

APPLICATION FOR

**DISTRICT COURT JUDGESHIP
First Judicial District**

A. PERSONAL INFORMATION

1. Full Name: Chad Garrett Parker

a. What name do you commonly go by? Chad

2. Birthdate: [REDACTED] Are you a U.S. citizen? Yes

3. Home Address: [REDACTED]

Phone: [REDACTED]

4. Office Address: 215 North Sanders, P.O. Box 201401, Helena, Montana 59620-1401

Phone: 406-444-2026

5. Length of residence in Montana: 16 years

6. Place of residence for the last five years:

<u>Dates</u>	<u>City</u>	<u>State</u>
May 2004 to November 2004	Missoula	Montana
November 2004 to September 2005	Billings	Montana
September 2005 to March 2010	Great Falls	Montana
March 2010 to Present	Helena	Montana

B. EDUCATIONAL BACKGROUND

7. List the names and location of schools attended beginning with high school:

<u>Name</u>	<u>Location</u>	<u>Date of Degree</u>	<u>Degree</u>
Edwardsville Senior High School	Edwardsville, Illinois	1991	Diploma
Brigham Young University	Provo, Utah	1999	B.A.
University of Missouri – Kansas City School of Law	Kansas City, Missouri	2004	J.D.

8. List any scholarships, awards, honors and citations that you have received:

Vice President, National Honor Society Class of 1991 – Edwardsville Senior High School
Top 10% student Class of 1991 - Edwardsville Senior High School
Eagle Scout, Boy Scouts of America
Partial Tuition Scholarship, Brigham Young University
Member of Appellate Advocacy Moot Court Team - University of Missouri-Kansas City School of Law

9. Were you a member of the Law Review? If so, provide the title and citation of any article that was published and the subject area of the article.

I was not a member of the Law Review.

C. PROFESSIONAL BACKGROUND AND EXPERIENCE

10. List all courts (including state and federal bar admissions) and administrative bodies having special admission requirements in which you are presently admitted to practice, giving the dates of admission in each case.

<u>Court or Administrative Body</u>	<u>Date of Admission</u>
Montana Supreme Court	May 2005
United States District Court	May 2005

11. Indicate your present employment. (List professional partners or associates, if any).

I am currently employed as an Assistant Attorney General within Prosecution Services Bureau for the Montana Department of Justice.

12. State the name, dates and addresses of law firms with which you have been associated in practice, governmental agencies or private business organizations in which you have been employed, periods you have practiced as a sole practitioner, and other prior practice:

<u>Employer's Name</u>	<u>Position</u>	<u>Dates</u>
Simkovic Law Firm	Legal Assistant/ Associate Attorney	November 2004 to September 2005
City of Great Falls, City Attorney's Office	Assistant City Attorney Chief Prosecutor Acting City Attorney	September 2005 March 2010
Montana Department of Justice, Attorney General's Office, Prosecution Services Bureau	Assistant Attorney General	March 2010 to Present

13. If you have not been employed continuously since completion of your formal education, describe what you were doing.

From May 2004 to November 2004, after relocating from Missouri to Montana, I worked and prepared for the Bar Examination. From November 2004, until being sworn in, in May 2005, I worked as a Legal Assistant.

14. Describe the nature of your present law practice, listing the major types of law that you practice and the percentage each constitutes of your total practice.

In my current position at the Attorney General's Office, I split my time, roughly in half, between working on a general prosecutorial case load and service as the State Traffic Safety Resource Prosecutor. My duties as the Traffic Safety Resource Prosecutor revolve around advising and training county and city attorneys, the judiciary, and law enforcement. I regularly present and teach at continuing legal education and other trainings throughout the state. I have litigated impaired driving-related matters as senior counsel with less-experienced county and deputy county attorneys in a mentoring capacity when it fulfills a training need or will assist other more senior county attorneys in navigating more complex litigation. I regularly advise local county and city attorneys and law enforcement, providing support in the form of statutory and case interpretation and legal briefing. I also serve as a liaison between the Montana Department of Transportation and the Montana Department of Justice in matters of highway traffic safety and reducing impaired driving. The other half of my practice focuses a wide range of felony criminal matters, which have included assault, drug crimes, sex crimes, and homicides. I also regularly advise county attorneys and law enforcement, and assist in drafting legislation and testifying before the Legislature for the Attorney General's Office. Other duties include sitting as a member of the Criminal Intelligence Advisory Counsel, and as part of the executive team for Project Safe Neighborhoods and MPADECC with United States Attorney's Office.

15. List other areas of law in which you have practiced, including teaching, lobbying, etc.

I began my legal career in 1999 working as a civil litigation paralegal for Thompson Coburn LLP, a large, corporate law firm, at their Belleville, Illinois and St. Louis, Missouri offices. During the 2 years I was employed at this firm, prior to starting law school, I assisted with Intellectual Property, Products Liability, Admiralty, FELA, and other corporate defense litigation. During law school I worked as a legal assistant and law clerk at a small, 2-man legal practice where the focus was on family law and criminal defense. After moving to Montana, I assisted with and then represented family law clients, plaintiffs in civil litigation, and defendants in criminal cases for a short time, then transitioned to prosecution and state and local government law at the City Attorney's Office in Great Falls, Montana. In addition to handling criminal prosecution, I also represented the City in civil litigation, in landlord tenant issues for the Great Falls Housing Authority, in drafting and advocating for city ordinances, representing the City of Great Falls as otherwise necessary, and worked in managing attorneys and staff at that office. Since that time, I have worked as described in paragraph 14, above, and have from time to time have assisted acquaintances and other individuals, pro bono, on a variety of issues separate from my current practice.

16. If you specialize in any field of law, what is your specialty?

Since 2005 a significant portion of my practice has been in criminal law, but my specialty would be trial practice. Since beginning my legal career, I have worked either as a legal assistant to litigators or as a trial attorney/litigator in my own right. Although I initially envisioned working in civil law or criminal defense, and was part of the Appellate Moot Court team in law school, my employment for the last 15 years has directed me into the court room where I have worked diligently to refine my abilities in hearings and trials.

17. Do you regularly appear in court? Yes.

What percentage of your appearance in the last five years was in:

Federal court	0 %
State or local courts of record	@ 95%
Administrative bodies	@ 1 to 2 % (various Legislative Hearings)
Other	@ 3 to 4 % (Justice Court, which is not a court of record)

18. During the last five years, what percentage of your practice has been trial practice? 85-90 %

19. How frequently have you appeared in court?

This can vary widely given the nature and demands of my case load within Prosecution Services Bureau; PSB attorneys, and I, represent the State as a Special Deputy County Attorney all throughout Montana, often requiring lengthy travel. Most often, it is 5 or more times per month. During the 5 years I was employed at the City Attorneys Office, I was in court, in trials, contested hearings, open court, or in Municipal Treatment Court every day of the week, and very often, for the entirety of the work day.

20. How frequently have you appeared at administrative hearings?

If the Legislature is in session, I could be at the Capitol several times in a week or just a few times during the session depending on what DOJ or other bills require informational or advocative testimony. I appeared before the Board of Pardons and Parole in 2019 and regularly monitor their proceedings to ensure attendance on cases I have handled. Since becoming an Assistant Attorney General I believe I have appeared before the Board of Pharmacy a couple of times. While employed with the Great Falls City Attorney's Office I appeared before the Planning Advisory Board/Zoning Commission a few times and appeared before the City Commission regularly.

21. What percentage of your practice involving litigation has been:

As a paralegal/legal assistant/clerk:

From 1999 to 2001:

Civil	100%
Criminal	0%
Other	0%

From 2001 to 2005:

Civil	60 - 70%
Criminal	30 - 40%
Other	0%

As an attorney:

From 2005 to 2010:

Civil	10 - 15 %
Criminal	60 - 70%
Other	20 - 25 %

Since 2010 :

Civil	0%
Criminal	90 %
Other	10 %

22. Have you appeared before the Montana Supreme Court within the last five years? If so, state the number and types of matters handled. Include the case caption, case citation (if any), and names, addresses and phone numbers of all opposing counsel for the five most recent cases.

