

## Where is Cynthia's campaign?

What's she waiting for?

Does she have an "October Surprise" to spring on the very active Gary Trauner?

Or is she counting on the overwhelming Republican voter registration advantage to carry her through? If that's her strategy, she may be in for a big shock late Tuesday night of November 4th.

Gary has set up his issues ads very nicely with a series of personality ads to establish his likability. His recent ad linking Lummis to the questionable Republican idea of privatizing social security is bound to play well with Wyoming's elderly. The last thing anyone collecting social security or within fifteen years of that age wants to hear is a candidate pushing the idea of tying social security to the stock market.

The best Cynthia Lummis can respond, through a surrogate, not even for herself, is that she meant she would take nothing off the table, including privatization. After the past week when the Dow Jones lost 18% of its value and about a trillion dollars in paper wealth, no one should be considering investing social security funds in the unpredictable stock market.

As this is being written, there are three weeks and two days left to campaign. Is it possible that the Republican national party sees this as a race not worth investing in and that Wyoming movers and shakers have found that party faithful will not invest *their* money in this race?

The only television commercial run for the Lummis campaign is one in which it is again misstated that she *grew* the state's

investment funds by \$4 billion. She did not. She cannot boast about the earnings on the principal because she did not do very well in that area. The investment funds grew by statutory requirement and legislative decision, nothing the treasurer did or could do.

Without the Sierra Club label to tag on the Democratic candidate, perhaps Cynthia simply does not know what to do. A recent forum by the LWV in Laramie did not attract her attendance. As so often happens, she sent her daughter in her stead. She appointed a campaign chairman who has zero experience in politics or political campaigns and it has shown.

Does she think she can win the US House seat on the strength of the signs she has placed all over the state?

Does she think voters are going to be impressed by her endorsements? Even the NRA barely chose her over Trauner. His A- grade won't cost him among gun owners in the state. It was only a few weeks ago that Joe Meyer declared Cynthia wasn't fit to be our Representative, endorsing a faux Republican instead, and now his endorsement of a fellow Republican is supposed to sway voters to her? An endorsement from Jim McBride will influence whom? Other failed superintendents from Colorado?

Twenty-three days and counting down. A recent poll supposedly has her down by four points to Trauner with heavy undecided. Does it really matter which one we send to Washington? Probably not. Especially if Cynthia is acting like another do-nothing like Cubin became.

## Laramie County District Court judges not ready for prime time

In *Catamount Construction v. Timmis Enterprises and Crayton Masonry, Inc.* (2008 WY 122 / S-08-0023), the Wyoming Supreme Court reversed and remanded Judge Ed Grant's ruling on the following bases:

"[¶1] General contractor Catamount Construction (Catamount) filed suit against several of its subcontractors, alleging defective work on a house in Cheyenne. The subcontractors filed motions to dismiss, asserting that Catamount had no standing to maintain its suit because it was defunct as the result of bankruptcy. The district court granted the subcontractors' motions. On appeal, we conclude that corporate existence is a matter of state law and, under Wyoming law, a dissolved corporation may sue and be sued. Catamount, therefore, has standing to maintain this action.

"[¶2] We reverse and remand."

In another recently issued opinion, the Wyoming Supreme Court continued to slap down Peter Arnold and wrote about his abuse of discretion and violation of legal principles.

In *Testerman v. Testerman* (2008 WY112 / S-08-0006) the Supreme Court reversed an important portion of Judge Arnold's ruling on the following bases:

"[¶1] This appeal arises from the divorce proceedings of Marcella Testerman and Gabriel Testerman. The district court awarded primary custody of their ten-month-old daughter to Ms. Testerman, then granted visitation to Mr. Testerman with the aim of having each parent spend approximately equal time with the child."

Then, "The district court's express purpose in granting this visitation was to prevent Ms. Testerman from moving to California, as she intended to do, so that the child would stay in Cheyenne and develop a relationship with her father. Ms. Testerman has appealed the district court's decision.

We will affirm the grant of primary custody to Ms. Testerman, but reverse the district court's decision regarding Mr. Testerman's visitation."

And, "[¶17] The district court articulated only one reason for imposing the visitation it did: to allow Mr. Testerman and the child to develop and maintain a relationship. That was a laudable goal, but it falls well short of the "good reasons" needed to justify the *de facto* joint custody imposed by the district court. Absent good reasons, explained in the record, the district court abused its discretion in ordering this custody and visitation arrangement.

