A photograph of a stone archway over a pond. The archway is made of stacked stones and has a wooden railing on top. The pond is filled with green lily pads and red flowers. The background is a dense forest of green trees.

The Advocate

Official Publication of the Idaho State Bar

Volume 50, No. 3

March 2007

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50 YEARS
1957-2007

This issue of *The Advocate* is sponsored by
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FEATURE ARTICLES

- 12 Welcome... from the Government and Public Sector Lawyers Section**
 Laura Chess
- 13 Olson and Rees:
 A Tale of Two Tort Claims Acts**
 Michael S. Gilmore
This article compares the U.S. Supreme Court's handling of a Federal Tort Claims Act case to the Idaho Supreme Court's handling of an Idaho Tort Claims Act case. It discusses the disparate treatment accorded the "private person" provision of both tort claims acts when determining the applicability of sovereign immunity.
- 17 If the Citizens Speak, Listen:
 Idaho's Local Initiative Process**
 Brian Kane
This article discusses the local initiative process in the context of two Idaho Supreme Court opinions. It provides suggestions to clarify municipal initiative statutes.
- 20 Lawyers, Lincoln, and Idaho**
 David Leroy
This article describes Abraham Lincoln's many ties to Idaho. It tells of Idaho's preparation to honor Lincoln through the Idaho Abraham Lincoln Bicentennial Commission and contains many observations expressed by Lincoln concerning lawyers and the legal profession.
- 22 Looking Back Article
 The Idaho Public Records Act:
 Preserving the Status Quo**
 Patricia M. Olsson
 Michelle R. Finch
This article discusses the Idaho Public Records Act when it was implemented in 1990.
- 23 Looking Back Article—School Board Recall
 Rules Must Be Changed**
 Rory R. Jones
This article discusses the impact of the recall process on a nonpaid publically elected position in the early '90s.

2007 Licensing Receipts and Stickers

The 2007 licensing receipts and membership card stickers will be mailed in mid-March. Please contact the Membership Department at (208) 334-4500 or astrouser@isb.idaho.gov if you need a new membership card.



In Idaho, more than 1,000 students participated in the Lawyers in the Classroom Project during the 2005-2006 school year.

Take Katelyn.

Katelyn and the other students in her fifth grade class worked with an Idaho volunteer attorney to learn important democratic principles and gain some important educational skills in the process. Employing a lesson plan she learned about in a **Law Related Education** sponsored workshop, the volunteer attorney told the children to pretend that aliens had invaded Earth. According to the lesson plan, the aliens told them they had to reach a unanimous decision to give up five of the 10 freedoms guaranteed by the Bill of Rights. The ensuing discussion taught the students the importance of critical thinking and compromise.

All children should understand the foundations of the United State's government and legal systems, and with the support of **Law Related Education's Lawyers in the Classroom Project** and the help of people like you, many more will.

Help young people like Katelyn become informed, participating citizens. Send your donation today.

A Foundation for Justice

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IDAHO LAW FOUNDATION



Helping the professtion serve the public

COLUMNS

- 6 President's Message, *Thomas A. Banducci*
9 Executive Director's Report, *Diane K. Minnich*
25 *InSite* - Traversing the Internet, *John Hasko*
26 Young Lawyers, *Kahle Becker*
28 ABA mid-year, *Larry C. Hunter*
34 State of the Judiciary,
Chief Justice Gerald F. Schroeder
36 Idaho Courts, *Michael Henderson*
41 Federal Court Corner, *Tom Murawski*

NEWS AND NOTICES

- 8 Discipline
8 Reciprocals
10 Idaho Supreme Court Memorial Service
11 Newsbriefs
30 Idaho Law Foundation
30 Mock Trial
30 Donations
31 IVLP Special Thanks
37 Idaho Supreme Court Fall Terms
37 Idaho Supreme Court Oral Arguments
38 Idaho Court of Appeals Fall Terms
38 Idaho Court of Appeals Oral Argument
39 Cases Pending
43 2007 Awards Nominations Form
49 Coming Events
50 Of Interest
53 Classifieds
55 Continuing Legal Education Information

ON THE COVER

This photograph was taken by Rob Lewis, Boise. He is a Boise attorney with a criminal defense practice; and, an avid photographer with an emphasis in outdoor and underwater photography. The photo was taken of a bridge at Gillette Castle State Park in Connecticut.

SECTION SPONSOR

This issue of *The Advocate* is sponsored by the Government & Public Sector Lawyers Section of the Idaho State Bar.

DeskBook Updates

We are preparing the 2007-2008 Idaho State Bar DeskBook Directory. All address updates must be received by March 12, 2007 to be included in the upcoming edition. Please check your address information on the ISB website (www.idaho.gov/isb) and send any changes to the Membership Department at astrauser@isb.idaho.gov by March 12, 2007.

The Advocate

Official Publication of the Idaho State Bar

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The Advocate (ISSN 05154987) is published monthly, September through June by the Idaho State Bar, 525 W. Jefferson Street, Boise, Idaho 83702. Subscriptions: Idaho State Bar members receive *The Advocate* as part of their annual dues payment. Nonmember subscriptions are \$45 per year. Periodicals postage paid at Boise, Idaho.

POSTMASTER: Send address changes to:
The Advocate
P.O. Box 895



RULE OF LAW AND THE JUDICIARY THAT UPHOLDS IT



Politicians love to talk about the “rule of law.” Our political system is stable because it is founded upon the notion that an individual’s conduct is regulated by laws

which are enforced by a judicial system that is both fair to the individual and stands as a safeguard against overreaching by those who make the laws (i.e., the politicians). Sometimes it seems our lawmakers take the rule of law for granted. They pay lip service to the importance of the rule of law, but are unwilling to invest in it.

In January, Chief Justice Schroeder announced his retirement in his State of the Judiciary Address to the Idaho legislature. A substantial portion of his address sought the legislature’s support for an increase in judicial salaries. Schroeder reminded our lawmakers that much is expected from judges: swift and firm decision-making in important civil and criminal proceedings equate to enormous responsibility:

“Magistrate Judges routinely deal with caseloads that would have been unthinkable when I started as a judge, but it goes beyond numbers. They routinely tell a person that he or she is going to lose custody of a child, the most precious thing in that person’s life. They routinely must take a person’s freedom, deprive a person of a livelihood because he or she cannot be licensed to drive, determine multimillion dollar probates, wrestle for solutions for abused children, fashion sentences for juvenile offenders, attempting to guess the future consequences and on and on.

District Judges routinely must decide the most difficult civil litigation, often-times determining

the life or death of a business and the financial future of individuals who have been terribly injured. They clean up the social garbage created by psychopaths, sociopaths, child molesters. They must stand against pressure when constitutional guarantees demand a result that is different from cries of vengeance... and they suffer from that. Ultimately they may be required to face another human and say ‘you must die.’ I have done that. I have stood closer than I am to any legislator in this room and looked a man in the eye I sentenced as he was executed.”

Although we expect this sort of commitment from our judges, we are unwilling to pay for it.

In the recent past, Idaho’s court system has distinguished itself from other state court systems, with its energy, commitment and innovation. Consider the following:

- Bonneville County’s Mental Health Court has been recognized by the Council of State Governments and the Department of Justice as a National Learning Site.
- Idaho is ranked #2 in the nation by the number of drug courts per capita.
- Statewide case resolution and clearance rates, on both civil and criminal dockets are among the swiftest in the nation.

For these accomplishments the Idaho legislature increased judicial salaries **moving our Supreme from 49th to 47th in the nation (\$110,500 per year) and maintaining the trial courts’ at 47th (\$103,600 per year)**. Chief Justice Schroeder’s State of the Judiciary Address and retirement announcement crystallizes a substantial challenge to Idaho’s bench and bar: How will Idaho attract and retain the “best and brightest” on our state judi-

ciary with what the legislature is willing to pay? More specifically, how do we replace the likes of Chief Justice Schroeder with an annual salary of \$110,500?

In order to enlist the “best and brightest” to become (and remain) Idaho judges, Idaho must pay a salary that attracts excellent lawyers and jurists who will choose the bench as their career. This is not to say that the legislature needs to pay our judges more than any other private attorney or public servant in the state. Rather, it means that judicial salaries should be high enough so that, along with the rewards of public service, talented lawyers and judges will view a judicial position as “in the ballpark” compared to the monetary and psychic rewards available from other public and private career choices.

The most desirable judicial prospects in private practice are at the peak of their careers. Their income is comfortable, if not substantial. They are recognized community leaders. They may have children who will (or already) attend college. A move to the bench means closing their private practice, isolating themselves from normal social contacts and foregoing normal business opportunities. Add to this the prospect of spending money to seek reelection if their seat is contested, and the decision to pursue a judicial position is tough, indeed.

Paying too little for this sort of commitment means that judicial positions will typically attract two types of applicants from private practice: those who can afford it, or those for whom the salary is better than what they are currently earning. The first group is likely at the end of their careers and therefore unable to commit to many years of judicial service. The second group may lack sufficient experience and qualifications for the position.

Other considerations apply when a magistrate considers a move to the district bench. District judges earn only \$5000 more than magistrates. It makes little eco-

conomic sense for qualified, experienced magistrates to consider a district judge position—particularly when a move to the bench also carries the prospect and cost of campaigning for reelection.

Idaho judicial salaries aren't keeping judges on the bench, either. As Chief Justice Schroeder pointed out:

“... (although) it is desirable to have geographical balance on the (Supreme) Court... over time that reality has faded. Many lawyers from outside the Boise area simply cannot afford to give up their homes and move to Boise. In the past, Justices on the Supreme Court tended to remain for many years. That is no longer the case. Turnover on our Court has become almost routine.”

Moreover, consider that the opportunity exists for many of our judges to step down from the bench and open a mediation practice. At \$200 an hour, with little overhead, a judge could leave the bench and earn his or her salary in six months.

Although this discussion may seem to compel the conclusion that we need to raise judicial salaries, the Idaho legislature is not convinced. Advocates for increased judicial salaries have heard, time and again, that a “hundred thousand dollars in my district is a lot of money.”

This may be true (particularly in the districts comprised of smaller communities) but it avoids the issue. If the best candidates for the district and appellate court benches are earning much more than the judicial salaries offered (and they likely are), then we are losing many of our best judicial prospects. Table 1, uses other Idaho legal professional salaries as a metric.

According to a 2006 Economic Research Institute (ERI) survey (of Idaho attorneys only) the median (50th percentile) salary for an attorney with 18 years experience is \$108,557. The 90th percentile salary for lawyers with this level of experience is \$132,548. The ERI survey was a statewide survey that presumably considered salaries earned by attorneys in smaller communities. The survey suggests that Idaho is largely foreclosed from selecting its judges from the top earning lawyers in the state.

TABLE 1. Idaho Legal Professional Salaries.

POSITION	ANNUAL SALARY
Idaho Supreme Court	\$110,500
Idaho District Court	\$103,600
Boise City Attorney	\$102,924
Ada County Prosecuting Attorney	\$125,904
University of Idaho Law School Faculty (median salary)	\$110,000
Law School Dean	\$167,275
U.S. District Judge	\$165,200
Circuit Court Judge	\$175,100

The news doesn't get much better when we compare Idaho's judicial salaries to other states' judicial pay. For example, the salaries listed in Table 2, are for district court judges from other western states, or states which, like Idaho, have a large population base in “non metropolitan” areas.

I am sure that a hundred thousand dollars in the smaller communities of Arkansas, Nevada and West Virginia amounts to “a lot of money.” Nevertheless, these legislatures saw fit to pay their judges more (presumably because the salaries were needed to attract and retain a talented judiciary.)

Although our legislature's current policy toward judicial salaries may have some short term appeal, the ones to lose in the long run will be Idahoans who look to our court system to protect their rights and resolve their disputes. Good judges are critical to a smooth functioning court system. Legal skill and experience on the bench translate into a more orderly process, greater predictability and fewer appeals. Additionally, when inadequate compensation increases turnover among judges, it has constitutional implications. U.S. Supreme Court Chief Justice John Roberts recently noted that inadequate pay for federal judges undermines the judiciary's independence,

“Inadequate compensation directly threatens the viability of life tenure, and if tenure in office is made uncertain, the strength and independence judges need to

uphold the rule of law—even when it is unpopular to do so—will seriously be eroded.”

Our legislature must invest in the rule of law and the judiciary which upholds it. I urge you to contact your state representatives. Inform them of the need to increase judicial salaries. If you are interested in actively assisting this effort, contact Patti Tobias at the Idaho Supreme Court. Email ptobias@idcourts.net.

TABLE 2. Comparable States District Judicial Salaries.