I have not appeared before the Montana Supreme Court in the past five years.

23. State the number of jury trials that you have tried to conclusion in the last ten years.

I have tried 10 jury trials in various jurisdictions throughout the State in the past ten years. Two of those trial settings involved *State v. Darrell Sharp*, in Toole County District Court. The first was halted early due to a mistrial because of improper bailiff commentary in front of the jury during a break. The retrial of that matter ended prior to the close of voir dire when the Defendant's demand he be allowed to plead guilty.

24. State the number of non-jury trials that you have tried in the last ten years.

I have tried 1 bench trial in Justice Court and conducted numerous contested hearings in District Court. Prior to this, however, while at the City Attorney's Office in Great Falls, the majority of 3 days of the week was dedicated to trial practice, which included hundreds of bench trials and contested hearings.

25. State the names, addresses and telephone numbers of adversary counsel against whom you have litigated your primary cases over the last two years. Include the caption, dates of trial, and the name and telephone number of the presiding judge. If your practice does not involve litigation, provide the same information regarding opposing counsel and the nature of the matter.

State v. Jeffords, Liberty County Cause number DC-17-07

Dates: Trial June 11-13, 2018
Presiding Judge: The Honorable David Cybulski, (406) 765-3404
Opposing Counsel: Mr. Lawrence LaFountain
Office of the State Public Defender
PO Box 268
Havre, MT 59501
(406) 265-2199

State v. Sharp, Toole County Cause Number DC-15-19

Dates: Trial July 16, 2018
Presiding Judge: The Honorable Jon A. Oldenburg, (406) 535-8028
Opposing Counsel: Mr. Matt McKittrick
Mr. Mark H. Frisbie
Office of the Public Defender
Region 3
615 2nd Avenue North, 3rd Floor
Great Falls, MT 59401
(406) 770-3200

State v. Gossard, Toole County Cause Number DC-17-10

Dates: Trial September 17-20, 2018
Presiding Judge: The Honorable Robert G. Olson, (406) 424-8360
Opposing Counsel: Ms. Carolyn Berkram
Glacier County Justice of the Peace
512 East Main
Cut Bank, Montana 59427

(406) 873-3631

Bobbie Cross Guns
Assistant Public Defender
615 2nd Avenue N., 3rd Floor
Great Falls, MT 59401
(406) 770-3200

State v. Holtz, Stillwater County Cause Number DC-18-25

Dates: Trial January 20-28, 2020
Presiding Judge: The Honorable Olivia Rieger, (406) 377-2666
Opposing Counsel: Mr. Vern Woodward
Ms. Cammi J. Woodward
Woodward Law Firm, PLLC
P.O. Box 1657
Billings, MT 59103-1657
(406) 294-5585

State v. Santoro, Toole County Cause Number DC-51-2014

Dates: Retrial, litigation ongoing
Presiding Judge: The Honorable Jennifer B. Lint, (406) 802-7192
Opposing Counsel: Ms. Amanda Marvin
Marvin Law Office, PLLC
P.O. Box 10699
(406) 407-0973

State v. Laird, Big Horn County Cause Number DC-2014-68

Dates: Retrial, litigation ongoing
Presiding Judge: The Honorable Randal I. Spaulding, (406) 802-7192
Opposing Counsel: Ms. Nancy G. Schwartz
Ms. Lisa Bazant
303 North Broadway, Suite 600
US Bank Building
Billings, MT 59101
(406) 256-1982

Keefe v. Kirkegard, Cascade County Cause Number ADV-17-0076

Dates: Post Conviction Petition - Resentencing hearing per *Miller and Montgomery*
April 18, 2019
Presiding Judge: The Honorable Gregory Pinski, (406) 454-6894
Opposing Counsel: Alex Rate
Elizabeth Ehret
ACLU of Montana
P.O. Box 9138
Missoula, MT 59807
(406) 204-0284

State v. Hasson, Mineral County Cause Number DC-31-2018-40-IN

Dates: Resolved via plea agreement

Presiding Judge: The Honorable Jason Marks, (406) 258-4774
Opposing Counsel: Mr. Bryan Tipp
Tipp Coburn & Associates PC
2200 Brooks St.
Missoula, MT 59801
(406) 549-5186

State v. Sharp, Toole County Cause Number DC-15-109

Dates: 2 trials (last 2 years various post-trial litigation)
Presiding Judge: The Honorable Jon A. Oldenburg, (406) 535-8028
Opposing Counsel: Mr. Todd A. Glazier
P.O. Box 202
Kalispell, MT 59903-0202
(406) 755-4400

26. Summarize your proceedings before administrative boards or commissions during the last five years.

I have represented the State of Montana before the the Montana Board of Pardons and Parole and in front of the Sentencing Review Board. I have also appeared before numerous committees and in hearings before the Montana State Legislature, in both the House and the Senate.

27. If you have published any legal books or articles, other than Law Review articles, list them, giving citations, dates, and topics involved. If you lectured on legal issues at continuing legal education seminars or otherwise, state the topic, date, and group to which you spoke.

I have conducted trainings, lectured, or have been a panel member on various legal issues for law enforcement, County and City Attorneys, courts of Limited jurisdiction and other groups on numerous occasions with regular frequency. A sampling of the trainings, lectures, and panels from the last 2 years is included below. I can provide additional dates and details past this 2-year window should the same be desired.

May 2020 – Cancelled due to COVID – Annual National Traffic Safety Resource Prosecutors Conference – Florida – Scheduled to be a panel member on Traffic Safety Resource Training creation and organization.

March 12, 2020 – Search and seizure and impaired driving legal review training with interdiction-team officers in Butte, Montana for the Highway Patrol.

February 2020 - Glasgow, Montana – “North Counties DUI Bootcamp” – Prosecution and Law Enforcement Boot Camp on roadside impaired driving enforcement for law enforcement officers and courtroom testimony and trial practice for both officers and prosecutors. This training also included statutory and case law instruction.

November 7 – 8, 2019 – Pacific Northwest Law Enforcement Liaison Workshop in Coeur d’Alene, Idaho representing Montana as Montana’s Traffic Safety Resource Prosecutor. At this workshop I participated with TSRPs from Idaho, Oregon, and Washington State, federal NHTSA representatives, and law

enforcement representatives for NHTSA Region 10. Also in attendance and participating was Region 10's Judicial Liaison Mary Jane Knisely, a District Court Judge for Yellowstone County Montana. Judge Knisely and I were the only representatives from Montana for all of Region 10. At this forum we discussed impaired driving related issues prevalent within the Region as well as the specific concerns we are attempting to overcome within our individual states. We worked together to analyze these concerns and drew from each other's experiences in combating impaired driving to identify strategies that we could bring back to our home states.

October 31, 2019 – Panel member for Montana Department of Transportation CHSP panel with TSRO Doug Samuelson and Judge Greg Mohr discussing legal issues pertaining to Impaired Driving in Montana from a law enforcement, prosecutorial and judicial perspective.

October 4, 2019 – Supreme Court Legal Update for City Attorneys at Montana league of Cities and Towns Conference.

January 2019 – Prosecution Boot Camp – 3.5 days of trial practice training with moot court breakout sessions for new prosecutors on variety of subjects, including: Domestic Violence and DUI Laws and Procedure, DUI Expert Testimony and Science, Commencing the prosecution/charging, Case Theory, Discovery and Pre-Trial Motions, Evidence, Opening Statements, Trial Organization, Jury Selection/Voir Dire, Protecting the Record for Appeal, Plea Offers and Sentencing, Working with Victims, Direct Examination, Cross Examination, Closing Statement

December 4, 2018 – Trained judges of Courts of Limited Jurisdiction regarding Impaired Driving Laws and issues related to trial litigation, including Discovery disputes, practice and procedure.

September, 2018 – Presented to Municipal Attorneys at MT League of Cities and Towns – presented and trained on DUI law and presented information on potential changes to DUI law.

D. PROFESSIONAL AND PUBLIC SERVICE

28. List all bar associations and legal professional societies of which you are a member. Provide the titles and dates of any office that you have held in such groups and committees to which you belong. These activities are limited to matters related to the legal profession. List the dates of your involvement.