The district court violated established legal principles when it ruled that Ms. Testerman's relocation could amount to a material change of circumstances justifying a change of custody. The sole reason given for this arrangement was to keep Ms. Testerman in Cheyenne, which violates her constitutional rights. Based upon our precedent, we are forced to conclude that the district court abused its discretion and violated legal principles in establishing this custody and visitation arrangement."

These two reversals are representative of the lack of knowledge and judgment shown by district court judges statewide.

## Downtown fire

The Wyoming Supreme Court recently ruled (2008 WY 116) that the owner of Mary's Bake Shoppe is responsible for paying for the demolition and clean-up of her property on W. Lincolnway.

Nothing surprising in that ruling.

They probably didn't have precedent to rely on and went the way most any court would under the same circumstances. In spite of what many thought would be an expedited decision by the Supreme Court as a favor to the City, it was actually very long in coming. Identified as S-07-0243, several cases heard and appeals filed after this case were decided ahead of this one. In fact, since June 1, 2008, at least 17 cases heard after Mary's have had rulings issued ahead of this one.

The legal issue appealed was related to a summary judgment granted by Judge Ed Grant on the city's claim for payment of the demolition costs and for foreclosure of its cost-of-demolition lien. The Supreme Court, in an opinion written by Justice Golden, affirmed Judge Grant.

The opinion in its entirety can be read at: <http://courts.state.wy.us/Opinions/2008WY116.pdf>

This ruling was not kind to the Colorado attorney who represented Mary Coonts.

Justice Golden wrote: "*Issues I and II are too broad to be useful. The language does nothing more than remind us that this appeal is from the grant of a summary judgment against Coonts. The presentation of such broad issues is exactly what Wyoming Rule of Appellate Procedure 7.01(d) is intended to prevent. The Rule exists to provide a direct roadmap to this Court of the coming arguments. In the instant appeal, because there is no appropriate listing of the issues, this Court is put in the highly undesirable position of having to independently scour Coonts' brief in order to determine her specific allegations of error. We will do our best to determine Coonts' points of error, but Coonts bears the risk that we might miss something buried in her brief.*"

Not a good start for the foreign barrister. He was taken to the woodshed on other occasions. Later, Justice Golden wrote: "*On March 31, 2006, the City filed the instant action for damages and foreclosure of the lien against her property. After extensive discovery, the district court granted summary judgment in favor of the City on both counts.*" Continued >>

Nothing like a little editorializing to favor one litigant over the other. "*After extensive discovery*" is seldom seen in an opinion. It is assumed there will be extensive discovery before a case is decided at the district court level. The words suggest to the reader that one side really did their homework and the reader can guess about the other side's preparation. Justice Golden's earlier words had already dissed the preparation of the lawyer for appellant Mary Coonts.

The decision relied heavily on the International Property Management Code (IPMC) and quotes extensively from its pages:

"*Notwithstanding other provisions of this code, whenever, in the opinion of the code official, there is imminent danger due to an unsafe condition, the code official shall order the necessary work to be done, including the boarding up of openings, to render such structure temporarily safe whether or not the legal procedure herein described has been instituted; and shall cause such other action to be taken as the code official deems necessary to meet such emergency.*"

The IPMC seems to suggest that "boarding up of openings" is the most extreme

measure allowed but Justice Golden did not think so.

Leading up to the boarding up of openings, the IPMC states:

"*When, in the opinion of the code official, there is imminent danger of failure or collapse of a building or structure which endangers life, or when any structure or part of a structure has fallen and life is endangered by the occupation of the structure, . . . the code official is hereby authorized and empowered to order and require the occupants to vacate the premises forthwith. . . .*"

Vacate. Still nothing about demolishing a structure without the owner's knowledge or approval. Now, here's a beauty:

"*Under normal circumstances, the IPMC gives the owner of a building subject to a demolition order the right to institute an administrative appeal within twenty days after service of the demolition order. IPMC 111.1. However, if the demolition order is issued as a result of an emergent situation, an administrative appeal, if requested, is afforded after the demolition of the building.*"

AFTER THE DEMOLITION? Hmmm.