COMPARABLE STATES	DISTRICT JUDICIAL SALARY
Idaho	\$103,600
Arkansas	\$126,111
Iowa	\$126,020
Nevada	\$130,000
Utah	\$114,700
West Virginia	\$116,000
Wyoming	\$106,000

Thomas Banducci is serving a six-month term as president and has been a Bar Commissioner representing the Fourth Judicial District since 2004. He has been practicing law in Idaho since 1979. He is a partner in the litigation firm Greener Banducci Shoemaker. Tom resides in Boise with his wife Lori and his three children; Andrea, Nina and Nick. Tom wishes to thank Elaine Winters for her assistance in researching materials for this article. If you have questions or comments please contact him by email: tbanducci@greenerlaw.com

DISCIPLINE

JOHN A. BRADLEY (Withheld Suspension)

On February 12, 2007, the Idaho Supreme Court issued a Disciplinary Order suspending John A. Bradley from the practice of law for two-years, with all two-years withheld, pursuant to I.B.C.R. 506(d) and 507.

The Idaho Supreme Court found that Mr. Bradley violated Idaho Rules of Professional Conduct 1.2(a) [Scope of representation]; 1.3 [Diligence]; 1.4 [Communication]; 1.7(b) and 1.8 [Conflicts of interest]; 1.15 [Safekeeping property]; 3.2 [Expediting litigation]; 4.1 [Truthfulness in statement to others]; 4.4 [Respect for rights of third persons] and 8.4(d) [Conduct that is prejudicial to the administration of justice].

The Disciplinary Order provided that the two-year suspension will be withheld and that Mr. Bradley will serve a two-year probation, subject to the conditions of probation specified in the Order. Those conditions include that Mr. Bradley will serve the entire two-year suspension if he admits or is found to have violated any of the Idaho Rules of Professional Conduct for which a public sanction is imposed for any conduct during Mr. Bradley's period of probation, regardless whether that admission or determination occurs after the expiration of the probationary period. In addition, if Mr. Bradley admits or is found to have violated any of the Idaho Rules of Professional Conduct for which a private sanction is imposed for any conduct during Mr. Bradley's period of probation, regardless whether that admission or determination occurs after the expiration of the probation, then a one year suspension for each private sanction, not to exceed two-years, shall be immediately imposed and served by Mr. Bradley. During his probation, Mr. Bradley must also take and pass the Multistate Professional Responsibility Examination, comply with any treatment regimen prescribed by his physicians and practice under a supervising attorney. Mr. Bradley must also pay the deposition costs incurred in this case.

The Idaho Supreme Court's Order followed a Professional Conduct Board Recommendation and stipulated resolution of an Idaho State Bar disciplinary proceeding. In December 2005, the Idaho State Bar brought a formal disciplinary Complaint alleging that Mr. Bradley engaged in professional misconduct in connection with his representation of clients in two different matters. The factual allegations and admissions underlying the admitted

misconduct relate to Mr. Bradley's representation of two different clients. In 2000, he worked on a transaction whereby one of his clients made a loan to another client, which Mr. Bradley co-signed. Mr. Bradley admitted that he violated conflict of interest rules with respect to his participation in the documentation of the transaction in violation of I.R.P.C. 1.7(b) and 1.8. Mr. Bradley also admitted that he violated I.R.P.C. 4.1 with respect to the fact that he signed one of his client's name to the promissory note. Mr. Bradley paid his client the full amount due under the promissory note he co-signed.

From 2001 through 2005, Mr. Bradley represented two clients in a personal injury action. In that case, the Idaho Industrial Commission asserted a subrogation lien on the settlement proceeds for medical payments. The settlement checks were issued to Mr. Bradley in December 2001, payable to his clients and various third parties. He did not deposit those checks into his trust account. The checks were not disbursed and expired after one year. The checks had to be reissued and the clients and third parties did not receive the settlement funds until January 2005. Mr. Bradley admitted that he did not act with reasonable diligence and promptness in representing his clients and did not keep his clients reasonably informed about the status of that matter in violation of I.R.P.C. 1.2(a), 1.3 and 1.4. In addition, Mr. Bradley admitted that he did not hold property of clients and third persons that was in his possession in connection with the representation separate from his own property, in violation of I.R.P.C. 1.15. Mr. Bradley also admitted that he violated I.R.P.C. 3.2, in that he did not make reasonable efforts to expedite litigation consistent with the interest of his clients, and I.R.P.C. 8.4(d), in that his conduct in the representation was prejudicial to the administration of justice. Mr. Bradley's clients did receive the full amount of the settlement and Mr. Bradley reduced his fee to his clients in conjunction with the disbursement of the settlement proceeds.

Mr. Bradley's two-year suspension is withheld subject to the terms and conditions of his two-year probation set forth above and in the Disciplinary Order.

Inquiries about this matter may be directed to: Bar Counsel, Idaho State Bar, P.O. Box 895, Boise, Idaho 83701, (208) 334-4500.

RECIPROCALs

The following lawyers were admitted to the practice of law in Idaho through reciprocal admission.

Reciprocal Admission Applicants Admitted

(from January 1, 2007 to January 31, 2007)

James Kent Lubing

Jackson, WY
Hamline University
Admitted: 1/12/07

Richard Lloyd Nelson

Jackson, WY
Baylor University School of Law
Admitted: 1/19/07

Robert Erling Ordal

Seattle, WA
Stanford University
Admitted: 1/12/07

Paul Gregory Rowan

Boise, ID
Willamette University
Admitted: 1/23/07



EXECUTIVE DIRECTOR'S REPORT

DIANE K. MINNICH

2006 – THE IDAHO LAW FOUNDATION YEAR IN REVIEW



Mission Statement: *The Idaho Law Foundation supports the right of all people to live in a peaceful community. Our mission is to educate all people about the role of law in a democratic society, to provide opportunities for people to avoid and resolve conflicts; and to enhance the education and competence of lawyers.*

ple to avoid and resolve conflicts; and to enhance the education and competence of lawyers.

1. Enhance public understanding of and respect for the law and the legal system.
2. Provide and improve access to legal services.
3. Provide programs and services that enhance the competency of members of the Bar.
4. Aid in the advancement of the administration of justice.
5. Generate the necessary funding to fulfill the mission and goals of the organization.
6. Maintain effective administration and management of the Foundation's resources.

Through its programs, the ILF strives to carry out its mission and goals. The following are highlights of the past year's achievements.

LAW RELATED EDUCATION

Law Related Education (LRE) is a K-12 civic learning program that empowers young people to become effective, knowledgeable citizens who understand both their rights and responsibilities as citizens. The LRE program staff and volunteers coordinate an extensive teacher outreach and training program, the High School Mock Trial Competition, lawyers in the classroom, and Law Day activities.

In 2006, over 200 educators participated in training programs offered by the LRE program, 36 teams participated in the High School Mock Trial Competitions and 80 lawyers were partnered with classroom teachers to teach students about law, government and citizenship.

Idaho Volunteer Lawyers Program

The Idaho Volunteer Lawyers Program continues to provide legal services to low-income individuals, families and groups. Through case representation by volunteer attorneys, brief services, advice and consultation, and workshops; IVLP served over 800 people last year. The program works closely with Idaho Legal Aid Services, and the statewide Court Assistance Offices to assist those with legal needs and limited resources.

IVLP is developing several initiatives to create more opportunities for attorneys to provide pro bono services. Included are recruiting law firm liaisons, additional workshops for low-income individuals and a pro bono challenge for law firms in the 4th District.

IDAHO VOLUNTEER LAWYERS PROGRAM			
	2004	2005	2006
Requests Received	1,266	1,222	1,026
Assistance Provided	1,197	1,043	812
Cases Referred	371	312	298
Donated Hours	6,461	16,612*	4,855
Donated Services Value \$	675,010	1,606,95	500,328

*Higher number of donated hours is in part attributed to closing old CASA cases.

INTEREST ON LAWYERS TRUST ACCOUNTS

Over the past 19 years, the IOLTA program has granted nearly \$4 million to law related programs and services throughout Idaho. The organizations funded in 2006 were: Idaho Legal Aid Services, Idaho Volunteer Lawyers Program, ILF Law Related Education, ILF Legal Resource Line, Idaho YMCA Youth Government, Idaho 4-H Know your Government, Idaho Commission on Aging, Ada County Guardianship Monitoring program, and law school scholarships. Funds granted for 2006 increased almost 50% over 2005 grant funds.

IOLTA		
	Grants	Organizations
2005	\$150,000	7
2006	\$224,000	9

GUARDIAN AD LITEM

The ILF is in its final year of administering GAL grant funds allocated to the Idaho Supreme Court by the Idaho Legislature. In 2006-07, \$409,100 was granted to assist Court Appointed Special Advocate (CASA) programs in each of Idaho's seven judicial districts.

In 2006, the GAL grant administration will be transitioned to the Idaho Supreme Court (ISC). At the request of the ISC, the ILF has served as the GAL grant administrator since 1989. The Court now has the staff to monitor and manage the GAL programs.

CONTINUING LEGAL EDUCATION

The Idaho Law Foundation and the Idaho State Bar Sections offer legal education programs throughout the state. In 2006, the Foundation offered 18 topics in 21 locations; ISB Sections offered 32 topics in 34 locations. The chart below includes attendance for all CLE programs; Foundation, ISB Sections and the ISB Annual Meeting.

ISB/ILF CONTINUING LEGAL EDUCATION		
	2005	2006
Live Seminars	56	62
Attendance	2,355	2,047

FUND DEVELOPMENT

The Foundation continues to focus on its fund development efforts, through the check off on the ISB license form and its spring fundraising campaign. In 2007, the Foundation plans to pursue an endowment campaign to establish a more stable source of funding for its programs.

TOTAL ATTORNEY DONATIONS		
	2005	2006
General Fund/IVLP	\$39,906	\$43,475
Endowment Fund	\$ 1,350	\$13,035
Total	\$41,256	\$56,510

The Idaho Law Foundation is indebted to the attorneys that volunteer their services and donate their resources to ILF programs and activities. The mission and goals of the organization are only realized with the help and support of our members. Thank you!



Deceased Judges and Attorneys Memorial Ceremony
Thursday, March 22, 2007 at 10:00 a.m.
Idaho Supreme Court Courtroom
Reception following ceremony

Chief Justice Gerald F. Schroeder announced that the Idaho Supreme Court will hold its annual Memorial Ceremony March 22, 2007 at 10:00 a.m., in the courtroom of the Idaho Supreme Court, Boise, Idaho. Those members of the Idaho State Bar who passed away during 2006 will be remembered at this ceremony. A resolution will be presented in memory of the deceased judges and attorneys. The Court invites the friends and family attending the Memorial Ceremony to a reception at the Supreme Court Building immediately following the ceremony. Those being remembered are:

JUDGES

Name	Residence	Deceased
<i>W.E. (Bill) Smith, Jr.</i>	Boise	June 15, 2006
<i>Merrill Kerr Gee</i>	Salt Lake City, UT	July 7, 2006
<i>Henry Ford McQuade</i>	Boise	December 13, 2006

ATTORNEY

Name	Residence	Deceased
<i>Simon Spencer Martin</i>	Idaho Falls	January 10, 2006
<i>William J. Jones</i>	Lewiston	February 5, 2006
<i>Jack Bernard Britton</i>	The Villages, Florida	February 25, 2006
<i>Joy Belle McLean</i>	Seattle, WA	March 4, 2006
<i>Peter Gregory Snow</i>	Burley	March 11, 2006
<i>Glen Edward Cox</i>	Boise	March 26, 2006
<i>Wynne M. Blake</i>	Lewiston	March 27, 2006
<i>Samuel David Swayne</i>	Moscow	April 8, 2006
<i>Steven Wayne Arnold</i>	Boise	May 24, 2006
<i>Robert L. Alexanderson</i>	Caldwell	June 8, 2006
<i>Alfred C. Kiser</i>	Boise	June 18, 2006
<i>Berne Kimball Jensen</i>	Boise	August 13, 2006
<i>James Frederick Fell</i>	Portland, OR	August 26, 2006
<i>James Laurence Schoenhut</i>	Cascade	September 14, 2006
<i>Connie Ann (Herd) Vietz</i>	Meridian	October 19, 2006
<i>David Allan Frazier</i>	Coeur d'Alene	October 29, 2006
<i>Rei Kihara Osaki</i>	Pasadena, CA	November 15, 2006
<i>Jess B. Hawley, Jr.</i>	Boise	November 22, 2006
<i>Leroy Earl Mosman</i>	Moscow	December 7, 2006
<i>John Amundsen Christensen</i>	Caldwell	December 19, 2006

NEWS BRIEFS

HON. N. RANDY SMITH was confirmed to the U.S. 9th Circuit Court of Appeals. The San Francisco-based 9th Circuit hears appeals from courts in nine Western states, as well as the territories of Guam and the Northern Mariana Islands.

Judge Smith was appointed as a district judge for Idaho's Sixth Judicial District in 1995. Since 2004, he has served as the court's Administrative Judge. As a trial judge, Judge Smith presided over more than 6,000 civil and criminal cases, including more than 50 trials and 100 appeals and has mediated over 700 state and federal cases during his judicial career.