State Bar of Montana

29. List organizations and clubs, other than bar associations and professional societies, of which you have been a member during the last five years. State the title and date of any office that you have held in each organization. If you held any offices, describe briefly your activities in the organization.

Boy Scouts of America – I was a Cub Scout leader (Cubmaster) for 2 years during 2018 and 2019.

Big Brothers Big Sisters Helena Chapter – Board Member for 2 years throughout 2010 and 2012.

30. Have you ever run for or held public office or sought a judicial appointment? If so, provide the details.

I have never run for office or sought a judicial appointment prior to this application.

31. Explain your philosophy of public involvement and practice of giving your time to community service.

My philosophy of public involvement and community service is that they are essential to the proper working of society and the intellectual, spiritual, and cultural development of individuals whether they are the ones performing the service or a recipient. My philosophy has been formed by three primary influences: my involvement with the Boy Scouts of America, charitable religious service, and in professional service to the State of Montana. While it seems very popular, currently, to view the Boy Scouts with cynicism, I am proud to have been involved with the organizational and am deeply thankful for the experiences I had serving as a scout. From the age of 7 or 8, I was an active Cub Scout. After that I was a Boy Scout. I worked through all the ranks and eventually became an Eagle Scout in my late teens. As an adult I have worked on occasion as a Scout Leader with Boy Scouts and most recently as a Cub Scout Leader. Whether the service was something as simple as picking up trash along a county road or involvement in food drives, I was actively involved in service through the Boy Scouts as a feature of my youth. It taught me that there are things far more important than myself and there are those who are in greater need than I am or was.

Participation in service as a Boy Scout spurred a determination to perform other charitable work and service, which was a primary feature of my work as a missionary. A large portion of my time during the 2 years I worked as a missionary in Russia was spent in charitable service outside of the religious activities I was involved in. We were not paid and our living and work was self-funded. We spent time working with abandoned children in orphanages, sometimes reading to them, helping out at the facility, or sometimes, even just being present and taking to them and showing them that someone cared. During the winters we helped break thick ice from sidewalks and in summer we helped people plant fields of potatoes at their "dacha" to help them supplement their food storage. We taught free English classes to people as well. Although I have continued to serve members of my local congregation, whether in attending to their physical or spiritual needs, I can honestly say that those 2 years in service were more fulfilling than almost anything I did before or have done since, short of being a husband and father.

During my professional career I have primarily worked as a public servant for the State of Montana. Most of my colleagues, and I, would likely make a much better living working at a private firm or elsewhere, but we serve victims of crime and our neighbors to provide a stabilizing influence and help to those in need. I have seen this work change people's lives and consider it an honor to serve in this capacity.

E. PROFESSIONAL CONDUCT AND ETHICS

32. Have you ever been publicly disciplined for a breach of ethics or unprofessional conduct (including Rule 11 violations) by any court, administrative agency, bar association, or other professional group? If so, provide the details.

No.

33. Have you ever been found guilty of contempt of court or sanctioned by any court for any reason? If so, provide the details.

I have never been held in contempt or officially sanctioned.

34. Have you ever been arrested or convicted of a violation of any federal law, state law, or county or municipal law, regulation or ordinance? If so, provide the details. Do not include traffic violations unless they also included a jail sentence.

No.

35. Have you ever been found guilty or liable in any civil or criminal proceedings with conduct alleged to have involved moral turpitude, dishonesty and/or unethical conduct? If so, provide the details.

No.

36. Is there any circumstance or event in your personal or professional life that would, if brought to the attention of the Commission, Governor or Montana Supreme Court, affect adversely your qualifications to serve on the court for which you have applied? If so, provide the details.

No.

F. BUSINESS AND FINANCIAL INFORMATION

37. Since being admitted to the Bar, have you ever engaged in any occupation, business or profession other than the practice of law? If so, provide the details, including dates.

From approximately May of 2010 through January 2019 we rented out our former residence in Great Falls. I managed the property through January of 2012, but had a management company handle rent collection and repair requests after that. We sold the property in August of 2019.

38. If you are an officer, director, or otherwise engaged in the management of any business, provide the name of the business, its nature, and the nature of your duties. If appointed as a district court judge, state whether you intend to resign such position immediately upon your appointment.

I am not currently engaged in or associated with any business outside my legal practice.

39. State whether during the last five years you have received any fees or compensation of any kind, other than for legal services rendered, from any business enterprise or organization. If so, identify the source and the approximate percentage of your total income it constituted over the last five years.

I have not.

40. Do you have any personal relationships, financial interests, investments or retainers that might conflict with the performance of your judicial duties or that in any manner or for any reason might embarrass you? If so, please explain.

No.

41. If appointed by the Governor, are you prepared to disclose the information required under 2-2-106, MCA (i.e., the name, address and type of your business; any present or past employer from which you currently receive benefits; any business or professional entity or trust in which you hold an interest; any entity in which you are an officer or director; and any real property, other than a personal residence, in which you hold an interest)?

Yes.

42. Have you filed appropriate tax returns as required by federal, state, local and other government authorities? Yes No

If not, please explain.

N/A

43. Do you have any liens or claims outstanding against you by the Internal Revenue Service (IRS)?
 Yes No

44. Have you ever been found by the IRS to have willfully failed to disclose properly your income during the last five years? If so, provide the details.

No.

G. WRITING SKILLS

45. In the last five years, explain the extent to which you have researched legal issues and drafted briefs. State if associates or others have generally performed your research and the writing of briefs.

I regularly research and write briefs for the cases I handle. Since beginning work at the Attorney General's Office I have regularly performed legal research for County and City Attorneys, too, but have more recently, since beginning my role as the TSRP, assisted other attorneys in drafting motions and briefs for them to alter and file. I do all of my own research and writing.

46. If you have engaged in any other types of legal writing in the last five years, such as drafting documents, etc., explain the type and extent of writing that you have done.

I regularly assist City and County Attorneys throughout the state in researching and drafting a wide variety of motions and other pleadings to assist them in their practice. I also review a substantial amount of legal writing by these attorneys prior to their filing their legal writing in courts around the state. I have also had somewhat frequent occasion to assist in drafting proposed legislation. Although I have worked on other legislation, I am particularly proud of the writing I did in support of 2013's HB 140, which was codified into law and amended Montana's drug laws. It specifically addressed illicit synthetic drug manufacture, possession, and distribution (Bath Salts, Spice, and other designer Danger Drug Ana-

logues). I also performed a majority of the writing and restructuring of MTDOJ's 2019 Legislative effort to reorganize the DUI code. I believe this was a worthwhile effort even though it was not successful.

47. Attach a writing sample of no more than ten pages that you have written yourself. A portion of a brief or memorandum is acceptable. The writing sample should be as recent as possible.

48. What percentage of your practice for the last five years has involved research and legal writing?

Approximately 50%, and sometimes more, of my practice involves legal research. I am engaged in legal writing about 20% of the time.

49. Are you competent in the use of Westlaw and/or Lexis?

Yes.

H. MISCELLANEOUS

50. Briefly describe your hobbies and other interests and activities.

I have a wide variety of hobbies and interests that range anywhere from tinkering on cars and bicycles to gardening and playing musical instruments. If I had to pick a favorite, and most dear, hobby, though, it would have to be painting and drawing. I cannot remember a time in my life when I did not draw or paint. Referring it as a hobby or passing interest understates the impact this activity has had on me throughout my life.

51. Describe the jobs that you have held during your lifetime.

I have been working since before I could hold an "official" job, due, primarily, to familial economic circumstances. I did odd jobs, like handyman work, scraping and painting houses, repairing bicycles, or "operating" a shovel amongst other things. From the age of 16, I worked at a couple of restaurants, including being a cook at Pizza Hut. I did not work for a couple of months while I recovered from surgery for a brain tumor, but soon returned to work as a store clerk at Shop & Save, a local grocery store in my hometown. I worked there for a short time to help pay for medical expenses.

