

Dan White - a good choice

The announcement that local attorney Dan White would be the next city attorney was a bit surprising. First because a capable attorney would be asked and second because a capable attorney would accept. We're just not used to that recently in Cheyenne city government.

The downside to appointing a competent person as city attorney is that it will take away about five percent of my material. The Cheyenne Herald is indebted to the two attorneys who served in that position during the Spiker administration. They dependably provided some of the best material we've had to write about for the seven years of the Cheyenne Herald.

It is doubtful Dan White will be a comparable source of poor legal decisions and advice to the mayor. At least, it is my opinion he will not be. And my hope.

What I respect about him - what I have seen of him in action - is that he knows his way around research material. None of us know all there is to know about every subject that comes our way. The difference in success and failure is being able to analyze accurately the information we have access to. That is what I think Dan White will do with regularity.

No attorney knows case law on every subject. But every attorney should know their way around the legal volumes that will lead them to the proper conclusion,

based on precedent. If there were ever a first time for a legal question, it is understandable that no one would be negligent for not knowing how the legal challenge will turn out. But that hasn't been the case with city legal disputes since 2001.

And that should be the difference with Dan White. What he doesn't know, he can learn and what he hasn't experienced, he will find the answers to. Hundreds of thousands of dollars of public money has been squandered because of incompetent legal advice from, and work by, city attorneys in the past few years.

It isn't that there weren't legal precedents on annexations, governmental immunity, sewer line backups and other legal issues on which the city lost litigation, there were. Dan White will find it, read it and understand it. That will save residents and the City incalculable money.

And the Cheyenne Herald will have to look elsewhere for city decisions to challenge and correct. They'll be there, trust me.

I've seen Dan in court. He has a pleasant manner, no arrogance or pomposity. And that hearing was one in which I preferred the other side but admired his preparation and presentation to the judge.

The city attorney is critical to the well-being and reputation of the city. Rick Kaysen made a good choice. A very good choice.

Peter Arnold - reversed again!

If Peter Arnold adopts two kittens or puppies, he should name them "Reverse" and "Remand." He's so familiar with those words that he won't have trouble remembering the animals' names either.

If he's not careful, the Supreme Court will come to believe they have to look especially close at appeals from his decisions because he is wrong so frequently.

An appeal to the Supreme Court is not automatically a reflection on the judge. Wyoming is one of those states where anybody can appeal any decision from a District Court and the Supreme Court generally has to consider it. In many states, those cases would be decided at a lower Appeals Court level, not taking up the time of the Highest Court in the State.

So, all Wyoming District Court judges have cases appealed to the Supreme Court. And most lower court decisions are affirmed. But Arnold is getting dangerously close to Ted Williams' 1941 batting average insofar as reversals and remands are concerned. That was .406 for my chess playing friends. An occasional reversal on legal grounds may be understandable but, as has been written here previously, cases involving women and child custody matters should not be decided by this judge.

As though the Supremes wanted to drop one more failure on Peter Arnold's record before the end of the year, a December 31, 2008 ruling was published.

This matter was actually a Petition for Writ of Review (2008 WY 159) but resulted in the familiar reverse and remand to Arnold.

Justice James Burke wrote:

"Petitioner ~~Kenneth Adams~~ entered a conditional guilty plea to a second offense of driving while under the influence of alcohol. She appealed to the district court, which affirmed the Judgment and Sentence. Ms. ~~Adams~~ petitioned this Court for a Writ of Review, which we granted. We find that Ms. ~~Adams~~ did not enter a valid conditional guilty plea pursuant to Rule 11(a)(2) of the Wyoming Rules of Criminal Procedure. Accordingly, we vacate the judgment of conviction and reverse for further proceedings."

What this case boils down to is that a woman intended to enter a conditional guilty plea to DUI, based on "holding an evidentiary hearing to establish the arresting officer's competence and reliability to testify regarding this evidence." The evidence in question was a Standardized Field Sobriety Test.

The Supreme Court rephrased the appeal to: "Did Ms. ~~Adams~~ enter a proper conditional guilty plea pursuant to W.R.Cr.P. 11(a)(2)?"

Note: The appellant's name has been removed because it is not germane to

this case. It could have been anybody, the name is not important.

By most indications, this woman was driving drunk. A portable BAC registered .125 in the field and a later one at the station was .14. The threshold for drunk driving now in Wyoming is .08 - a lower threshold can be applied for impaired driving.

At circuit court, "the court denied the Motion for Discovery of EC/IR Software Information," and "addressed the defense motions to suppress evidence."

What had happened was the highway patrol trooper had stopped the woman because of what he said was a missing front license plate. He saw the rear plate was from South Dakota and he knew that state, like Wyoming, requires the display of two license plates.

But, the owner of the vehicle was a passenger in it that night and said there were two plates displayed at the time. A friend arrived after the defendant was taken to jail and took photographs of the front of the vehicle and the front license plate was in place. That picture was placed into evidence. The record reflects that "the circuit court issued an Order Denying Motion to Suppress Evidence and Dismiss Case and Order Denying Motion to Suppress Statements of the Defendant. Specifically, the court determined that the testimony of the car owner was not as reliable as that of the patrolman."

The defendant requested a *Daubert* hearing to determine the competence of expert witness testimony - the trooper - about certain field sobriety tests and his comments related to those tests. When *Daubert* was denied, the defendant changed her plea to a conditional guilty plea. The sentence was to be 127 days in jail, 120 days suspended, in favor of probation for two years.

She appealed to the district court - enter Peter Arnold. He, of course, affirmed the judgment and sentence of the circuit court. Enter the Supreme Court on petition for review. There are requirements for a valid conditional plea of guilty. They were not met in this case.

"It is undisputed that in this case the parties did not make a reservation of the right to appeal a specific issue in writing. Additionally, the record does not sufficiently demonstrate that Ms. ~~Adams~~ intended to preserve the right to appeal the specific issues." She also appealed on a Fourth Amendment issue - that the stop was illegal because of the dispute over the front license plate. If she "were to prevail on this issue, suppression of all evidence obtained as a result of the illegal traffic stop would have to be suppressed," the Supreme Court wrote. And, "Because there is no evidence of guilt other than that obtained as a result of the traffic stop, a finding in favor of Ms. ~~Adams~~ on this issue would require dismissal of the charges against her."

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