The American Bar Association unanimously rated Judge Smith "Well Qualified," its highest possible rating. In addition to his service on the bench, Judge Smith brings his experience as a corporate lawyer, appellate and trial litigator, and professor to the Court.

Following graduation from Brigham Young University Law School in 1977, Judge Smith worked as counsel for the J.R. Simplot Company. He specialized in handling corporate, business, and tax law matters. From 1982 to 1995, he practiced as a civil litigator with the law firm of Merrill & Merrill, focusing on corporate civil litigation and insurance defense cases. As part of his appellate work, he argued two cases before the Ninth Circuit. He serves as an adjunct professor in the management and political science departments of Idaho State University, where he has taught courses in business law, legal environment, and judicial process. He previously taught accounting classes at Boise State University and Brigham Young University.

In 2005, Judge Smith received Idaho State University's "Statesman of the Year" award, which is presented each year to an Idahoan who makes a significant contribution to the welfare of Idaho. He was honored for his efforts to reduce crime and prevent recidivism. In 2003, he received the Idaho Court system's George G. Granada, Jr. Award for Professionalism as a trial judge, in recognition of his demonstrated professionalism and for motivating and inspiring his colleagues on the bench by character and action. In 2004-2005, Judge Smith was the first adjunct faculty member to be selected as the Outstanding Teacher by the Idaho State University College of Business.

Judge Smith has given significant service as a leader in several community organizations, including the Gate City Rotary Club and the Boys Scouts of America. He has served as a lay leader in his church, and he and his wife are involved in community and church activities.

BAR COUNSEL POSITION—Accepting applications for Assistant Bar Counsel. See ad in classifieds, page 51, for position details, qualifications, and salary.

NOMINATIONS FOR 2007 ISB COMMISSIONERS DUE APRIL 3, 2007—Attorneys in the 1st, 2nd and 4th districts will be electing a new representative to the Idaho State Bar Board of Commissioners this spring. The new commissioners will replace Jay Q. Sturgell of Kellogg and Thomas Banducci of Boise. Pursuant to Idaho Bar Commission Rule 900, the new commissioner representing the 1st and 2nd districts must reside or maintain an office in the 2nd district. Commissioners of the Idaho State Bar, the elected governing body of the Bar, serve for three years,

beginning on the last day of the ISB annual meeting following their elections. The Board of Commissioners is charged with regulating the legal profession in Idaho, which includes the testing, admission, and licensing of attorneys, overseeing disciplinary functions and administering mandatory continuing legal education requirements.

Nominations must be in writing and signed by at least five members of the ISB in good standing, and eligible to vote in the districts. The executive director must receive nominations no later than the close of business on April 3, 2007. Nominating petitions are available on the Idaho State Bar website or a form may be obtained by calling the office of the executive director at (208) 334-4500. Ballots will be mailed to all members eligible to vote in the 1st, 2nd and, 4th, districts on April 16, 2007. All ballots properly cast and returned to the executive director will be counted by a board of canvassers at the close of business on May 1, 2007.

2007 ANNUAL MEETING SCHOLARSHIPS AVAILABLE—The Idaho State Bar is offering a limited number of scholarships to the 2007 annual meeting July 18-20, in Boise. The scholarships include the annual meeting registration fee and a per diem (up to \$50 per day) for travel and lodging. The scholarships are designed to provide assistance to those attorneys who, due to financial or professional circumstances, would otherwise be unable to attend. To apply for a scholarship, contact the ISB Commissioner who represents your judicial district.

SUBMIT NOMINATIONS FOR 2007 AWARD RECIPIENTS—Each year, the commissioners select individuals to receive awards for their commitment and service to the profession and the public. The awards acknowledge those who have given of themselves to improve the legal profession, provide pro bono legal services, and exemplify the highest standards of professionalism. On **page 43**, is the description of the awards given and a nomination form. We encourage you to nominate individuals that you feel deserve recognition for their efforts and contributions. Please submit your nominations by March 29, 2007.

DESKBOOK UPDATES—The 2007 *Deskbook* Directory will be printed soon. Please check your address information on our website at www.state.id.us/isb to make sure it is correct. Send your updates to the Membership Department at (208) 334-4500 or astrouser@isb.idaho.gov by March 9, 2007 for inclusion in this year's *Deskbook*.

WARREN E. BURGER PRIZE—The American Inns of Court sponsors the Warren E. Burger Prize to encourage thoughtful consideration of the practical application of the highest principles of professionalism in the American legal community. The author should address one or more aspects of legal excellence, civility, ethics or professionalism within the legal profession. Deadline for submission is June 15, 2007; announcement of winner is September 1, 2007; presentation of award is October 20, 2007 in Washington, D.C. You can download an application from www.innsofcourt.org or contact: Cindy Dennis, Awards and Scholarships Coordinator, American Inns of Court, 1229 King Street, 2nd Floor, Alexandria VA 22314, (800) 233-3590, x 104; or email to cdennis@innsofcourt.org

Welcome from the Government and Public Lawyers Section

Laura A. Chess
Kane & Tobiason, LLP

The Government and Public Lawyer Sector Section of the Idaho State Bar is pleased to sponsor this issue of *The Advocate*. As you will note, this edition covers a wide range of practice areas, which reflects the nature and purpose of the section. In *Olson and Rees: A Tale of Two Tort Claims Acts*, Michael Gilmore compares the United States Supreme Court's handling of a Federal Tort Claims Act case to the Idaho Supreme Court's handling of an Idaho Tort Claims Act case and the effects upon the sovereign immunity of the governmental parties. Brian Kane follows with; *If the Citizens Speak, Listen: Idaho's Local Initiative Process*, which discusses the local initiative process in the context of two Idaho Supreme Court opinions. David Leroy's article *Lawyers, Lincoln and Idaho*; highlights Abraham Lincoln and his ties to Idaho. We hope you find these diverse articles interesting and thought provoking.

The section's membership is derived from attorneys in both the public and private sector. The members of the section are united in the common goal of representing government clients. As an attorney in private practice, I have had the pleasure of working with numerous governmental clients over the last several years. There are certainly unique issues that arise when your client is a governmental entity, and those issues are addressed in the monthly meetings held at the Idaho State Bar and the CLEs presented by the section.

The section meets the second Friday of every month at noon. Members are welcome to attend either in person or by telephone conference call. For those who attend in person, lunch is provided. For all attendees, the monthly meetings provide a forum to address those issues that affect governmental entities and the attorneys who represent them. If you are not able to attend a monthly meeting, but would like to learn more about the section,

the monthly minutes and other valuable information can be found at <https://www2.state.id.us/isb/sec/gov/gov.htm>.

At the majority of the monthly meetings, the section members and guests present CLE information. Past CLE topics have included a legislative update, judicial confirmation, and special-use districts. Upcoming CLEs are slated to include a primer on using Casemaker and a legislative recap. Additionally, the section has again agreed to prepare a presentation for the annual meeting.

The goal of the section is to provide information and education to attorneys who represent the interests of governmental entities at all levels of government. If you are interested in learning more about our section please attend one of our monthly meetings. You can also contact me, or any of the other section officers; Lynnette McHenry, Dave Wynkoop, or the past chair Brian Kane. You can also find information at <https://www2.state.id.us/isb/sec/gov/gov.htm>.

ABOUT THE AUTHOR

Laura A. Chess is an associate at *Kane & Tobiason, LLP* in Boise, Idaho, where she focuses her practice in the areas of Social Security disability, governmental defense, and administrative law. She is the current chair of the Government and Public Sector Section of the Bar. She earned her Bachelor of Arts degree in History and American Studies from Whitworth College and her Juris Doctorate from the University of Idaho, College of Law.

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OLSON AND REES: A TALE OF TWO TORT CLAIMS ACTS

Michael S. Gilmore
Deputy Attorney General, Civil Litigation

It was the best of times, it was the worst of times, it was the age of wisdom, it was the age of foolishness, it was the epoch of belief, it was the epoch of incredulity, it was the season of Light, it was the season of Darkness, it was the spring of hope, it was the winter of despair, we had everything before us, we had nothing before us, we were all going direct to Heaven, we were all going direct the other way ...

Charles Dickens, *A Tale of Two Cities*

The Federal Tort Claims Act (FTCA)¹ and the Idaho Tort Claims Act (ITCA)² both contain provisions waiving sovereign immunity when “a private person” would be liable in tort.³ In *United States v. Olson*,⁴ the United States Supreme Court grounded its holding under the FTCA on the “private person” provision while in *Rees v. State, Dept. of Health & Welfare*,⁵ the Idaho Supreme Court ignored the “private person” provision altogether in a case under the ITCA. This article compares those decisions.

OLSON AND THE FEDERAL TORT CLAIMS ACT

In *Olson* the United States Supreme Court made short work of a Ninth Circuit decision that the Federal Government could be liable in tort in circumstances in which a municipality would be liable in tort under local law.⁶ *Olson* arose out of miners’ injuries and disabilities following an Arizona cave-in. In *Olson* the miners claimed that the United States Mine Safety and Health Administration negligently failed (1) to evaluate written and oral complaints of mine safety hazards and (2) to inspect the mine thoroughly and in its entirety.⁷

In discussing the FTCA’s imposition of liability when “a private individual in similar circumstances” would be liable under State tort law, see 28 U.S.C. § 2674, quoted, n.3, the Ninth Circuit did not look to the Arizona law governing private persons. Instead, it said:

As a threshold matter, we hold that the district court correctly determined that there is no private-sector analogue for mine inspections because private parties do not wield regulatory power to conduct such unique governmental functions. The question thus becomes whether, under Arizona law, state and municipal entities would be liable under like circumstances. The answer is yes. As the district court pointed out, a state governmental entity, including a state mine inspector, may be held liable under Arizona law for the failure to perform mandatory safety inspections.⁸

The United States Supreme Court found two errors in the Ninth Circuit’s analysis. First, the “private person” standard of liability means just what it says. The FTCA “requires a court to look to the state-law liability of private entities, not to that of public entities, when assessing the Government’s liability under the FTCA.”⁹ *Olson* “found nothing in the [FTCA’s] context, history, or objectives or in the opinions of this Court suggesting a waiver of sovereign immunity solely upon this basis” that municipal or State actors would be liable under Arizona law.¹⁰

Second, *Olson* rejected the contention that there cannot be private entity analogies to the performance of governmental regulatory duties. On the contrary, there may be similar “good Samaritan” analogies where a private party has undertaken to warn of danger and thereby induced reliance upon which liability may be based.¹¹ *Olson* remanded to the Ninth Circuit to determine whether Arizona law had such provisions regarding private persons.¹²

Both of *Olson*’s criticisms of the Ninth Circuit—ignoring the “private person” basis of tort liability and assuming that there were no private person analogies for the governmental conduct in question—apply to the Idaho Supreme Court’s reasoning and decision in *Rees*.

REES AND THE IDAHO TORT CLAIMS ACT

Rees grew out of the tragic death of a two-year-old boy who was murdered by his mother’s boy friend Griffeth. The boy’s father sued. Among other things, the father contended that the Department of Health & Welfare (DH&W) and one of its social workers negligently investigated allegations of child abuse at Griffeth’s hands, which lead to the boy’s death when he was not removed from Griffeth’s presence.¹³

Rees stated that Idaho’s precedents called for a three-part analysis to determine whether there can be liability under the ITCA. The first of the three steps is the focus of this article.

First, we must determine whether “tort recovery is allowed under the laws of Idaho.” *Harris [v. State Dept. of Health & Welfare]*, 123 Idaho 295, 298 n.1, 847 P.2d 1156, 1159 n.1 (1992)]. This is essentially a determination of whether there is such a tort under Idaho Law. *Czaplicki [v. Gooding Joint Sch. Dist.]*, 116 Idaho 326, 330, 775 P.2d 640, 644 (1989)].¹⁴

This statement of the first step seems compatible with § 6-903(a)’s extension of governmental liability only “where the governmental entity if a private persons or entity would be liable for money damages under the laws of the state of Idaho.” *Czaplicki* itself, which *Rees* cited, defined the determination of liability in terms of the liability of private persons or entities:

[A] trial judge should first determine whether the plaintiffs’ allegations and supporting record generally state a cause of action for which “a private person or entity would be liable for money damages under the laws of the state of Idaho.” *Walker v. Shoshone County*, 112 Idaho 991, 995, 739 P.2d 290, 294 (1987). ... in consideration of the initial inquiry as to whether a private individual or entity could be held

liable under the facts alleged in the complaint, we essentially ask “is there such a tort under the laws of Idaho?” *Walker v. Shoshone County*, 112 Idaho 991, 995, 739 P.2d 290. In the present case, the existence of the common law tort of negligence answers that threshold inquiry in the affirmative.¹⁵

Instead of attempting to determine whether Idaho law would impose liability upon a private person who may have known of allegations of child abuse and negligently responded, *Rees* did exactly the opposite. *Rees* said: “The parties correctly agree the Department... owed no general duty to [the murdered child]; therefore, the issue for this Court becomes whether Idaho law recognizes a special duty of care in this instance.”¹⁶

Rees then asked whether the Idaho Child Protective Act (ICPA) created an affirmative duty in the *Department of Health & Welfare* to competently investigate reported child abuse. *Rees* cited *Horridge v. St. Mary’s County Dept. of Soc. Servs.*¹⁷ as authority for the following statement: “Most of the courts in other jurisdictions that have considered whether the state agency charged with investigating child abuse reports has a duty to competently investigate have determined such a duty exists.”¹⁸ The question of whether other jurisdictions with agencies charged with investigating child abuse reports have found a duty to competently investigate is, of course, beside the point of whether private persons would have such a duty in Idaho. But *Rees’s* observation about *Horridge* became the springboard for placing such a duty on DH&W without analyzing whether private persons have any comparable duty.