During my senior year of high school, having enough credits to graduate mid-year, I left high school early and started working full time to assist my family. I worked at a local landscaping and fresh produce store called the Market Basket, where I performed a wide range of duties from driving tractors, dump trucks, and fork lifts, to stocking store shelves, ordering product, cashiering, and opening the store every morning during the work week. I had a second, part-time job where I worked assisting a local modern sculptural artist, Mary Pizzini, at Pizzini Art Studio. I then left the Market Basket and took a job at a local bank chain, Central Bank, where I worked as a bank teller. I rotated between 3 different branches while at the bank, including Madison, Marine, and Glen Carbon, Illinois.

After the better part of 3 years, in June of 1993, I had managed to not only assist my family, but also save enough money to finance missionary service with the Church of Jesus Christ of Latter-day Saints. For the next 2 years I worked as a missionary in the former Soviet Union, and was posted in several

cities, namely Moscow, Nizhnii Novgorod, Yekaterinburg, and Novosibirsk. As a representative of the Church I was primarily occupied in proselytizing and charitable service work, but was also responsible, in concert with other missionaries, for managing local congregations. I was chosen as part of group of 10 missionaries to assist in opening a new mission in Yekaterinburg, in the Urals, where I worked as a District Leader and was responsible for the day-to-day work and welfare of numerous missionaries. Also, while in Yekaterinburg, I was assigned to work with a coworker and assist in the legal registration of the Church organization with the Russian government. This required extensive face-to-face work with government officials and navigation of the post-Soviet Russian legal bureaucracy. Despite our fluency in the Russian language, this was a perplexing and complicated task, mainly because the Russian government seemed to want it to be so. Our and other missionaries' work on this task secured official status for our organization and allowed our work to continue without additional bureaucratic hurdles being put in the way for many years afterwards. After approximately 9 months in Yekaterinburg, I was transferred to work in the Siberian city of Novosibirsk as a Zone Leader, where my responsibility over the welfare of missionaries and work organization expanded dramatically. Once my two-year service period was completed, I returned home and prepared to attend undergraduate studies.

Beginning in January of 1996, I attended Brigham Young University in Provo, Utah where I worked at several jobs to help pay for tuition, books, and living expenses. My main employment was at Brigham Young University's Missionary Training Center as a Russian language and teaching skills instructor. I taught groups of missionaries who were being sent to Russian and Slavic-speaking language areas in grammar, vocabulary, syntax, and immersive conversational training. I also substitute taught for other Slavic-language groups and English as a Second Language. During the last year of my studies I also worked at the Center's travel office where I assisted with missionary travel logistics. I was also employed at BYU as a technical assistant for the Slavic Languages Department. At this job, in addition to other tasks, I graded assignments and reviewed language proficiency exams for students from several universities and colleges in BYU's region. These exams, if passed, could provide an exemption of up to 16 credit hours for a language-major's coursework. I also worked as a pizza delivery driver and a tutor during this period of time to make ends meet.

After graduating from BYU in 1999, I returned to the St. Louis area and worked for 2 years as a civil litigation paralegal at Thompson Coburn, LLP in various practice areas, as described above. In 2001, I began law school. After the first year of law school I worked at a small, 2-man practice as a legal assistant and clerk. At Taylor & Young, I assisted with appellate, family law, and criminal defense cases and did a significant amount of pleadings drafting and writing appellate briefs. After graduating from law school in 2004, my wife and I relocated to Montana. In the fall of 2004, I began work as a legal assistant with the Simkovic Law firm in Billings, Montana. After receiving my licensure, I continued to work for the firm for a few months as Associate Attorney until I secured other employment at the City Attorney's Office in Great Falls, Montana.

I began working at the Great Falls City Attorney's Office in September of 2005 and was promoted to each of the successively responsible positions available in that department during the nearly five years I was employed there; i.e., Assistant City Attorney (2007 to 2007), Chief Prosecutor (2007 to 2010), and Acting City Attorney (2009-2010). While working as the Assistant City Attorney and Chief Prosecutor, I concentrated my efforts on reorganizing the prosecution efforts of the City Attorney's Office, establishing a relationship of trust with the Great Falls Police Department, the Cascade County DUI Task Force, and the Great Falls Community Development Department. I also concentrated on building positive rela-

tionships between our office and other City Departments. This required reassessing our work processes related to the departments' criminal prosecution and code enforcement efforts and creating a system of checks and accountability for managing the nearly 20,000 misdemeanor criminal, traffic, and code citations processed by the City Attorney's Office and adjudicated in Great Falls Municipal Court each year.

As I worked, first as the Chief Prosecutor and later as the Acting City Attorney, I counseled the various departments of the City of Great Falls on legal and procedural matters, trained the City's law and code enforcement officers, and served as the City Attorney's Office's representative on the Cascade County DUI Task Force and the EUDL (Enforcing Underage Drinking Laws) coalition. I also continued to manage the City Attorney's Office staff, attended and participated in City Commission meetings, provided legal counsel for the City Manager and City Commission, reviewed and prepared contracts and other official City documents, drafted and presented ordinances for approval by the City Commission, interpreted and advised staff and management on matters related to the City Code, attended to public relations and media contact, represented the Great Falls Housing Authority in litigation and in an advisory capacity, and managed the City Attorney's Office budget.

I also attended to numerous other legal and management matters during that time, including: 1) representing the City in litigation initiated by the EPA and the Montana Department of Environmental Quality against the City, which involved industrial waste discharge, hydrogen sulfide control, and the City's waste water discharge permit; 2) writing and presenting the City's Fireworks and Social Host Ordinances for passage by the City Commission; 3) working on an interim zoning ordinance designed to address Medical Marijuana business licensing; 4) working with the City Commission and City Management on organizational and legal review of the City of Great Falls electric energy arm, Electric City Power; 5) resolving a Human Rights Commission Discrimination Claim involving an Officer with the Great Falls Police Department and the Great Falls Police Protective Association through mediation; and 6) working to resolve pending litigation concerning Montana's open records laws.

In March of 2010 I began employment with the Attorney General's Office, in the Prosecution Services Bureau. I was initially assigned to handle prosecutions related to Prescription Drug Diversion and other crimes involving the illicit possession, use, manufacture and distribution of dangerous drugs, and medical marijuana as part of the Attorney General's drug diversion and prescription drug abuse prevention program. Since 2012, however, I have coordinated with investigators, litigated, and tried various criminal matters (assaults, fraud and financial crimes, sex crimes, homicides, and crimes perpetrated by elected officials, etc.). I also regularly advise City and County Attorneys and other law enforcement officials on matters of law and policy, respond to public inquiries, assist in drafting and testifying on legislation, and review complaints filed with the Attorney General's Office regarding County Attorneys throughout the State. In addition to the other work I do that the office (described herein) I maintain a full trial case load, which requires travel throughout the state.

As noted in the preceding paragraph, I am often called on to testify or otherwise work at the Legislature. Although I also presented testimony on one occasion while working with the City of Great Falls, I have testified or worked on legislation with MTDOJ during each session since 2011. During the 2013 Legislative Session, I, along with staff from the Montana State Crime Lab, the Montana Division of Criminal Investigation, and the Montana Highway Patrol, researched, wrote, and advocated for House Bill 140, which was passed by the Legislature and addressed the proliferation of designer drugs, including

Spice and Bath Salts. Throughout the 2019 session I worked as the primary drafter of the Department of Justice's proposed DUI legislation which sought to simplify and clarify the DUI code as well as correct years of piecemeal amendments to the state's impaired driving laws.

During the fall and winter of 2013-14, I worked with the Montana Medical Association in a working group to help clarify for their members the parameters of HIPAA and medical professionals' ability to share information concerning prescription drug crime with law enforcement under Montana Law. In March of 2014, I was asked to be a speaker at the Montana Medical Association conference at Carroll College and participated in a panel discussion on that issue with several other legal experts.

During 2015 and 2016, I was an active member of the Attorney General's Office's Technology Study Committee, which was comprised of Bureau Chiefs or a particular Bureau Chief's designee. The Committee has been tasked with researching, evaluating, and recommending technology updates, work-process improvements for the Attorney General's Office, and improving public access to public information related to the work of the Attorney General's Office. As a result of our work on the committee we completed an RFP process, awarded a contract, and rolled out a case and information management system.

