

**"ANYTHING TWO PEOPLE KNOW IS NOT A SECRET."**

# THE CHEYENNE HERALD

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## Herald accused of slander!

by Dave Featherly

*"... it is illegal to publish false information and to slander Jay's name as you are doing."*

A letter I received recently from the parents of Jay Payne did not provide me a return address for response so I'll respond in this space in the event there are others who hold similar beliefs about what the Cheyenne Herald has published in the many stories concerning the death of Dwayne Sells and, to a lesser extent, any role Jay Payne may have played in that death.

Slander is an oral defamation and libel is a printed defamation. But I know what was meant. And, to their credit, both parents signed the letter of March 28, 2006.

I take exception to accusations made in the single page letter and will respond to some of them here.

*"... the young man you have been trashing, time and time again in your so called paper."* (Jay Payne)

I will point out that I knew the identities of Jay Payne and his young drinking partner that night of April 22 (early morning of April 23, 2005), from the very first conversation I had concerning the incident at the Outlaw Saloon that led to Dwayne Sells' death. I have written over 20 articles of varying lengths on this subject and I did not identify Jay Payne by name until three months after he was publicly identified at the coroner's inquest on August 23, 2005.

*"... you are still bringing Jay's name up."*

It is impossible to ignore his involvement that early morning, whether criminal or not.

*"He has never been charged in Dwayne Sells death as it has been ruled an accidental death and this lawsuit has nothing to do with our son."*

True, no criminal charges have been brought against anyone in the death. But the lawsuit has much to do with the acts of Jay Payne and Josh Cooper. The ruling of accidental death by the coroner's inquest does not bring closure to the matter. A new District Attorney will be elected in November and he can reopen the case - it has not been closed just because of the coroner's inquest - and

charges can be brought up until the time any statute of limitations expire. Some may believe the coroner's inquest closed the books. It did not. It was just part of the investigatory process.

*"It not only saddens us, but all of our family that you continue to do this."*

I not only withheld Jay Payne's name for as long as I could, but I refused to print the name of a prominent relative of his because that relationship had nothing to do with the event of that night.

*"... you have said some very ugly things about our son along with saying he and Josh fled to Florida."*

I have reviewed all of the stories I've written or published in the Cheyenne Herald and I take strong exception to any characterization that I have written "ugly things" about Jay Payne. It just isn't true. Both the county coroner and police statements indicated that the move to Florida was sudden. If "fled" suggested they were fleeing criminal charges, that was too strong a suggestion. Had, or if, criminal charges are filed, they will be of such a magnitude that extradition will bring them back to Cheyenne, willing or not.

*"... poor reporting on your part as you want to mislead the public."*

My goal has been to inform the public. I have never said the fight caused Dwayne Sells death. By itself, I don't believe it did. I believe, even though no one has such proof, that Dwayne may have survived the fight. But not the fight **AND** fall.

You, on the other hand, charge that Dwayne Sells BAC that night was "3 times the legal limit." That is blatantly false. You also charge that he had "other drugs in his blood" that night. He had a trace level of pot, no hard drugs. But, due to a poor police investigation, your son's BAC was not tested. Nor for other drugs in **HIS** system. You charge that Dwayne was "out drugging" that night. What evidence do you have of that? Pot stays in the system for weeks. He could have smoked a joint three weeks prior.

You point out that Colt Price, Dwayne's friend who was with him that night, was "caught for possession of meth" on February 28, 2006. (Concludes on P. 4)

## KOHL'S to open by Lowe's in north Cheyenne and Best Buy is also likely



The Cheyenne Herald has learned that the fast-growing and profitable department store chain, Kohl's, of Menomonee, Wisconsin (a Milwaukee suburb), will open a store east of Lowe's and north of Prairie Avenue, behind Frontier Mall.

The new store will be built on two parcels of land which have been acquired from Lowe's and members of the Cole family. It has taken more than a year and a half to complete the purchases of 9.517 acres from nine members of the Cole family and 7.46 acres from Lowe's.

Many Cheyenne residents already travel to the Colorado cities of Denver, Fort Collins or Greeley, to shop at the popular Kohl's. Offering products similar to traditional department stores but with centralized checkouts like a discounter, Kohl's conducts many "sales" and targets a middle to upper income customer.

Kohl's began as a family grocery store in Milwaukee in 1946. In 1962, the founder, Max Kohl, established the first Kohl's department store. Owned by family for another decade, the stores (food and department) were sold three times before going public in 1992. The last of the grocery stores closed in 2003.

Herb Kohl, a son of Max, was active in the operation of the stores for quite some time, and became owner of the NBA's Milwaukee Bucks and is in his third term as a U.S. Senator from Wisconsin.

Kohl's have announced plans to open 500 stores during the next five years. In 2006, 80-85 stores are planned to be opened. The company's latest fiscal year ended January 28, 2006 and Kohl's reported \$13.4 billion in sales. There were 732 stores at the end of January. Their operating profit was \$1.416 million and net income was \$842 million. Sales for that fiscal year were up 14.5% over the previous year.

In the opinion of the Cheyenne Herald, there has been no more significant retail addition to the city since Frontier Mall opened. Target, Wal-mart, Home Depot and Lowe's were certainly factors but true soft goods retailing took a major hit with the closing of Joslin's.

The Special Warranty Deed transferring about 7.5 acres from Lowe's to a new ownership (MRV WyEx, LC) was recorded September 3, 2004. The initial filing for this new Limited Liability Corporation is dated July 2, 2004 and the agent's address is Topeka, Kansas. The purpose for the organization is shown to be Real Estate.

Exhibit C of that Special Warranty Deed contains a lengthy list of restricted uses for the land. What follows is a partial list:

- (a) Paint Store;
- (b) Appliance Store, **BUT NOT PROHIBITING A BEST BUY STORE;**
- (c) Home Electronics Store, **BUT NOT PROHIBITING A BEST BUY STORE;**
- (e) Hardware Store;
- (f) Lumber Yard;
- (h) Building Supply Center;
- (i) (j) Home Improvement Center, and Home Improvement Warehouse;
- (k) Church
- (l) School
- (o) A bar, tavern, nightclub, discotheque, or other similar type facility ...
- (p) A gas station or convenience store

The restrictive uses are effective for 20 years.

Some of the restrictions are protective of the business of Lowe's, others are protective of the potential use of three pads to the south of Lowe's (between the store and Prairie Avenue) which have been retained in ownership by various members of the Cole family.

*Note: It is likely other major retailers will open on the same parcel but we'll leave something for the WT-E to announce.*

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