Rees’s analysis was based almost entirely upon the Minnesota case of *Radke v. County of Freeburn*.¹⁹ *Radke*, like *Rees*, also involved a case of a child killed by his mother’s boy friend. In the Idaho Supreme Court’s view, the key element of the *Radke* analysis is whether the ICPA, like Minnesota’s Child Abuse and Reporting Act, “set forth mandatory acts clearly for the protection of a particular class of persons rather than the public as a whole.”²⁰ Although Minnesota’s Tort Claims statute contains “private person” language like Idaho’s,²¹ *Radke* never mentioned the statutory waiver of tort immunity “under circumstances where the state, if a private person, would be liable to the claimant.” In fact, *Radke* never cites to the Minnesota Tort Claims section of the code at all. Thus, *Rees* was based upon a Minnesota decision, that like *Rees*, ignored the language of its own tort claim statute.

Radke concluded that the Minnesota child welfare statutes placed duties on the counties and their child welfare personnel and that those duties are for the protection of a “particular class of persons,” so tort liability could be imposed upon the counties and their child welfare personnel. *Rees* leapt aboard *Radke’s* train and also found that the ICPA places special duties upon DH&W personnel “owed to a narrow, easily identified class of persons to be protected from particular harm.” The duty is based upon unique obligations placed upon DH&W under the ICPA, not upon general responsibilities of the public at large:

The relationship created by this statute between the Department and abused children goes far beyond that of police or other investigatory agencies and

crime victims. The ICPA creates a class of mandatory reporters, I.C. § 16-1605 (2005) (formerly codified at I.C. § 16-1619), and grants immunity to any person who makes a good faith report of child abuse or neglect, I.C. § 16-1606 (formerly codified at I.C. § 16-1620). The ICPA also mandates the creation of multi-disciplinary teams consisting of at least law enforcement personnel, Department child protection risk assessment staff, and a representative of the county prosecuting attorney’s office to investigate reports of child abuse. I.C. § 16-1617 (formerly codified at I.C. § 16-1609A). Their creation also shows the legislature’s goal of providing professional investigation of suspected child abuse and neglect and also shows the intent that these investigations be carried out by the best groups available. We conclude from this that the ICPA creates a special relationship between allegedly abused children and the Department. Therefore, the third factor from *Radke*—“whether an ordinance or statute set forth mandatory acts clearly for the protection of a particular class of persons rather than the public as a whole”—has been met, and in this instance weighs heavily in favor of finding a duty under Idaho law to competently investigate reported child abuse.²²

Rees concluded: “[U]nder these circumstances the Department... owed to [the murdered boy] a duty to competently investigate the reported child abuse because of the special relationship created once the report of suspected abuse was received.”²³

Rees’s statement that liability can be imposed upon the State based upon statutes placing unique duties upon DH&W that create a special relationship between DH&W and an allegedly abused child might be a reasonable public policy, but it is not the public policy of the Idaho Tort Claims Act and § 6-903(a). Why has the Idaho Supreme Court substituted its own public policy for the ITCA’s? That is a good question.

From 1999 to late 2006, no Idaho Supreme Court decision quoted or referred to § 6-903(a)’s “private-person-or-entity” standard of tort liability. In *Sherer v. Pocatello School District #25*²⁴ that the Idaho Supreme Court returned to that standard to determine liability, this time to impose liability if the allegations of a complaint were proven:²⁵

The negligence claim relies upon a number of acts and omissions attributable to the school which, if proved, would constitute a breach of duty sufficient to allow a recovery for Alyssa’s injuries. Alyssa was a student in the custody of the school and was injured while participating in a school-sponsored activity. The Appellants allege that the school was negligent in choosing to conduct an unreasonably hazardous activity, in failing to supervise Alyssa during her participation in that activity, and in failing to supervise Cliffhanger to ensure that they provided adequate instruction and supervision. These allegations are sufficient to state a claim under Idaho law and for which

they would be entitled to money damages against a private individual if established.²⁶

Before *Sherer*, the last time that the Idaho Supreme Court referred to the “private-person-or-entity” language of § 6-903(a) was seven years before.²⁷ It is this private-person analysis that was lacking in *Rees*.

For reasons that were never explained, *Rees* ignored the “private-person-or-entity” basis for imposing liability under the Idaho Tort Claims Act. This basis for liability was resuscitated in *Sherer* to determine whether there could be liability. Neither *Rees* nor any Idaho Supreme Court decisions in this millennium explain how the “private-person-or-entity” provision of § 6-903(a) can be reconciled with the imposition of liability on the basis of a duty place upon governmental employees alone. That will have to await another case.

ENDNOTES

¹ The Federal Tort Claims Act of 1946 was codified at 26 U.S.C. §§ 2671-2680, and is Chapter 171, Title 28, United States Code. Chapter 85, Title 28, also contains a jurisdictional provisions for the FTCA.

² Idaho Code §§ 6-901 *et seq.*

³ Idaho Code § 6-903(a) provides:

6-903. Liability of governmental entities—... (a)

Except as otherwise provided in this act, every governmental entity is subject to liability for money damages arising out of its negligent or otherwise wrongful acts or omissions and those of its employees acting within the course and scope of their employment or duties... where the governmental entity *if a private person or entity would be liable for money damages under the laws of the state of Idaho...* [Italics added.]

28 U.S.C. § 2674 provides:

§ 2674. Liability of the United States

The United States shall be liable, respecting the provisions of this title relating to tort claims, *in the same manner and to the same extent as a private individual under like circumstances...* [Italics added.]

28 U.S.C. § 1346(b)(1), a section in the chapter governing jurisdiction of the District Courts, provides:

§ 1346. United States as defendant

....

(b)(1) ... [T]he district courts ... shall have exclusive jurisdiction of civil actions on claims against the United States, for money damages ... for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, *if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.* [Italics added.]

⁴ 546 U.S. 43, 126 S.Ct. 510 (2005).

⁵ 143 Idaho 10, 137 P.3d 397 (2006).

⁶ *Olson v. United States*, 362 F.3d 1236 (2004), *rev'd* 546 U.S. 43, 126 S.Ct. 510 (2005).

⁷ See the descriptions of the complaint in the two opinions, 546 U.S. at –, 126 S.Ct. at 512, and 362 F.3d at 1238.

⁸ 362 F.3d at 1240 (citations and internal punctuation omitted).

⁹ 546 U.S. at –, 126 S.Ct. at 512.

¹⁰ *Id.* at –, 126 S.Ct. at 512-13.

¹¹ *Id.* at –, 126 S.Ct. at 513.

¹² *Id.*

¹³ 143 Idaho at 13-14, 137 P.3d at 400-01.

¹⁴ *Id.* at 15, 137 P.3d at 402.

¹⁵ *Id.* at 330, 775 P.2d at 644 (footnote omitted).

¹⁶ *Id.* at 15, 137 P.3d at 402.

¹⁷ 382 Md. 170, 190, 854 A.2d 1232, 1243 (2004). *Horridge* explained that Maryland statute placed a duty upon private persons to report suspected child abuse and upon the Maryland Department of Social Services to investigate the reports. *Id.* at 183-84, 854 A.2d at 1239-40. Maryland’s waiver of tort immunity has no “private-person” language like Idaho’s, so *Horridge*’s analysis would not seem to apply under the Idaho statute:

(a)(1) Subject to the exclusions and limitations in this subtitle and notwithstanding any other provision of law, the immunity of the State and of its units is waived as to a tort action, in a court of the State, to the extent provided under paragraph (2) of this subsection.

(2) The liability of the State and its units may not exceed \$200,000 to a single claimant for injuries arising from a single incident or occurrence.

Maryland State Government Code, § 12-104.

¹⁸ 143 Idaho at 16, 137 P.3d at 403.

¹⁹ 694 N.W.2d 788 (2005). After citing *Horridge*, *Rees* contains this footnote:

Additionally, the federal courts have acknowledged that welfare agencies or social workers can be liable under 42 U.S.C. § 1983 for failure to carry out statutorily imposed duties. *Coleman v. Cooper*, 89 N.C.App. 188, 366 S.E.2d 2, 7 (1988) (citing *Doe v. New York City Dept. of Soc. Servs.*, 649 F.2d 134 (2d Cir. 1981); *Estate of Bailey by Oare v. County of York*, 768 F.2d 503 (3d Cir. 1985); *Jensen v. Conrad*, 747 F.2d 185 (4th Cir. 1984)). 143 Idaho at 16, n.5, 137 P.3d at 403, n.5.

DeShaney v. Winnebago County Department of Social Services, 489 U.S. 189, 200-01, 109 S.Ct. 998, 1006-07 (1989), says just the opposite of what this footnote says—that there is no liability under 42 U.S.C. § 1983 for failure to protect a child against abuse, even when the State knew of the potential for later abuse, at least when the child is not in the State’s custody, even if the State actors knew of the potential for abuse and even if the child had once been in the State’s custody because of abuse.

Later federal cases recognize that *Bailey* had been effectively overruled by *DeShaney*. See, e.g., “*DeShaney* overrules this court’s opinion in *Estate of Bailey by Oare v. County of York*, 768 F.2d 503, 510-11 (3d Cir.1985).” *Philadelphia Police and Fire Ass’n for Handicapped Children, Inc. v. City of Philadelphia*, 874 F.2d 156, 167 (3rd Cir. 1989). *Doe* and *Jensen* stand for the proposition

that liability may be imposed under § 1983 when the child is injured while in State custody, not when the State has no direct control over the child. See *DeShaney, supra*, 489 U.S. at 201, n.9, 109 S.Ct. at 1006, n.9.

²⁰ 143 Idaho at 16, 137 P.3d at 403, quoting *Radke*, 649 N.W.2d at 794.

²¹ Minnesota Statutes Annotated, § 3.736.

²² 143 Idaho at 18, 137 P.3d at 405.

²³ *Id.* at 19, 137 P.3d at 406.

²⁴ *Sherer v. Pocatello School Dist. #25*, 2006 Opinion No. 100, 2006 WL 3332921 (Nov 17, 2006).

²⁵ *Id.* at 6.

²⁶ 2006 Opinion No. 100, slip opinion at 6.

²⁷ See *Coonse ex rel. Coonse v. Boise School Dist.*, 132 Idaho 803, 805, 979 P.2d 1161, 1163 (1999). In contrast, the Idaho Court of Appeals has referred to the “private-person-or-entity” standard for liability more recently. *Nelson v. Anderson Lumber Co.*, 140 Idaho 702, 712, 99 P.3d 1092, 1102 (App. 2004) (“When ruling on a motion for summary judgment based upon an

immunity defense under the ITCA, the trial court initially determines whether the plaintiff’s allegations and the supporting record generally state a cause of action for which a private person or entity would be liable for money damages under the laws of the state of Idaho.”). Also *Hagy v. State*, 137 Idaho 618, 621, 51 P.3d 432, 435 (App. 2002) (reference to “private-persons-or-entity” standard).

ABOUT THE AUTHOR

Michael S. Gilmore is a Deputy Attorney General with the Civil Litigation Division. He is a graduate of the Massachusetts Institute of Technology (1971) and the University of Idaho College of Law (1974). He clerked for the Idaho Supreme Court from 1974-1977, and has been with the Attorney General’s Office since May 1978. His interests include constitutional law and administrative law. Mr. Gilmore was not an attorney of record on this case, but he has frequently represented the Bureau of Risk Management, which handles all tort defense for the State of Idaho, and became familiar with this case through that Bureau. The opinions in this article are his own and not those of the Attorney General.

- SAVE THE DATE -

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IF THE CITIZENS SPEAK, LISTEN: IDAHO'S LOCAL INITIATIVE PROCESS

Brian Kane

Attorney General's Office, Idaho

There is no truer exhibition of democracy in its purest form than the initiative and referendum process.¹ In 1911, in the midst of a period of reform and grassroots empowerment known as the Progressive Era, Idaho joined many other western states in amending its constitution to secure the power of the initiative and the referendum to the people of Idaho.