Between 2016 and 2018 I also worked part-time as an adjunct instructor for the University of Montana - Helena College in its Continuing Education Department teaching Russian.

Since September 2018 I have worked, in addition to my other responsibilities, as the State Traffic Safety Resource Prosecutor. As described above under other paragraphs, I conduct a wide variety of training, consult with law enforcement, prosecutors, and the judiciary and assist local prosecutors in trying criminal matters throughout the state. A significant portion of my current case load connected to this responsibility deals with Negligent Homicide and other impaired-driving related matters.

52. Identify the nature and extent of any pro bono work that you have personally performed during the last five years.

Due to my regular work and home-life responsibilities I have not been able to perform a lot of pro bono work, but I do assist acquaintances and other individuals from time to time with legal concerns. Since 2018 I have assisted in a few matters, including assisting leadership from my local congregation navigate a guardianship and property rights matter for an elderly member of our congregation, have reviewed contracts for other individuals, and have assisted an individual with some capacity challenges to work in attempting to recover lost or stolen business assets.

53. In the space provided, explain how and why any event or person has influenced the way that you view our system of justice.

My perspective on the legal system has changed dramatically since I was a youth. When I was a kid, I distinctly recall the adults in my life speak exclusively in negative terms about the legal system and those involved in it. And, although I did not know the details, and still really do not, the story of how my grandparents lost their home and had to buy it back from a purportedly less than reputable lawyer, allegedly all over again and through no fault of their own, pervaded my sense of how the legal system worked. This story, the reputation of the county where I grew up in Southern Illinois as one of

the two most litigious counties in the state, and the wide economic disparity between our side of the tracks and the bankers and lawyers who lived on the other in my hometown did nothing to convince me that working in the legal system was a desirable or respectable life choice. The teenage “me” could not have imagined himself an attorney.

A lot has changed, though, over 30 years. During my time in Russia in the early to mid-nineties I saw what a society truly devoid of democratic constitutional protection and civil legal redress for its citizens looked like. Daily existence required the navigation of purposefully nebulous and ineffectual bureaucratic structures. You could be stopped and detained by the police solely because it suited their mood. None of the problems I was aware of in the United States compared to the disaster Russia’s lawlessness had to offer. I came to realize that my prior attitude lacked thoughtfulness and had been formed in the absence of appreciation for nuance. Within months of returning to the United States, now as a generally destitute student, I suffered an appendicitis. The hospital misdiagnosed my condition and sent me home. I returned to the hospital, in the throes of sepsis, 5 days later, nearly 4 days after my appendix had burst. I felt lucky to have survived, but not grateful for the monumental medical bills now coming my way. Luckily, my uncle was able to refer me to an attorney to talk over my situation. Over the next few months this meek, yet highly astute, lawyer helped me through my troubles. It seemed like some kind of intellectual magic at the time, but this man’s pro bono service prevented what I had expected to be an unmitigated and predetermined financial disaster. He had saved me from a real mess and inexplicably asked for nothing in return. I had experienced for the first time in my life the great power that legal practitioners and our legal system have in service to others. This changed me and the course of my education. This experience has continually returned to my mind in the 25 years since and guides my practice daily.

Throughout undergrad many of my friends talked about becoming lawyers. Very few of them did, though. Maybe, they, before I did, became privy to how challenging it is to become a lawyer and how much work it takes to be a skilled one. As a paralegal at a large corporate firm, I came to believe that I was capable of handling the intellectual demands of legal practice. In very short order, after receiving my license to practice law, I then saw, first-hand, the effect a skilled and compassionate attorneys can have on people’s lives versus those who are not so committed to serving others and this profession. Soon, I felt drawn to prosecution, mainly because of what appeared to be a larger set of tools to work with in achieving justice in the hands of prosecutors, whether that be by moving a matter all the way through trial in service to victims or society, or whether it be in making a decision to not pursue charges. Since I have worked as a prosecutor, I have seen both paths render a restorative influence in people’s lives. I have also had the opportunity to help shape the structure and content of our State’s laws and help other legal professionals and law enforcement officers provide better service. These experiences have helped me become a witness to the fact that our legal system can work for us individually as well as collectively despite what prevailing attitudes may be or in what station one finds him or herself.

54. In the space provided, explain the qualities that you believe to be most important in a good district court judge.

From my perspective a judge needs to be a steady influence in the courtroom, have a professional and dispassionate attitude towards all litigants and issues, a deliberate and restrained temperament, and be able to make appropriate and quick decisions that reflect the law and respect parties’ rights. A

necessary part of conducting trial is making evidentiary rulings on the spot, sometimes while litigants are highly emotional, even disrespectful and contrarian, or completely ignorant of the rules of court and the law. In this setting the judge has to be able to provide appropriate analysis and maintain the decorum of the courtroom, reflecting patience. A judge cannot let his or her personal mood or feelings towards litigants, their representatives, or the issues presented sway outcomes. A judge also has to ensure that dispositive rulings are consistent and based in the law and the facts so attorneys and pro se litigants can expect and achieve more predictable outcomes. A district judge, above all, has to seek to do what is right.

55. In the space provided, explain how a court should reach the appropriate balance between establishment of a body of precedent and necessary flexibility in the law.

A district court judge is required to follow legal precedent that is binding on the court unless there is a clear basis to do otherwise. While there is often wide variability in the facts and circumstances of the cases that are presented to the court, the court should look to see where the questions presented by each unique case has been most closely answered and apply those holdings in a consistent and rational manner without creating precedent out of whole cloth. To do otherwise would undermine the predictability of our system and compromise legal practitioners' and other citizens' ability to function within our society. However, sometimes precedent conflicts. History, facts, circumstances, and changed understanding should have a bearing on our interpretation of law and its value for our time. For example, it would be nearly imperceivable that one would argue that the Dred Scott case (*Dred Scott v. Sanford*) should be controlling precedent today. While most examples presented to a district court are not likely to be as clear cut as in the case I cite, the court must be flexible and astute enough to recognize when, however rarely, divergence from precedent is required.

56. In the space provided, state the reasons why you are seeking office as a district court judge.

I am seeking the office of district court judge because I want to serve the community where I live in a more direct way. As an Assistant Attorney General, most of my cases are filed and litigated in outside of Lewis and Clark County even though my office is only a couple of blocks from the Capitol. And although I believe my work has been impactful for those communities, I also believe that my experience, abilities, and work ethic could be more directly meaningful to my own family and my direct neighbors in this area if I were allowed to serve as a judge in this district court. I also believe that having served as an officer of the court throughout the state that I have learned a lot about what does and does not work well at the district court level. I am confident that I would be able to apply that experience in providing equal access to, fairness from, and consistency on the bench.

57. What items or events in your career have distinguished you or of which you are most proud?

The things I am most proud of in my career relate to my handling of a pair of homicide cases, as an Assistant Attorney General, and the choice to forego pursuing prosecution on a pair of misdemeanor defendants during my time as a City Attorney. With the homicides, the work of being a support for the families and friends of the decedents often outpaced the cases' logistical demands. And, the logistical demands were enough for anyone's plate. The initial success achieved in those matters has been compromised by subsequent litigation, requiring another full run at the matters. I have worked really hard to shepherd the families through all of this and believe that I have been able to assist them in ways that

simply pursuing the matters without fulfilling that role would not have done.

With the matters I handled in municipal court, one involved a defendant who just simply could not seem to get his driving privileges restored. Mind you, this was due to the fact that for the longest time he just would not stop driving, whether he was legally allowed to do so. The fines and suspensions from one charge compounded onto another and others onto those. When I met this defendant, he had really been working to dig himself out of this hole. However, and despite the efforts, which seemed to him to be monumental, he was charged again. It looked to undue all his work. City Attorneys see thousands of this type of citation every year and likely hear the same number of explanations and excuses. This makes it easy to distrust the storyteller. After speaking with him face-to-face I was convinced to have some faith in this person, dismissing his charges in the interests of justice. The other matter concerned domestic violence. When first seeing the charging documents I recognized his name. It was not the first time I had handled a matter with this defendant. The file on the new charges described an event that fit the cycle of violence and from all signs he looked to be a future and repeat customer until finding his way into district court on felony charges. However, he was representing himself and sought an appointment to speak to me about the charges. I was hesitant, and was told by many to not trust anything he had to say. I did meet with him, though, and later with the alleged victim of the offense. They both pled with me to dismiss the charges. I held off, but soon received reports of the defendant's work in counseling groups. This is not generally enough of an assurance to defer a prosecution, but in this case, I took that step. In this case as well as with the suspended driver, I chose to rely on something I saw in the person and their behavior, rather than the unvarnished facts. A few years later I saw these two individuals out in public. The change in them was obvious and they had not been in court since then. Had I chosen to allow, as was my usual course, the matters to proceed through to trial, these men would likely have been convicted, but justice would not have been done. The consequences would likely have pushed their situations over the edge.

