the law was partly based on the fact that two words that should have been deleted from the ballots were underlined instead.

During an overhead projector-assisted high court argument in which Goetz traced litigants' rights back to the Magna Carta—"He did a floor show. It was like a dance," gushes one court spectator—he suggested that a two-word change in another ballot measure could have eliminated the state supreme court. Then again, most people would have voted for that, Goetz deadpanned, to smirks from the

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bench. He won the case.

Goetz acknowledges that the activism of Montana's seven-member supreme court may be fading, due to two recent retirements. Rick Bartos, who faced Goetz in the schools case as in-house counsel to the public construction agency, observes that after ruling the funding scheme unconstitutional the court simply referred the issue to the legislature, whose new plan was presumed valid. The panel did not assert a basic right to education or retain jurisdiction, as Goetz asked. Bartos, now chief counsel to Republican

governor Stan Stephens, speculates that the court "saw the separation of powers pushed to its limits" by a sweeping lower court decision and "impliedly drew a line in the sand."

TESTING A DRUG TAX

Sexy public issues like the schools case are often paying propositions for Goetz, either hourly or on contingency. He is contracted, for instance, to represent at \$120 an hour the Confederated Salish and Kootenai Tribes of the Flathead Indian Reservation, headquartered north of Missoula.

"In the world of federal Indian law," notes John Carter of the tribes' seven-lawyer in-house department, "we've done some pretty big cases," disputing water rights with the U.S. government, generally successfully.

Goetz prepares and examines the tribes' expert witnesses and cross-examines opposing experts. "We get the facts," says Carter, "and he tunes them up and makes them perform," adding that Goetz is particularly effective in dragging admissions from adverse witnesses. "He's done some really nice numbers on people with

their own [previous] testimony and/or figures."

Goetz says he does little criminal work mostly because, he attests, it bores him. Yet last spring he scored a notable blow against enforcement strategy in the drug war in the unlikely venue of federal bankruptcy court.

Goetz represented three couples who were partners in a Northern Montana ranch that failed in 1988 and the bankruptcy estate. According to court papers, the families began growing marijuana around Christmas 1985 in an effort to save their drought-stricken grain and livestock operation.

In October 1987 state and federal agents raided the ranch. The six ranchers later pled guilty in state court to drug possession and sale and were sentenced to prison terms ranging from three to twenty years. Then, under a 1987 state law taxing illegal drugs, one of 22 such laws recently enacted nationwide, Montana's Department of Revenue slapped the ranchers with an assessment eventually totaling more than \$900,000.

Last May federal bankruptcy judge John Peterson in Butte ruled for Goetz's contention that the tax constitutes double jeopardy under the Fifth Amendment. The case is apparently the first to test the drug taxes in federal court. The Montana Department of Revenue has appealed to U.S. district court in Butte.

"NOT THAT ESTABLISHMENT"

For all his impact, Goetz doesn't wax sentimental about his priorities. He says he probably wouldn't take on the doomed Big Sky fight today. He's cut back on reduced-fee environmental work generally, he adds.

Not that he's sold out to the safe and respectable. Goetz is now representing two former Montana Republican Party staffers claiming in state court that they were wrongfully fired when they complained to superiors that so-called "soft money" in party accounts was illegally diverted to a 1988 U.S. senatorial campaign.

Also in state court, Goetz is seeking environmental class certification for customers of the Butte Water Company, who have had to boil their water for more than a year. Butte Water is owned by Dennis Washington, one of the richest men in Montana. Both cases are in discovery.

Goetz "takes on the biggest interests in the state," observes Judge Morrison. "He's not *that* establishment. But he's not viewed as a [Ralph] Nader [either]."

It is all an inspiration to Bozeman solo practitioner Jent, who contrasts Goetz with "corporate whores" and complains, "In the legal profession now, if you tell people you're going to go into practice in a medium- to small-size town and attempt to do quality work, they look at you like you're kind of loco. People should know there are alternatives." Jent adds, "It was nice for me to have a role model here in town who cared about more than amassing assets."

For his part, Goetz says money is nonetheless "very seductive." Beyond what it buys, he claims, there's what it *means* to the state's 2,000-member bar: "Other litigators and judges respect you when you're able to function commercially, rather than just being a Don Quixote. And I've been on both sides of that." □

HAVE A HEART...

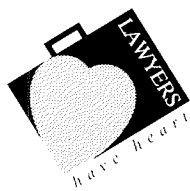
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