The initiative power is not self-executing.² In other words, even where the right is constitutionally enumerated, absent accompanying legislation establishing the procedure for an initiative, there exists no mechanism by which the people may exercise the right. Thus, it would be 22 years before Idahoans could actually exercise the initiative power as to statewide legislation. In 1933, the Idaho Legislature adopted provisions outlining the procedures for statewide initiatives and referenda. Interestingly, however, the Idaho Legislature enacted procedures for exercising the initiative and referendum right as to municipal ordinances concurrently with the constitutional amendment creating the right.³

Against this historical backdrop, this article will discuss the jurisprudence of local initiatives and referenda within Idaho, noting standards for pre-election challenges, reviewing two recent opinions, and providing some ideas for clarification of the municipal initiative statutes.

IDAHO'S LOCAL INITIATIVE AND REFERENDUM JURISPRUDENCE

In *Gumprecht v. City of Coeur d'Alene*,⁴ the petitioners sought to restrain an initiative, which, if passed, would have placed height restrictions on buildings near Lake Coeur d'Alene. The Idaho Supreme Court held that review was proper even though the election had not yet occurred, reasoning that such review was necessary to establish the boundaries of the local government's power. The Court opined that "[i]f an initiative election is an improper means of adopting or amending zoning ordinances in Idaho, then the city council of Coeur d'Alene would be acting in excess of its jurisdiction in holding the election."⁵ Thus, the Court established that in certain instances, pre-election review of municipal initiatives was proper.

In *Weldon v. Bonner County Tax Coalition*,⁶ the Coalition's referendum sought to freeze Bonner County's *ad valorem* property tax at the same level as the preceding calendar year. The Court determined that referenda and initiatives in Idaho are limited to addressing "acts" or "measures" passed by a legislative body. In other words, a referendum can only seek to reject an act or measure, and an initiative can only seek to implement an act or measure. The Court found that the statutorily mandated budgeting process, by which Bonner County had calculated the *ad valorem* tax levy, was not an act or measure of the county, and barred the Coalition's referendum on the basis that it sought simply to circumvent the county budgeting process.

Gumprecht and *Weldon* were considered to stand for the premise that ordinance initiatives could be challenged pre-election. By contrast, the rule regarding statewide initiative efforts announced in *Associated Taxpayers of Idaho v. Cenarrusa*,⁷ was that the Court would not entertain any pre-election challenges concerning the substantive portions of an initiative.⁸ Chief Justice Charles Donaldson stated the Court's reasoning prophetically:

If the voters at the election defeat the lottery, then the state will know what a majority of the voters of Idaho want. If the lottery passes, then the legislators who represent the people will know what the peoples' wishes are and can act in a constitutional manner to amend the constitution so as to carry out those wishes.⁹

The court confirmed this holding several years later, in *Noh v. Cenarrusa*.¹⁰ *Noh*, similarly, involved a pre-election challenge to an initiative, challenging the constitutionality of the initiative. The Court again declined to rule on this issue prior to the election. Subsequently, making the petitioners' case more difficult, the exact scenario that Chief Justice Donaldson predicted in *Associated Taxpayers* did, in fact, occur. The initiative passed and was declared unconstitutional, which led to the state adopting a constitutional amendment.¹¹ The example set by *Noh* effectively did away with substantive pre-election challenges to the constitutionality of statewide initiatives.

HOW AN INITIATIVE BECOMES LAW

1. The idea!
2. Prepare a draft of the Initiative in substantially similar form to that outlined in Idaho Code § 34-1801A.
3. Collect 20 signatures of qualified electors.
4. Submit to Secretary of State for approval as to form and certification of initial signatures.
5. Attorney General has 20 working days to prepare Certificate of Review.
6. Petitioners receive Certificate of Review and may adopt, modify or ignore recommendations within the Certificate of Review.
7. Petitioner submits Initiative for Ballot Titles.
8. Attorney General has 10 working days to prepare ballot titles.
9. Initiative is circulated for signatures of qualified electors (18 months to collect signatures for state; 75 days for municipal-level initiatives).
10. Secretary of State certifies signatures and prepares ballot, including language explaining the effects of "yes" or "no" votes.
11. Initiative appears on the ballot at next general election.
12. If passed, Initiative becomes law within 30 days of election by proclamation of Governor.

Again, however, municipal and county initiatives were distinguished from statewide initiatives, as the *Noh* Court confirmed when it stated:

Weldon and *Gumprecht* dealt with county initiatives that over-reached the authority for such initiatives because state statutes defined the processes the initiatives sought to effect. The initiative process itself was flawed because the county initiatives could not change processes determined by state legislation. The subject matter was beyond the scope of the county initiative process. On the other hand, *Associated Taxpayers* dealt with a statewide initiative on a subject appropriate for the initiative process, though the substance of the initiative might violate the state Constitution. Nonetheless, the cases draw the distinction—**if the subject matter of the initiative is reserved to another government unit, there is a justiciable controversy.**¹² (Emphasis added)

Late in the Summer of 2006, this reasoning was brought to bear in two cases: *City of Boise v. Keep the Commandments Coalition*¹³ and *Ryan Davidson, et al. v. Janis Wright, in her capacity as Sun Valley City Clerk*.¹⁴ The first, *Keep the Commandments*, dealt with the City of Boise's decision to relocate a Ten Commandments Monument from a public city park to a church in downtown Boise. The Coalition circulated an initiative petition seeking, in part, to have a new Ten Commandments monument erected in the same place that the previous monument had stood. The Boise City Council refused to place the matter on the ballot. The Coalition filed suit, and the District Court upheld the City Council's decision. On appeal, the Supreme Court noted the importance of the initiative within our democratic process, and identified it as a tool that compels authorities to listen when nothing else will.¹⁵ The Supreme Court reversed, and in the process overruled *Gumprecht* and *Weldon*.¹⁶ While the *Keep the Commandments* case represented a change in initiative case law, perhaps the more surprising decision was *Davidson*. Davidson's initiative sought to permit the regulated growth, sale and use of marijuana in the City of Sun Valley, to make enforcement of private adult marijuana offenses the city's lowest law enforcement priority, and to direct the city to advocate for changes in state marijuana laws. Pursuant to the advice of the city attorney, the city clerk rejected the petition on the grounds that it was contrary to state law, and therefore improper content for an initiative. The district court upheld the clerk's action. The Idaho Supreme Court, relying on *Keep the Commandments*, overturned the district judge's decision, holding that the initiative would not be ripe for review until the initiative had passed. The Court additionally noted that Davidson had not even been permitted to gather signatures to qualify it for the ballot.

It is worth noting that in the Davidson case, the futility of the initiative was compounded because the subject matter of the initiative—legalization of marijuana—is pre-empted at both the state and federal levels. For example, when California authorized the limited use of marijuana for medicinal purposes, the United States Supreme Court, in *Gonzales v. Raich*,¹⁷ held that recognition of California's medicinal marijuana permissions would abrogate the Federal Controlled Substances Act.

Likewise, even if Davidson's initiative had been statewide in effect, it would be pre-empted by Federal law. Nonetheless, prevailing Idaho case law dictates that, however legally infirm an initiative, it must actually pass before its substance may be struck down on such grounds.

It seems clear there are at least two issues for courts to consider when hearing initiative cases. First, the Court is, appropriately, leery of precluding the people's vote on an issue that has made a showing of a "sufficient grassroots support"¹⁸ to be placed on the ballot. Second, the statutes governing the local initiative process, particularly at the city level, are long overdue for some fine-tuning. Idaho Code § 50-501 is sparse in its directives, and the directives that are in place are often not appropriately addressed within city ordinances. Additionally, Idaho Code § 50-501 and Idaho Code § 50-473 seemingly conflict, since they refer to different sections of the code for the same issue. The Davidson Court, in particular, noticed the shortcomings of these statutes by finding that the city clerk, even acting on the advice of the city attorney, lacked the authority to make a threshold determination of the constitutionality of Davidson's initiative.¹⁹

SUGGESTED REVISIONS TO IDAHO'S LOCAL INITIATIVE STATUTES

With the *Keep the Commandments Coalition* and the Davidson cases in mind, this would be a good session for the legislature to address the shortcomings of the municipal initiative laws. The legislature should start by incorporating the Certificate of Review, provided for statewide initiatives in Idaho Code § 34-1809, into the provisions governing local initiatives. Idaho Code § 34-1809 directs the Attorney General to perform a substantive review of proposed statewide initiatives and make recommendations to the petitioner. This is one of the most beneficial aspects of the statewide initiative law. The review can assist the petitioners in making necessary changes, and at the same time provides an objective review of the initiative for voters. This provision could easily be adapted to permit city attorneys to perform a legal review of proposed initiatives.

Another measure that would likely greatly assist cities is to require petitioners to start the initiative process with a request that the city council consider adopting the measure. If the city council declined to adopt the measure, it would then be placed on the ballot.

Finally, Idaho Code §§ 50-501 and 50-473 should be reconciled. The best solution is to repeal Idaho Code § 50-473 in its entirety, and then use Chapter 5 of Title 50 to enact a series of statutes governing municipal initiatives and referenda, as well as recall elections. The problem with Idaho Code § 50-501 is that it tries to address all three of these election processes (initiative, referendum, and recall) within a single statute. The result is a confusing statute that tangles itself up in its attempt at brevity. The Idaho Code has granted an entire chapter to these three types of elections, presenting an opportunity for the legislature to clearly outline the processes for each of these three elections.

CONCLUSION

Although many were surprised at the Idaho Supreme Court's new direction with regard to city initiatives, both opinions take a reasonable approach. The United States is a government of con-

sent—that is, the people have consented to be governed by those it elects. The Court recognized this important aspect of Idaho and America in choosing to foster political debate rather than impede it with procedural machinations that could remove politically sensitive or controversial topics from the public forum. As Idaho's initiative nears the century mark, it is certain that it will continue to spur debate, cause anguish, and, nonetheless, appear on the state's ballots.

ENDNOTES

¹ "Initiative" refers to the means by which citizens may initiate legislation by petitioning to have a particular bill placed on the ballot and then directly voting for its adoption in a general election. "Referendum" is the means by which citizens affirm or negate an action of a governing body.

² *Idaho State AFL-CIO v. Leroy*, 110 Idaho 691, 718 P.2d 1129 (1986).

³ 1911 Sess. Laws 281, 301 (§ 24) granted the right to residents of cities with a population of 2,500 or more. In 1967, the population requirement was increased to 15,000. 1967 Sess. Laws 1249, 1259 (§27A).

⁴ 104 Idaho 615, 661 P.2d 1214 (1983).

⁵ *Id.* at 617, P.2d at 1216.

⁶ 124 Idaho 31, 855 P.2d 868 (1993).

⁷ 111 Idaho 502, 725 P.2d 526 (1986).

⁸ *Id.* at 503, P.2d at 527.

⁹ *Id.*

¹⁰ 137 Idaho 798, 53 P.3d 1217 (2002).

¹¹ Idaho Constitution Article III, § 20. (Adopted November 8, 1988).

¹² 137 Idaho at 802, 53 P.3d at 1221 (emphasis added).

¹³ 143 Idaho 254, 141 P.3d 1123

¹⁴ 2006 WL 2741665, p.5, -- P.3d -- (Idaho, 2006).

¹⁵ *Id.*

¹⁶ *Id.* at 1126. (The Court also presciently noted that this particular initiative would not pass, which would make any substantive determinations moot. The initiative failed in the November 2006 election.)

¹⁷ 545 US 1, 22 (2005).

¹⁸ *Meyer v. Grant*, 486 US 414, 425 (1988).

¹⁹ 2006 WL at 3. Since the Court noted that the clerk did not have the authority, the legislature could grant the clerk the authority, in consultation with the city attorney to determine a proposed initiative unconstitutional for purposes of precluding it f

ABOUT THE AUTHOR

Brian Kane, *Assistant Chief Deputy Attorney General in the Idaho Attorney General's Office, serves as the chair of the Idaho State Bar's Public Information Committee, and is past Chair of the Government and Public Sector Lawyers Section. The author's perspective expressed herein is his own; nothing herein should be interpreted as reflecting the position of the Idaho Attorney General.*

2007 Law Day

Liberty Under Law: Empowering Youth, Assuring Democracy

This year, Idaho's Fourth District Bar Association will host a number of special events designed to address such considerations while reaching the whole community with positive messages about our system of liberty under the law. These include:

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Dialogue Series May 1, 2007 The Fourth District's Dialogue Series is built upon the idea of stimulating conversations about law and its role in society. This year, Tom Dominick and Judge Trott will take the Series to Capital High School for their *Dialogue on Freedom*. For more information, please contact Tom Dominick at tomdominick@justicemaximus.com.

Court of Appeal's Oral Argument 101 May 1, 2007 The Idaho Court of Appeals will hold the oral argument for a northern Idaho murder case at the Borah High School Auditorium. For more information, please contact Jeremy Chou at Jeremy.chou@ag.idaho.org or Jason Prince at jepince@stoel.com.