With each of these, most, if not every other person I consulted on the matters, told me I should do the opposite of what I eventually decided to do because of the challenges and alleged "risks" identified through their analysis. It was not that they were wrong, but rather I considered other, possibly more subtle, factors beyond the mechanics of the thing to be more important in guiding my approach. Those other factors had everything to do with the impact that proceeding or holding off would have on the victims or the defendants involved. I believe that in giving these men another opportunity that justice was done.

58. Provide any pertinent information reflecting positively or adversely on you that you believe should be disclosed to the Judicial Nomination Commission.

I do not believe there is anything to disclose that has not already been provided herein.

59. Is there any comment that you would like to make that might differentiate you from other applicants or that is unique to you that would make you the best district court judge applicant?

For years a majority of my caseload has required service to those who remain after the death of a loved one or whom have directly suffered at the hands of another. This has not only demanded I attend very closely to the logistics of prosecuting cases, which are often technically complicated, but also that I tend to the needs of the victims of crime or the family and friends of a decedent, which is complicated in a

very different way. This, more than anything, requires an open heart, an open ear, and the wherewithal to find the right words to somehow assuage, if only temporarily, the deep sadness and loss that they feel in the aftermath of such events and from which they will never fully recover. This has often taken more from me than I thought I had to give, but I have been proud to serve in this way. I am constantly impressed by the ability of people, thus situated, to endure patiently as the legal process works its course in the face of uncertain results.

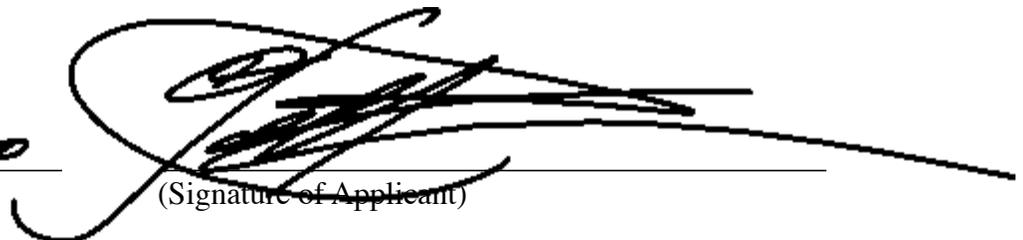
I have also been impressed with the seriousness with which those called to jury service attend to their duties. Our system leaves the responsibility for making final decisions about an accused person's guilt with the jury, a group of individuals who very rarely have had any experience with the law. The evidence in many cases is subject to myriad interpretations and proving a case beyond a reasonable doubt is not a given. Because of this, the size of caseloads and the continual balancing required to prioritize cases, some prosecutors do not pursue cases when a win is not clear. A decision to decline a serious and not-so-cut-and-dried prosecution, from what I have seen, is rarely made lightly, but I have also seen, all too frequently, legal analysis inserted as a justification for not moving forward when a case should be decided by a jury.

My personal philosophy is that sometimes the fight that plays out in the courtroom is necessary to help heal people, whether it be for defendants or victims, civil litigants, or people working through treatment court. We have juries and other court structures for a reason; that the most consequential decisions of are best left to regular people. I believe that often in contrast to other legal practitioners I have encountered, I have taken on cases and other work that were very difficult to try or navigate when others shrank from the burden. I have worked to be skilled at the mechanics of this work and have tried to always be compassionate. I believe I have been of assistance to many people. As a district court judge, I would work tirelessly to ensure that justice is accessible to everyone in our community.

CERTIFICATE OF APPLICANT

I understand that the submission of this application expresses my willingness to accept appointment as District Court Judge for the 1st Judicial District, if tendered by the Governor, and further, my willingness to abide by the rules of the Judicial Nomination Commission with respect to my application and the Montana Code of Judicial Conduct, if appointed.

August 25, 2020
(Date)


(Signature of Applicant)

A signed original **and** an electronic copy of your application and writing sample must be submitted by
5:00 p.m. on Thursday, August 27, 2020.

Writing Sample

The Defendant has submitted a motion to dismiss on the grounds that the crime as alleged took place at a location where the United States has exclusive jurisdiction and, therefore, the State has no authority to prosecute this matter.

The State asserts that the Defendant's analysis and conclusion are in error. First, the Defendant generally misunderstands that land purchases, in and of themselves, do not equate to procurement and divestiture of jurisdiction. Second, the Crow Indian Tribe (Tribe), although it transferred land in the referenced transactions, did not lose any portion of its Reservation to the Federal Government or surrender its inherent sovereignty. Third, if the Tribe could exercise its jurisdiction by virtue of its inherent sovereignty, then the Federal Government did not, even against the Tribe, have exclusive jurisdiction. Fourth, Mont. Code Ann. § 2-1-214 did not cede State ownership or jurisdiction over all land within the Bighorn Canyon and, at a minimum, this cession from the State to the United States, resulted in proprietary jurisdiction for the Federal Government, not exclusive jurisdiction. Sixth, absent exclusive jurisdiction by the Federal Government on the Reservation, the State of Montana retained the authority to exercise criminal jurisdiction over non-Indian crimes against other non-Indians within the Crow Reservation. And finally, whether the crime was committed on Crow Reservation land or on State land, the State of Montana has jurisdiction to prosecute ██████████ for the charge of Deliberate Homicide, in violation of Mont. Code Ann. § 45-5-102(1)(a) (1999). The Defendant's Motion to Dismiss should be denied and this matter should proceed to trial in Big Horn County District Court.

ARGUMENT

At the core of the Defendant's brief is a presentation and analysis of the property transactions between the State of Montana and the United States of America (United States), and the property transactions between the Crow Tribe and the United States related to the creation and expansion of the Bighorn Canyon Recreation Area. Based on that

analysis, the Defendant concludes that since the State of Montana allegedly failed to expressly reserve concurrent jurisdiction over the lands which were the subject of those transactions, the United States of America has exclusive jurisdiction over the land where [REDACTED] was killed by [REDACTED] and, thereby, the State of Montana lacks jurisdiction to prosecute him for the crime of Deliberate Homicide, in violation of Mont. Code Ann. § 45-5-102(1)(a) (1999). The Defendant misunderstands which property rights were ceded and the general import of those cessions on jurisdiction.

I. PUBLIC LAWS 85-523 and 89-664, CROW TRIBAL RESOLUTION 67-59

The Defendant describes three transactions between the Crow Tribe and the United States to assert that the Federal Government has exclusive jurisdiction over the north shore of the Afterbay and that the State of Montana has no jurisdiction to prosecute this matter; Public Laws 85-523 and 89-664, and Crow Tribal Resolution 67-59.