The 6.1 Challenge: Modeled after Idaho Rule of Professional Conduct 6.1, this year's *6.1 Challenge* represents a friendly competition to recognize and encourage pro bono and public service from law offices within the Fourth District. Simply submit the 6.1 Challenge form to: Fourth District Law Day Committee, c/o Idaho Sate Bar, so that it is received by 5:00 p.m. on Monday, April 16, 2007.

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LAWYERS, LINCOLN, AND IDAHO

David H. Leroy
Leroy Law Offices

I am not an accomplished lawyer. I find quite as much material for a lecture in those points wherein I have failed, as in those wherein I have been moderately successful.

Abraham Lincoln

On February 12, 2009, America will celebrate the bicentennial of Abraham Lincoln's birth. The United States and the states of Illinois, Kentucky, Indiana and New York, among others, have established commissions to plan and present appropriate civic tributes leading up to and on the occasion. Idaho also established a commission to mark this historic event. This article will highlight the Idaho Commission's efforts, the impact that Lincoln had on Idaho, and some significant events that tie Lincoln to Idaho.

IDAHO ABRAHAM LINCOLN BICENTENNIAL COMMISSION

Lincoln and Idaho are inextricably linked in a number of ways. In fact, Idaho is a more direct political descendent of Lincoln than Illinois, Kentucky, Indiana or New York. Abraham Lincoln lived in Kentucky from birth to age seven, resided in Indiana fourteen years to age twenty one, and of course spent his adulthood in Illinois, serving in state office only as a deputy surveyor and four-term legislator. Lincoln merely traveled in New York on five occasions. For example, while an attorney, Abraham Lincoln represented the DuBois family. Fred DuBois later would become a United States Senator for the state of Idaho. Perhaps this encounter with Lincoln later spurred Senator DuBois to government service. Recognizing the significant role that Lincoln played in Idaho's history and the formation of the state of Idaho, on April 28, 2006, Governor Dirk Kempthorne signed an Executive Order establishing an Idaho Abraham Lincoln Bicentennial Commission ("Commission"). In establishing the Commission, Governor Kempthorne declared the purpose of the Commission to:

- a. Plan for a statewide recognition and celebration of the 200th anniversary of Lincoln's birth;
- b. To educate the people of Idaho and our nation about the unique relationship between the Idaho Territory and the sixteenth President of the United States;
- c. To encourage and coordinate the activities of local historical societies, civic groups, public schools, institutions of higher education, chambers of commerce and other entities to celebrate the Lincoln Bicentennial;
- d. To coordinate and establish a liaison with the Abraham Lincoln Bicentennial Commission of the United States and its advisory committee and those commissions established by other states;
- e. To seek volunteer assistance, monetary donations, public and private grants, and legislative appropriations in support of its mission;
- f. To support research, publications, historical analysis and exploration, the acquisition and preservation of artifacts and displays appropriate to the presentation

- and explanation of the career and contributions of Abraham Lincoln to the United States and Idaho;
- g. To issue such interim and final reports and periodicals as shall advance the Commission's work.

After two meetings during 2006, the 19-member Commission is well on its way to planning a kick-off event in February 2008, to start the year-long portion of the recognition leading up to the February 12, 2009 bicentennial birth date of Lincoln.

The leading rule for the lawyer, as for the man of every other calling is diligence.

Abraham Lincoln

PRESIDENT LINCOLN LOOKS WEST

Lincoln's interest in the West was most likely piqued in 1849, when he was offered the governorship of the Oregon Territory by President Tyler, which then included the landmass of what later became the state of Idaho. This familiarity and interest served him well, as during the Civil War, Lincoln needed loyal Western governments opposed to slavery to help save the Union. Recognizing the resource that lay Westward, Lincoln created Arizona (Feb. 24, 1863), Idaho (March 3, 1863), and Montana (May 26, 1864) Territories and he signed two Statehood Bills: Nebraska (April 19, 1864) and Nevada (May 2, 1864). In the case of Idaho, Lincoln was particularly personally involved. Lincoln personally lobbied Congress to pass the Idaho Bill and was present at the meeting when the name for the new territory was selected. He stayed up until 4:00 a.m., on the last night of the 38th Congress to sign the Idaho Bill in the Capitol Building. A week later he appointed several of his closest legal friends and political allies to be Idaho's first territorial officers.

Lincoln mentioned Idaho in both his 1863 and 1864 State of the Union messages to Congress. He was visited by Idaho's delegate to Congress, William Wallace, on April 14, 1865, at the White House because Wallace sought to fill a vacancy on the Idaho Supreme Court. After Wallace became Governor of Idaho, Lincoln invited Governor and Mrs. Wallace to attend the play at Ford's Theater as members of the presidential party. They could not go, as Mrs. Wallace was ill... .

LINCOLN'S CONNECTIONS TO AN EARLY TERRITORIAL GOVERNOR

The largest fee ever earned by lawyer Lincoln was \$4,800 for representing the Illinois Central Railroad in the trial and appeal of a corporate tax exemption case. The matter was referred to him by his friend, the chief counsel for the Railroad, Mason Brayman. Brayman moved to Illinois in 1842 to practice law and when Lincoln went to Congress in 1848, Brayman rented

Lincoln's house in Springfield for most of the months that the Lincoln family was away.

During Lincoln's travels to New York City in 1860, to give his notable address at the Cooper Institute, Brayman welcomed Lincoln at his hotel. As Lincoln made his address in the Cooper Institute Union Hall, he arranged for Brayman to sit in the back of the auditorium, with instructions to raise his tall hat on a cane if the speaker's voice was not sufficiently audible. Thus, no man was in a better position to see, or hear, Lincoln's improbable, meteoric rise to the presidency in 1860 than Brayman.

As he had during the 1840s and 1850s, Brayman kept up his contacts with President Lincoln through correspondence as a general of the Illinois volunteers during the Civil War. In 1876, President Ulysses Grant appointed Brayman, Lincoln's fellow lawyer to the governorship of Idaho Territory.

LINCOLN'S CONNECTION TO LAWYERS

Early Idaho was well connected to lawyer Lincoln. Lawyers who "politicked" or rode the circuit in Illinois with Lincoln became prominent leaders in Idaho. One became a judge of our Territorial Supreme Court, one unsuccessfully sought to become

governor here, and others sent their sons to serve in Idaho as Indian Agent, Congressman and United States Senator.

Lincoln's counsel to attorneys has a timeless quality that reaches across the years, as illustrated by some of his quotes. Through the Idaho Abraham Lincoln Bicentennial Commission, all Idaho counsel will have a wonderful opportunity to participate in recognizing the two hundred years since "Honest Abe" was born and to emphasize the legacy he leaves us as lawyers.

ABOUT THE AUTHOR

David H. Leroy is a former Ada County Prosecutor, Idaho Attorney General and Lt. Governor. He practices trial law in Boise, and is a Lincoln scholar, author and collector. To contact the Idaho Abraham Lincoln Bicentennial Commission write P.O. Box 122, Boise, Idaho.

There is a vague, popular belief that lawyers are necessarily dishonest. I say vague, because when we consider to what extent confidence and honors are reposed in and conferred upon lawyers by the people, it appears improbable that their impression of dishonesty is very distinct and vivid.

Abraham Lincoln

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THE IDAHO PUBLIC RECORDS ACT: PRESERVING THE STATUS QUO?

PATRICIA M. OLSSON
MICHELLE R. FINCH

The Idaho Public Records Act was passed by the Legislature last session; parts of it became effective July 1, 1990.¹ The Act does several things. It provides that all records of every state and local governmental agency in Idaho are public, unless the record falls within 36 listed exceptions. Effective July 1, 1993, the Act also repeals most Idaho statutes that formerly provided for confidentiality of materials gathered and created by public agencies. Lastly, the Act establishes a uniform procedure for requesting access to public records, provides that agencies may not include administrative costs when charging for copies, and creates a summary procedure for appealing denials of requests.

By passing the Act, the Idaho legislature has recognized and codified the principle announced in *Dalton v. Idaho Dairy Products Commission*, 107 Idaho 6,874 P.2d 983 (1984). *Dalton* held that no balancing test applies to disclosure of records of Idaho's governmental agencies; there must be an explicit exception to the rule of disclosure to confer confidentiality on any governmental agency. The Act follows this principle.

The Public Records Act was the product of a standing committee of the Idaho House and Senate co-chaired by Skip Smyser and Don Loveland. In drafting the statute the committee examined similar laws in Oregon, Washington, Iowa, Hawaii, Virginia, Vermont, and Louisiana.² However, the Records Act is not modeled on any single state's statute; it is unique to Idaho.

The bill initially contained no exemptions, and simply provided likely that all Idaho records would be public. This draft was resisted. Eventually, 36 exemptions to disclosure were included in the Act. According to the scrivener of the bill, the exemptions are intended to encompass the 104 confidentiality laws that have been repealed. However, repeal of the confidentiality statutes is not effective until July 1, 1993. The purpose for this delay is twofold. If a confidentiality provision was inadvertently repealed, the legislature has time to reinstate it. Second, the delay gives the public and the bar an opportunity to study the law and determine whether the exemptions are comprehensive enough.

In analyzing whether one of the 36 exemptions in the Public Records Act will cover a former specific statutory exemption, the presumption established by Idaho Code Section 9-388(1) is relevant. Under this subsection of the Act, a record is presumed to be open and public unless specifically exempted. Given this statutory statement, it is likely that courts will narrowly construe the exemptions.

Superficially, the exemptions appear comprehensive. For example, statutes that formerly provided for confidentiality of competitive economic information given to state agencies have been covered in broad exemptions that probably will be effective. *See, e.g. Idaho Code § 9-340(5)*. However, some of the exemptions are not as broad as the former statutory provisions. For example, Idaho Code Section 31-874 formerly provided that all medical indigency proceedings were confidential. Under the amendments, proceedings are now subject to disclosure pursuant to the Public Records Act. The exemption at Idaho Code Section 9-349(23) exempts "records of a personal nature related to application for public care for the indigent." If a narrow construction of the exemption is adopted, one wonders whether all "non-personal" records of matters discussed at the hearing, perhaps including the name of the indigent,

are open to public disclosure. Many exemptions may not shield as much information from public disclosure as the prior statutes did.

At least one statutory amendment appears inadvertent. Idaho Code § 33-1211, which provides that communications by school board members are privileged, has been amended to provide that such communications are subject to public disclosure. It is apparent, however, that "privilege" was used in the sense of conferring immunity from tort liability, not in the context of confidentiality. Close review of the revisions to statutes which affect a client's interest is recommended.

The Act established a uniform procedure for requesting records. An agency may require a request for records to be in writing. The agency must grant or deny a request within three working days unless a longer period of time is needed to locate the records. In that case, the agency has up to ten working days to respond to the request. If the request is denied, the public agency must cite the statutory authority for the denial and indicate the person's right to appeal the denial or partial denial to the district court. Failure to respond to a request is deemed a denial. The custodian may make no inquiry about any person seeking records, except to obtain an address and telephone number. The agency must permit copying of records, and may charge only for actual copying costs; it may not include administrative costs of locating and collating the requested records.³ In some cases this may result in private enterprise being funded by the public. For example, a person in the business of challenging tax assessments will be entitled to voluminous tax data at cost, without paying labor costs for collection of requested data. This provision creates tremendous potential for abuse by the private sector and the media.

A denial of the request may be appealed to the district court of the county where the records are located. The appeal must be filed within 180 days from the date of mailing of the denial notice. A hearing on the appeal must be set by the court no later than 28 calendar days from the date of filing.⁴ The court shall order the disclosure if it finds that the agency's refusal to disclose the record is not justified. If the refusal is deemed frivolous, the court shall award reasonable costs and attorney's fees to the prevailing party. If a public official is found to have deliberately and in bad faith improperly refused a legitimate request for inspection, a civil penalty not to exceed \$1,000 shall be assessed against the public official, in addition to attorney's fees and costs.⁵

Before passage of the Act, every agency's policy regarding the release of information was different. Although some records, such as worker's compensation medical records, are now more difficult to obtain (the Industrial Commission now requires an authorization), in general, access to information will be greater. This has implications for the private practitioner. Governmental sources should not be neglected in conducting case investigations. The Public Records Act can be a valuable tool, particularly given the summary appeals procedure established in the Act.

The specific Code provisions amended by the Public Records Act, become effective July 1, 1993. The chart summarizes the Code provisions, the substance of the amendments, and these authors' suggestions as to which "generic" exemptions may cloak the information with confidentiality under the new scheme. Although the Act is a good start towards resolution of a complex problem, it has flaws. No doubt that is

why the legislature delayed the repeal of confidentiality provisions until 1993. Whatever its flaws, the legislature has fixed on a laudable goal—openness in government. The challenge is to achieve openness while preserving the integrity of governmental functions and the right to individual privacy.