“Exclusive Jurisdiction” is defined as “[t]hat power which a court or other tribunal exercises over an action or over a person to the exclusion of all other courts.” *Black’s Law Dictionary* 507 (5th ed. 1979). Generally, the federal courts have original and exclusive jurisdiction over certain actions and concurrent jurisdiction with state courts in others. *Id.* According to *Kelly v. Lockheed Martin Services Group*, 25 F. Supp. 2d 1 (D.C. Puerto Rico 1998), the Federal Government can obtain exclusive jurisdiction in one of four ways. First, the United States must have reserved legislative jurisdiction upon a state’s entry into the Union. Second, if prior to February 1, 1940, the Federal Government buys land for a purpose enumerated in the Constitution and the State transfers complete jurisdiction to the United States pursuant to U.S. Const. art. I, § 8, cl. 17. Third, the Federal Government obtains land within a state through purchase, gift, or eminent domain. Fourth, if after February 1, 1940, the United States accepts exclusive jurisdiction after the acquisition of property and then receives the state’s cession of jurisdiction. *Id.*

Nothing in the Defendant's brief supports a claim that the United States acquired exclusive jurisdiction over the subject property by methods one or two. It appears, however, that the Defendant claims that an amalgam of the third and fourth methods has divested the State of Montana of criminal jurisdiction in this matter. The Defendant's conclusion requires, first, that the Court analyze whether, through these three transactions, the Federal Government obtained exclusive jurisdiction from the Tribe over the land beneath the water closest to the north shore of the Afterbay reservoir where [REDACTED] is alleged to have been drowned by [REDACTED].

In 1851, the United States entered into the First Treaty of Fort Laramie with the Tribe and other northern plains tribes. The treaty identified approximately 38.5 million acres as Crow territory. *Montana v. United States*, 450 U.S. 544, 548 (1981) (hereinafter *Montana*; 11 Stat. 749 (1851); 2 Kappler, *Indian Affairs: Laws and Treaties* 594 (1904)). In 1868, the Second Treaty of Fort Laramie established a Crow Reservation of 8 million acres inside the larger Crow territory, including land through which the Bighorn River flows. 15 Stat. 649 (1868); 2 Kappler at 1008. The General Allotment Act of 1887 and the Crow Allotment Act of 1920, further reduced the size of the Crow Reservation until in 1943 and 1944, the United States passed the Flood Control Act of 1944. *Montana*, 450 U.S. at 548; 24 Stat. 388 (1887); 41 Stat. 751 (1920); 58 Stat. 887 (codified as amended at 16 U.S.C. § 460d (1976)). When the State of Montana entered the Union in 1889, title to the land under the Bighorn River was conveyed to the State of Montana by the United States. *Montana*, 450 U.S. at 548. The treaty establishing the Crow Indian Reservation did not convey to the Tribe any beneficial ownership of the bed of the Bighorn River flowing through the Reservation. *Id.* It is clear from this history, the holding in *Montana*, and the maps presented by the Defendant, that the referenced lands, lying north of the Bighorn River, at the very least up until the construction of the Yellowtail Dam and the Afterbay dam, were Crow Tribal Reservation lands and that the land under the

Bighorn River belonged to the State of Montana. The Defendant erroneously asserts that this changed, however, beginning in 1958.

In 1958, Congress enacted Public Law 85-523, whereby the United States transferred certain lands surrounding the Bighorn River, shown in Defendant's Exs. B and C, out of trust from the Tribe and set them aside in a right-of-way for the creation of the Yellowstone Dam and Reservoir. Parcels 1 through 5 of section 16 of the Crow Tribal Reservation Lands were not transferred into the right-of-way. These parcels appear to be those that encompass the area where [REDACTED] is alleged to have been murdered by [REDACTED] [REDACTED] d. And, pursuant to Mont. Code Ann. § 46-2-101, an understanding of their transfer and the rights exchanged between the United States, the Tribe, and the State of Montana is critical to determining whether the State of Montana had jurisdiction to charge and try [REDACTED] for the crime of Deliberate Homicide, in violation of Mont. Code Ann. § 45-5-102(1)(a) (1999).

In 1966, Congress enacted Public Law 89-664, which created the Bighorn Canyon National Recreation Area, and transferred administrative responsibility of the Bighorn Canyon National Recreation Area to the National Park Service. No additional land was transferred into the 1958 right-of-way. *See* Def.'s Ex. D. The 1966 act also, therefore, did nothing to affect the property rights of parcels 1 through 5 of section 16. The parcels remained part of the Crow Reservation.

The Defendant then cites Crow Tribal Resolution 67-59, a 1967 Memorandum of Agreement between the Tribe and the National Park Service. Through this agreement, the Secretary of the Interior administratively expanded the Bighorn Canyon National Recreation Area by placing almost 56,000 additional acres of Crow Reservation land inside the regulatory jurisdiction of the National Park Service. This transfer included parcels 1 through 5 of section 16 and affected some of the Tribe's rights in this land, but not all. *See* Def.'s Ex. E, specifically subsections I.-B., I.-D., I.E., I.-G., II.-A., II.-C., III.-

D., III.-E., III.-F., and III.-H. Still, the parcels remained part of the Crow Reservation. This will be discussed in further detail below.

Despite this, on page 6 of the Defendant's brief, he argues that the above-cited 1958, 1966, and 1967 land transactions between the United States via the Department of the Interior and the National Parks Service and the Crow Indian Tribe resulted in the Federal Government obtaining exclusive jurisdiction over parcels 1 through 5 of section 16. The Defendant describes these land transactions, but fails to explain how by virtue of the language of those acts of Congress and the 1967 agreement, or any subsequent holdings of any court, equates to a simple conveyance of land and all attendant interests in the land, and thereby divested the Tribe and the State of Montana of their jurisdiction in these lands. The State submits that although the Tribe may have transferred title to these lands to the Federal Government, these transactions, as evidenced by the Tribe's reservation of rights in Tribal Resolution 67-59, did not reduce or diminish the Crow Reservation or cede the Tribe's inherent sovereign jurisdiction to the United States.

Tribal jurisdiction on Indian reservations stems from the fact that Indian tribes are "unique aggregations possessing attributes of sovereignty over both their members and their territory." *United States v. Wheeler*, 435 U.S. 313, 323 (1978). There are two primary sources for tribal regulatory power within the boundaries of a reservation; the Crow treaties, "augmented by 18 U.S.C § 1165, and inherent Indian sovereignty. Montana, 450 U.S. at 557. Various Congressional acts, including precursors to the Major Crimes Act, have recognized the inherent power of Indian Tribes, within the boundaries of their reservations, to enforce their criminal laws against tribal members. *Id.*, 435 U.S. at 322. It follows that if, after 1967, the Tribe was able to enforce its laws within those portions of the Bighorn Canyon National Recreation Area, which were part of the Crow Indian Reservation prior to 1958, 1966, and 1967, then those acts of Congress and the 1967 Tribal Resolution did not result in the United States obtaining "exclusive jurisdiction" within the Bighorn Canyon National Recreation Area (hereinafter referred to as the BC-

NRA). This means that the United States would only have exclusive jurisdiction against the Tribe if Public Laws 85-523 and 89664 and Crow Tribal Resolution 67-59 reduced, or diminished, the Crow Reservation when parcels 1 through 5 of section 16 were absorbed into the BCNRA. Therefore, analysis of whether the Crow Reservation was diminished through the creation and expansion of the BCNRA is critical to either establishing or refuting the Defendant's premise.

Pursuant to *Solem v. Bartlett*, 465 U.S. 463 (1984), only Congress can divest an Indian Reservation of its land and diminish its boundaries, and that diminishment "will not be lightly inferred" and "requires that Congress clearly evince an 'intent to change boundaries' before diminishment will be found." *Id.*, 465 U.S. at 470 (quoting *Rosebud Sioux Tribe v. Kneip*, 430 U.S. 584, 615 (1977)). The United States Supreme Court continued, holding that "[o]nce a block of land is set aside for an Indian Reservation . . . no matter what happens to the title of individual plots within the area, the entire block retains its reservation status until Congress explicitly indicates otherwise." *Id.* at 470. "Diminishment" is only presumed when there is an "unconditional commitment" to compensate the Tribe, along with present and total surrender or all tribal interests. *Id.* at 470-71. Although there is reference to compensation to the Tribe throughout Public Law 85-523, there is also an express reservation of rights. By the standard pronounced in *Solem*, there was no diminishment of the Crow Reservation simply because compensation was rendered in 1958. With regards to 1966 and 1967, there is no language referencing additional compensation being provided to the Tribe. Again in *Solem*, the United States Supreme Court noted,

When both an act and its legislative history fail to provide substantial and compelling evidence of congressional intention to diminish Indian lands, we are bound by our traditional solicitude for the Indian tribes to rule that diminishment did not take place and that the old reservation boundaries survived the opening.

Solem, 465 U.S. at 472.

“Compelling evidence of congressional intent to diminish Indian lands” requires clear and unambiguous language that expressly changes a reservation’s boundary. *United States v. Dupris*, 612 F.2d 319, 320-22 (8th Cir. 1979). An “isolated phrase in [a statutory section] having nothing to do with the location of reservation boundaries falls short of ‘clear language of express disestablishment.’” *Lower Brule Sioux Tribe*, 711 F.2d at 819 quoting *Mattz v. Arnett*, 412 U.S. 481, 504 (1973). Again, with regards to the second prong of the *Solem* diminishment presumption (*Solem*, 465 U.S. at 470-71), throughout the creation of the 1958 right-of-way for the Yellowtail Dam and Reservoir, the 1966 creation of the BCNRA, and its 1967 expansion, the Tribe reserved numerous, substantial rights.

An analogy to the creation of the 1958 right-of-way in the lands surrounding the Bighorn River can be found in *South Dakota v. Bourland*, 113 S. Ct. 2309 (1993). In *Bourland* the Cheyenne River Sioux Tribe conveyed land in an Act to build the Oahe Dam and Reservoir, but reserved from the conveyance tribal rights in minerals, timber, grazing, hunting, and fishing. *Id.*, 113 S. Ct. at 2314. The Eighth Circuit held that the Act did not diminish the Sioux Reservation. *South Dakota v. Bourland*, 949 F.2d 984, 990 (8th Cir. 1991). As in Public Law 85-523, where the Tribe reserved irrigation, mineral, hunting, and fishing rights, the Crow Reservation was not diminished. Further, in *Bourland*, that reservation of rights led the district court and the Eighth Circuit to find that the creation of the dam and reservoir did not “disestablish” the river boundary of the Cheyenne River Reservation. *Bourland*, 113 S. Ct. at 2314. Applying *Bourland* to the instant case, Public Law 85-523 did not disestablish the Crow Tribal Reservation boundary at the Bighorn River. All parcels that were part of the Crow Tribal Indian Reservation prior to 1958 remained part of the Crow Tribal Indian Reservation after passage of Public Law 85-523.

According to this same legal rationale and the very language of Public Law 89664, when Congress created the Bighorn Canyon National Recreation Area and transferred

administrative responsibility of the Bighorn Canyon National Recreation Area to the National Park Service, no additional Crow Tribal Reservation Land was transferred into the right-of-way created via Public Law 85-523. According to subsection (2)(b) of the Act, no lands would be included within the recreation area unless it was requested by the Tribe. At a minimum, until 1967, the boundaries of the Crow Tribal Reservation remained the same.

As cited in the Defendant's brief, in 1967, the Tribe enacted Crow Tribal Resolution 67-59, a Memorandum of Agreement between the Tribe and the National Park Service. This agreement placed almost 56,000 additional acres of Crow Reservation land inside the regulatory jurisdiction of the National Park Service. However, the Federal Register Notice regarding this agreement indicates that the Tribe did not convey or cede any lands via this agreement. Rather, it simply made them "available . . . for public recreational use and for development and administration by [the National Park Service] of administrative and public use facilities, with the understanding that such tribal and other lands within the Crow Indian Reservation . . . would be included in the boundaries of the recreation area." 33 Fed. Reg. 15, 128 (Oct. 10, 1968).

In addition to these reservations of rights, nothing in the 1958 Joint Resolution, the 1966 creation of the BCNRA, and the subsequent 1967 expansion of the BCNRA via Crow Tribal Resolution 67-59 expressly restricted the Tribe's jurisdiction over Indians. Pursuant to *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130, 148 (1982), the correct implication from this silence is that the Tribe's inherent sovereign power remained unaltered. From this it is clear that despite the transfer of the listed lands into the BCNRA, the Crow Tribal Reservation was not diminished and the United States did not acquire exclusive jurisdiction within the BCNRA against the Tribe. Since the Crow Reservation was not diminished in 1967, and the Tribe could exercise jurisdiction, at the very least over Indians while in the boundaries of the reservation, the United States does not have exclusive jurisdiction over the land north of the border of the Bighorn River.

II. MONTANA CODE ANNOTATED § 2-1-214 AND THE JANUARY 14, 1980 LETTER FROM THE UNITED STATES DEPARTMENT OF THE INTERIOR TO GOVERNOR THOMAS L. JUDGE

After his reference to the 1967 Memorandum of Agreement/Crow Tribal Resolution 67-59, the Defendant, on pages 7 and 8 of his brief, addresses the 1979 enactment of Mont. Code Ann. § 2-1-214, and circles back to his argument that the alleged failure to reserve concurrent jurisdiction with the Federal Government in the lands of the Bighorn Canyon resulted in exclusive federal jurisdiction. This conclusion erroneously extrapolates the Defendant's previous error regarding the United States' and the Tribe's land transactions to the loss of jurisdiction to the 1979 passage of Mont. Code Ann. § 2-1-214.

Although the language of Mont. Code Ann. § 2-1-214 reads that “[c]oncurrent jurisdiction over crimes and offenses under the laws of the state is ceded to the United States over and within all the lands dedicated to national park purposes in . . . Big Horn Canyon,” the Defendant does not explain how the State of Montana could have ceded jurisdictional rights over lands which it did not own, but which were part of the Crow Indian Reservation in 1979 (namely, parcels 1 through 5 of section 16, otherwise known as the “Added lands”). *In re Estate of Hobbs*, 2002 MT 85, 309 Mont. 308, 46 P.3d 594.

The State submits that regardless of the very general language “Big Horn Canyon,” which is emphasized by the Defendant, nothing in the 1958 and 1966 acts of Congress, the 1967 Crow Tribal Resolution, the 1979 passage of Mont. Code Ann. § 2-1-214, or the retrocession letter dated January 14, 1980, from the United States Department of the Interior to Governor Thomas L. Judge divested the State of Montana of their criminal jurisdiction over non-Indians in Crow Reservation lands. Again, this cession of jurisdiction did not equate to a simple conveyance of land and all attendant interests in the land.

Reference not only to the holding of *Montana*, is critical to refuting the Defendant's conclusion, but so is the analogous nature and timing of the Tribe's and the United States' claims in that case.

In 1974, the Crow Tribal Council passed Crow Tribal Resolution No. 74-05, which prohibited hunting and fishing within the reservation by anyone who was not a member of the Tribe. *Montana*, 450 U.S. at 548-49. Despite the Resolution, the State of Montana continued to assert its authority to regulate hunting and fishing by non-Indians within the reservation. *Id.*

On October 9, 1975, proceeding in its own right and as fiduciary for the Tribe, the United States endeavored to resolve the conflict between the Tribe and the State of Montana by filing suit seeking the following relief: (1) a declaratory judgment quieting title to the bed of the Big Horn River in the United States as trustee for the Tribe; (2) a declaratory judgment establishing that the Tribe and the United States have sole authority to regulate hunting and fishing within the reservation; and (3) an injunction requiring Montana to secure the permission of the Tribe before issuing hunting or fishing licenses for use within the reservation. *Id.*

Initially, the district court denied the United States' lawsuit, but the Court of Appeals reversed that judgment, relying on its opinion in *United States v. Finch*, 548 F.2d 822 (9th Cir. 1976), *vacated on other grounds* in *Finch v. United States*, 433 U.S. 676, 97 S. Ct. 2909 (1977), which held that the United States, pursuant to the treaty of 1868, which created the Crow Indian Reservation, held the bed and banks of the Bighorn River in trust for the Tribe. The United States Supreme Court then, in 1981, overturned the 9th Circuit Court of Appeals based on the following rationale:

Though Article 2 (of the treaty of 1868) gave the Crow Indians the sole right to use and occupy the reserved land, and, implicitly, the power to exclude others from it, the respondents' reliance on that provision simply begs the question of the precise extent of the conveyed lands to which this exclusivity attaches. The mere fact that the bed of a navigable water lies within the boundaries described in the treaty does not make the riverbed part of the riverbed that might overcome the presumption against its conveyance.

Montana, 450 U.S. at 554.