ENDNOTES

¹ Sections 1 and 2 of the Act, Sess. Laws 1990, ch. 213, are codified in part at I.C. §§ 9-337

through 90348. Sections 3 through 10 of the Act amend specific statutes; Section 111 provides that the amendments become effective July 1, 1993.

² Citations to other jurisdictions' Freedom of Information Acts, and cases interpreting terms used in the Idaho Act, can be found at **Annotation: What are "Records" of Agency Which Must be Made Available Under State Freedom of Information Act**, 27 A.L.R.4th 680 (1990), **Annotation: What Constitutes an Agency Subject to Application of State Freedom of Information Act**, 27 A.L.R.4th 742 (1990); **Annotation: What Constitutes "Trade Secrets" Exempt**

From Disclosure Under State Freedom of Information Act, 27 A.L.R.4th 773 (1990); **Annotation: What Constitutes Preliminary Drafts or Notes Provided by or for State or Local Governmental Agency, or Intra-agency Memorandums, Exempt From disclosure or Inspection Under State Freedom of Information Act**, 26 A.L.R.4th 639 (1990); **Annotation: What Constitutes Personal Matters Exempt From Disclosure by Invasion of Privacy Exemption Under State Freedom of Information Act**, 26 A.L.R.4th 666 (1990).

³ Idaho Code §§ 9-338,339.

⁴ Idaho Code § 9-343.

⁵ Idaho Code §§ 9-343, 345.

ABOUT THE AUTHORS (In December 1990 and March 2007)

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ADVOCATE RETROSPECTIVE

(REPRINT FROM JANUARY 1990)

SCHOOL BOARD RECALL RULES MUST BE CHANGED

RORY R. JONES

The recall process has always been a powerful political weapon on behalf of special interest groups and against wayward public officials. As applied to school board trustees, the recall process has the potential for destroying the incentive of public-spirited citizens concerned enough with education to serve. These unpaid volunteers face the grim prospect of large, recurring legal bills when a recall is initiated.

At the root of this problem is Article VI, Section 6 of the Idaho Constitution which reads as follows:

"Recall of officers authorized—every public officer in the state of Idaho, excepting the judicial officers, is subject to recall by the legal voters of the state or the electoral district from which he is elected. The legislature shall pass the necessary laws to carry this provision into effect. "

This seemingly straightforward constitutional provision has been difficult for lawmakers to implement since its enactment in 1911, and stands as the prime impediment to legislative attempts to put some parameters on the recall provisions. It has led to several decisions declaring the recall-enabling legislation unconstitutional. Several judges have analyzed the development of the statutory and case law in this area, including Judge Bengtson from Moscow; Judge Carey in Boise County; and most recently, Judge Williamson on assignment from Valley County. Her scholarly and well-written opinion makes interesting reading. A brief history of the statutory development follows to crystallize the current problem.

The original statutory provisions for conducting elections were originally codified at Idaho Code Title 33, in 1891. The original laws contain general provisions for the conduct of elections and are the types of laws today's courts determine comply with Article VI of the Constitution. Those laws remained unchanged through 1911, when the recall provisions then known as the "Black Law" were enacted. The Black Law, which applied to all public officials, contained no provisions for judicial review or specific grounds for recall of any public officials. The apparent, motivation of the legislature was to provide for liberal recall of public officials, giving the broadest power possible to the people.

The Black Law remained in effect unchanged until 1933, when it was repealed and replaced by Chapter 209, Statutes at Large, which

provided for the recall of public officers other than judicial officers. It clearly applied to school board trustees. However, that statute was eventually repealed and recodified at Idaho Code § 34-1701 through 1715 and even after amendment in 1975, did not refer to school board trustees, who apparently were off the hook.

In 1985, Sixth District Judge Arthur P. Oliver held in *Brewster v. in Ellis*, (Register No. 39198-B), that Idaho Code § 34-1701 was unconstitutional in that it excluded school board trustees from recall elections in violation of Article VI, Section 6 of our Constitution. In response, legislators in the 1986 legislative session struggled to provide a basis for the recall of school board officials. The State Department of Education helped draft a bill which was partially based upon similar statutes from the state of Washington. Unfortunately, no one noticed that unlike the Idaho constitution which requires no grounds for recall, the Washington constitutional recall provision reads in part as follows:

"... [s]uch officer has committed some act or acts of malfeasance or misfeasance while in office, or ...has violated his oath of office, staling the matters complained of, ..."

Thus, while the statutes are identical, they are based upon dramatically different constitutional provisions.

In Idaho legislation was eventually enacted which is now set forth at Idaho Code § 33-424 through 442 for the recall of school trustees. Those 18 code sections contain very specific provisions regarding the manner of bringing charges, review of the sufficiency of the charges, the procedure for proceeding with the recall, provisions for judicial review, the gathering of petition signatures, preparation and review of a ballot synopsis, scheduling of the election and the effect of both successful and unsuccessful recall elections. Three respected judges of this state have now held that Idaho Code § 34-1703, which sets forth the reasons a trustee may be recalled, unconstitutionally impinges upon the people's right to recall trustees.

This convoluted history is necessary in order to put the current problem in perspective. Unlike virtually every other elected public official in Idaho, school board trustees receive no pay. It is somewhat alarming then to realize that they can be subject to recall at any time for

any reason at potential financial expense which many could never afford.

Both good thought and good drafting went into Idaho Code § 34-1703, which provides in relevant part as follows:

"[A charge must be filed] reciting that such school trustee has willfully neglected or failed to perform faithfully a duty imposed by law; or acted in an arbitrary and capricious manner; or has committed an unlawful act; or has wrongfully acted so as to interfere with, interrupt, or adversely affect the performance of his official duty; or has violated his oath of office:

Any trustee who violates any of those provisions deserves to be recalled and should stand before the public to justify the action taken. However, those reasons are apparently an unconstitutional impediment to the people's right to recall which purportedly must be unfettered. Theoretically, trustees could be subject to recall efforts and potential elections every few months so long as the petitioners follow the other requirements of the recall statute. Such a result has an obvious effect on the willingness of school board members to sit, exposes the taxpayers of individual school districts to unnecessary and duplicative costs to conduct such elections, and forces school board, trustees to expend monies to defend themselves in court against any new recall effort.

Because no school boards in Idaho employ full-time attorneys to do their legal work, districts generally use outside counsel whenever legal problems arise. Though there are no cases in Idaho discussing the issue, other jurisdictions have recognized potential problems in utilizing taxpayer funds to pay the school district's attorney to represent school board trustees in the legal process involved in recall elections

This is by no means an exhaustive legal review of this issue. Nevertheless, some legal principles are apparent. First, trustees may not accept district money as compensation for their services. Idaho Code § 33-507.

Second, school district funds may not be used to determine the validity of an individual trustee's election. *Pasley v. Brooks*, 17 S.E.2d 865 (S.C.1941).

Third, school district money may not be used to ascertain an individual trustee's status as a resident of the district in which he was elected to serve. *Campbell v. Harris*, 638 P.2d 1355 (Ariz.App.1981).

The Idaho Code provision and those out-of-state cases basically hold that when private purposes are being served by the lawyer, the district's funds may not be used.

The issue then becomes whether in defending a recall petition, the trustees are serving private or public purposes. The cases with which I am familiar indicate that so long as the attorney's work is serving the best interests of the district, district funds may be used to compensate the attorney.

(See *Annotation at 75 ACR 2d 1339, Power of school district or school board to employ counsel, and 130 ACR 736, Payment of attorney's services in defending action brought against officials individually or within power or obligation of public body.*)

What expenditures of funds are in the best interests of the school district? This question is bound to be broadly answered because school district trustees are elected to establish the school district policy and thereby determine what is in the school district's best interests. Common sense would indicate that trustees charged with improprieties involving school district funds, malfeasance, unlawful activity or a failure to follow their duties as defined by Idaho law, were not acting in the school district's best interests and would not be entitled to legal services at taxpayer expense. Common sense would also indicate that to the extent the attorney's services are used to vindicate school district policies or procedures, to protect trustees from recall for carrying out their statutory duties or to protect against recall challenges based on individual trustee's vote or votes, such expenditures would be proper. Neither com-

mon sense interpretation is clearly defined in the law despite 100 years of trying.

The current state of affairs leaves school district trustees with many unanswered questions. Is it in the best interests of the school district to expend taxpayer funds for the district's attorney to appeal a judicial decision that the recall statute is unconstitutional when three judges have already held that it is not? Is an individual board member violating his oath of office by not protesting if his fellow trustees vote to pursue such an appeal when that trustee does not think that expenditure of funds is in the best interests of the school district? Should trustees have to face the possibility of incessant and recurring attempts to recall them for decisions they make presumably in good conscience and in the conduct of their official duties? Of course, all of these questions presume Idaho courts would adopt the "in the best interests of the school district" in determining the propriety of spending taxpayer funds on attorneys fees.

Unpaid school trustees should not be subject to recall for decisions they make on individual policy issues. Once elected, they should serve until the conclusion of their term or until they are recalled for specific reasons involving dereliction of duty, malfeasance or misconduct. Furthermore, trustees should not be faced with the Hobson's choice of allowing a recall election to proceed without legal challenge leaving the school district's patrons to suffer the emotional and financial expense of an election, or the alternative, hiring counsel at their own expense to defend against charges in a recall petition. Because even this latest legislative attempt to put some parameters on the recall of school board trustees is apparently unconstitutional, the people of Idaho must go to the root of the problem. Article VI, Section 6 of the Idaho Constitution should be amended to generally prescribe the grounds for recall of school board trustees.

ABOUT THE AUTHOR (in January 1990 and March 2007)

Rory Jones is an attorney with the Boise firm *Clemons, Cosho & Humphrey*. He is also a member of the *Boise School Board of Trustees* and was the target of a recent attempted recall. He is now with *Trout Jones Gledhill Fuhrman, PA*



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INSITE—TRAVERSING THE INTERNET

John Hasko
University of Idaho College of Law

As you make your way through the Internet looking for the most useful legal sites to support your research, the greatest challenge lies in separating out the wheat from the chaff. InSITE, an electronic service offered by the Cornell Law Library, can go a long way toward getting you connected to sites of the highest quality.

Every 3-4 weeks, subscribers to InSITE receive an issue via email with links to a handful of URLs, along with annotations on the major features of those sites. There is no focus on any one area of Law in any given issue; the sites listed run the gamut.

The predecessor of InSITE was created at Cornell Law School while I was the Associate Law Librarian there. Tom Bruce, one of the co-founders of the Legal Information Institute at Cornell, developed software to troll the Internet for new sites that might be useful for legal research. He would then pass the URLs for the sites on to librarians at the Law Library at Cornell, and we would review each batch, annotate what we felt were the best, and produce an in-house product for the Law School.

As the Internet developed, that in-house product has evolved into what has become InSITE, and its distribution has been greatly broadened. There are two features of InSITE that make it especially useful for legal researchers. The first is the variety of topics covered; in any given

issue, there may be treatments of URLs dealing with topics like women's rights, immigration, disability law, gun control, or obscenity. The most recent issue dealt with child welfare, early American Indian treaties, and International Labor. The coverage goes far afield. The second major feature is that the URLs are tried out by the Cornell Law Librarians, and are incorporated in InSITE because they are ranked as among the "best." Too often, information on the Internet is questionable in quality. What InSITE does is act as a filter to collect information about the most valuable sites, and identifies the qualities of the sites that make them useful. Considered in the listings in InSITE are completeness, currency, organization, and ease of use.

You can access InSITE by clicking on its listing in the bar at the top middle of the page at <http://www.lawschool.cornell.edu/library>. You will find instructions there on how to set up an email subscription, so that you receive individual issues as they are produced. You also have the option of searching the InSITE archives by individual issue, with a list of the sites covered in that issue. You can also search by topic, keyword, or source/sponsoring agency for the entire archive, going back to vol. 1, issue 1 (February 1996).

The current InSITES and the archival collection at the Cornell Law Library homepage will direct you to a broad range

of law-related Internet sites, and provide an excellent tool for locating those of the highest quality. You should check InSITE out, no matter what your legal research topic is; it will serve you well.



John Hasko received his J.D. from St. Mary's University in San Antonio, Texas, and his M.S. in Library and Information Science from the University of Illinois in Urbana-Champaign. He has been the Director of the Law Library at the University of Idaho College of Law since 1997.

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WHAT ARE ENDOWMENT LANDS, AND WHAT ISSUES DO I NEED TO WATCH OUT FOR WHEN DEALING WITH THEM?

Kahle Becker
Young Lawyers Section

The Idaho Admissions Bill, which admitted Idaho into the Union, provided that sections 16 and 36 of every township were to be given to the State to be held in trust for the benefit of the public schools and other public institutions. In order to effectively manage these endowment lands and funds, Article IX of the Idaho constitution established the State Board of Land Commissioners, consisting of Idaho's Governor, Secretary of State, Attorney General, Superintendent of Public Instruction, and the State Controller. The Land Commissioners, acting in the capacity of trustees on behalf of the beneficiary schools and other institutions, were given the responsibility under article IX, § 8 of the constitution (as amended) to manage endowment lands " ...in such manner as will secure the maximum long term financial return to the institution to which granted... ." The Idaho Department of Lands (the Department) administers these lands on behalf of the Land Commissioners.

In addition to this charge, the constitution also established a permanent endowment fund primarily comprised of the proceeds of prior land sales and mineral receipts. These land sales must be held at public auction. The endowment fund " ...shall forever remain inviolate and intact... ," and the interest from the fund must be used for the maintenance of the public beneficiaries of the State. These lands and their proceeds are given an almost sacred status in the constitution and the case law interpreting the various provisions addressing them. Consequently, our Supreme Court has recognized the high public function that these lands serve and has held that not only may endowment lands not be adversely possessed, but also statutes of limitations do not apply to actions concerning them. See *Hellerud v. Hauck*, 52 Idaho 226, 13 P.2d 1099 (1932), and *State v. Peterson*, 61 Idaho 50, 97 P.2d 603 (1939) respectively.

Of the 3.65 million acres originally received, endowment lands currently total nearly 2.5 million acres, including 780,000 acres of commercial timberland. Timber has historically and continues to provide the vast majority of the revenue to the endowments. Approximately three million acres of mineral lands also remain in state ownership due to the required reservation of these rights under Idaho Code § 47-701(2).

Due to the dispersed nature of these lands and recognizing the need for flexibility in managing them, the legislature enacted Idaho Code § 58-138(1) which states:

The State Board of Land Commissioners may at its discretion, when in the state's best interest, exchange and do all things necessary to exchange fee simple title to include full surface and mineral rights, to any of the state lands now or hereinafter held and owned by this state for similar lands of equal value public or private, so as to consolidate state lands or aid the state in the control and management or use of state lands.

The Department has utilized the exchange concept in order to consolidate its grazing and timber lands that might otherwise be too difficult to manage effectively.

The recent growth and changing land use patterns Idaho has been experiencing have caused the Idaho Department of Lands to reevaluate its management strategies of many parcels in order to increase the return to the beneficiaries. Lands that were once used simply for grazing or agriculture are now often in the path of development or more suitable for other uses that can generate significantly higher returns. The constitution mandates that the Department constantly re-evaluate the highest and best use for such lands.

Currently, the endowment lands portfolio includes a wide variety of non-tradi-

tional income producing properties. For example, a large portion of Tamarack ski resort and a number of commercial buildings in the Boise area are owned and managed by the Idaho Department of Lands. Much of the land along Payette and Priest Lakes belongs to the endowments and is managed for cottage site leases. Attorneys representing clients with cottage site leases should be mindful of IDAPA 20.03.13.020.02, which prohibits corporations from holding leases and only permits an individual to hold a single lease at a time.

Endowment lands are often able to support mixed uses such as wind power generation, hunting, and grazing. The Department also administers a number of multi year recreational leases and issues temporary use permits for shorter term recreational events such as off road vehicle races and backcountry skiing operations. With increasing pressure and misuse of these lands, the Department will be looking for ways to provide greater protection to existing uses.

Idaho is growing and people are moving to this state to buy their little piece of "the West". Developers seek to capitalize on this desire and often view endowment lands as parks or "open space" similar to that of the Federal Bureau of Land Management. They have attempted to advertise residential communities as having exclusive access to public lands and have gone as far as attempting to zone endowment land as "open space" within their development. Endowment lands are not parks and will not remain in an undeveloped state in perpetuity if it is not in the best interest to the beneficiaries. Based on the Supreme Court's holding in *State ex rel. Kempthorne v. Blaine County*, 139 Idaho 348, 79 P.3d 707 (2003) and the constitutional mandate, conflicts between local zoning ordinances and the constitutional mandates requiring endowment lands to be managed to produce income to the beneficiaries must be resolved in favor

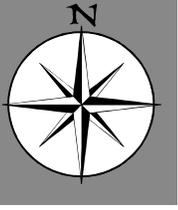
of the constitutional mandates. If you are representing a developer or a local municipality and a proposed development is adjacent to endowment lands, please contact Kate Langford, Idaho Department of Lands Land Use Planner, at (208)334-0257.

Many western states have been aggressively managing their endowment lands and have seen significant increases in the returns to their beneficiaries. Idaho has only recently begun to embrace the true potential of these lands and therefore has the benefit of hindsight to learn from the mistakes and progress other states have

made. In the coming years, statutory changes may be required to allow for a more flexible and efficient administration of endowment lands. The Department may also seek to hire or retrain employees in order to have the skills that are necessary to manage a diverse portfolio of properties. With the proper tools in place, these lands can produce a significant revenue stream which will benefit the school children of Idaho while keeping our taxes to a minimum.

Kahle Becker is a Deputy Attorney General with the Idaho Department of Lands. His primary practice focuses on

real estate development, commercial property, navigable waterways, and litigating wildland fire cost recovery cases. He graduated from Pennsylvania State University with a degree in Biology in 2000. He received his JD from the University of Pittsburgh School of Law along with a Certificate in Environmental Law, Science, and Policy in 2004. The author's perspective expressed herein is his own; nothing herein should be interpreted as reflecting the position of the Idaho Attorney General.



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ABA ENACTS MODEL CODE OF JUDICIAL CONDUCT

Larry Hunter

Moffatt, Thomas, Barrett, Rock and Fields, Chtd.

At its Mid-year meeting in Miami, with the 15-story visage of Shaquille O'Neil looming over the meeting site from an adjoining condominium construction site, the American Bar Association's mid-year meeting of the House of Delegates culminated in the adoption of a recommended Model Code of Judicial Conduct. The recommended model code replaces an ethical standard that was almost twenty years old and had been undergoing study, drafts, and input from many sectors for the past two years. In the end the House adopted a Code that was structurally somewhat different than in the past (the organization of Canons that contain overriding concepts and Rules that contain more specific, enforceable standards much the same as the attorneys' Rules of Professional Conduct) but did not contain any extreme departures from the current Code of Judicial Conduct (CJC) which is divided into 5 Canons.

There was a stream of discussion prior to the meeting about the term "avoid the appearance of impropriety" which is contained in Canon 2 of the current CJC. The original draft of the recommended Code contained the same language in Canon 1, which, by intent of the recommended Code, would not be an enforceable standard but an overarching principle that would be flushed out in the Rules. However there was nothing in the Rules that followed that Canon regarding the avoidance of impropriety. There was concern that omitting the pertinent language from the Rule would render the standard meaningless for enforcement. The controversy that followed prompted the drafters to put the "avoid the appearance of impropriety" language into a rule. When that draft was suggested, there were complaints that the broad language would be subject to attack for being too vague to advise a judge of what conduct should be avoided and could result in affording a judge facing a disciplinary complaint a lack of due process. At that point, the drafters removed the cited language from the suggested Code completely.

There was an immediate reaction from the Council of Chief Justices and other interested groups who suggested that the "avoidance of impropriety" language should be included and be enforceable. It was immediately put back into the Rules section of the newly recommended Code. In the short passage of time that the phrase was excluded, various sources picked up on the exclusion. Editorials appeared in both the New York Times and the Los Angeles Times bemoaning the omission of this language, intimating that the ABA was going too soft on the judiciary. By the time that the editorials appeared, the language had been replaced, and perhaps a follow-up by the editors would have avoided the ruckus that followed. Nonetheless, the language that a judge should "avoid the appearance of impropriety" is contained in Rule 1.2 of the recommended Code of Judicial Conduct. In the end the fears that the language was too vague fell to that time honored test of potentially vague standards, "I may not be able to explain 'impropriety', but I know it when I see it."

The remaining Canons are summarized as follows: Canon 2 deals with the basic responsibility of judgeship on the bench—ruling impartially, competently, and diligently; Canon 3 deals with extra-judicial activity and Canon 4 with political activity. The fourth Canon generated the most discussion as the committee tried to steer a course between politicization of judicial races and first amendment rights. The Canon and following rules are more straightforward and tightly drafted than the prior code. Of course, the ABA only recommends the Code as it did with the recent Rules of Professional Conduct for attorneys. However, many states have adopted the ABA's rules for attorneys, and many will adopt the Code of Judicial Conduct as well.

Prior to the meeting, a "buzz" was created by the comments by Deputy Assistant Secretary of Defense for Detainee Affairs, Charles Stimson, condemning firms that were providing *pro bono* defense to

detainees at Guantanamo. The consequent reaction by attorneys, newspapers, and government officials eventually led to Stimson resigning his position; however, it also spawned a resolution reaffirming the right of persons accused of the most heinous of crimes to legal counsel. This reaffirms the basic principle of advocacy that attorneys can defend repulsive parties without being identified with them.

Whether in reaction to that situation or for other reasons, the Attorney General for Great Britain, Lord Peter Goldsmith, was granted leave to speak to the House of Delegates and spoke eloquently about the West's obligation to with the war of values as well as the war of force. He included the detainee situation at Guantanamo and the failure to absolutely ban torture as two areas in which the United States must take a different course in order to assure that the war of values is not lost. He emphasized that our commitment to the Rule of Law requires a commitment to fundamental rights and freedoms and that some rights are not negotiable. His emphasis on the Rule of Law and the ABA's theme of Defending Liberty and Pursuing Justice met with a favorable reaction from the delegates whose concern for the Rule of Law was emphasized throughout the meeting.



Larry Hunter was appointed as the Idaho State Bar Delegate to the American Bar Association House of Delegates effective August 2004. Mr. Hunter

is a partner with Moffatt, Thomas, Barrett, Rock and Fields in Boise. His practice includes general and commercial litigation, administrative law, and alternative dispute resolution. Larry is a past president of the Idaho State Bar. He received his J.D. from Northwestern University School of Law. He has an A.B. from Harvard University (*cum laude*). Contact information for Larry is: (208) 345-200, or lch@moffatt.com

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1:00 PM to 9:00 PM

Nez Perce County
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SATURDAY, MARCH 3, 2007

8:00 AM to 5:00 PM

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Courthouse, Idaho Falls
Twin Falls County
Courthouse, Twin Falls

Over 300 students, 70 volunteer coaches, and 200 legal and other community volunteers across Idaho will participate in this year's High School Mock Trial Competition. Visit the Idaho Law Foundation website (www.state.id.us/isb/) the day after each competition to see results for each region.

For more information, contact Carey Shoufler at cshoufler@isb.idaho.gov or (208) 334-4500.



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Mark T. McHugh--McHugh Law Office
Curtis David McKenzie--McKenzie Law Offices, PLLC
Harlow Joseph McNamara--Beard St. Clair
Craig L. Meadows--Hawley Troxell Ennis & Hawley, LLP
L. Victoria Meier--Eberle, Berlin, Kading, Turnbow, McKlveen & Jones, Chtd.
Douglas K. Merkley--Douglas K. Merkley, PA
Kendall L. Miller--Saint Alphonsus Regional Medical Center, Inc.
Patrick Jerome Miller--Givens Pursley LLP
Mark J. Mimura--Mimura, James & Mimura, PLLC

Richard W. Mollerup--Meuleman Mollerup, LLP
Judson Brown Montgomery--Givens Pursley LLP
M. Brent Morgan--M. Brent Morgan, Chtd.
Stephen John Muhonen--Racine, Olson, Nye, Budge & Bailey, Chtd.
Gary Lance Nalder--Nalder Law Office, PC
Benjamin Neilsen--Loveless, Neilsen & Loveless
Deborah E. Nelson--Givens Pursley LLP
Charina Anne Neville--Perkins Coie, LLP
Nick L. Nielson--Pocatello
Penelope North-Shaul--Dunn Law Offices, PLLC
Audrey L. Numbers--Numbers Law Office
David C. Nye--Merrill & Merrill, Chtd.
Mary "Molly" O'Leary--Richardson & O'Leary, PLLC
Dennis W. Olley--Olley Law Office, Chtd.
Eric Lynn Olsen--Racine, Olson, Nye, Budge & Bailey, Chtd.
Brooke A. O'Neil--Finch & Associates Law Office, PA
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Kristen J. Ormseth--Stoel Rives, LLP
Zachary G. Parris--Pocatello
Craig W. Parrish--Parrish Law Office
David M. Penny--Cosho Humphrey, LLP
David K. Penrod--Maguire & Kress
Richard D. Petersen--Farm Bureau Insurance
Mark R Petersen--M. Brent Morgan, PC Chtd.
Mark C. Peterson--Moffatt, Thomas, Barrett, Rock & Fields, Chtd.
James Marshall Piotrowski--Herzfeld & Piotrowski, LLP
Michelle R. Points--Hawley Troxell Ennis & Hawley, LLP
William Christopher Pooser--Stoel Rives, LLP
Rebecca A. Rainey--Moffatt, Thomas, Barrett, Rock & Fields., Chtd.

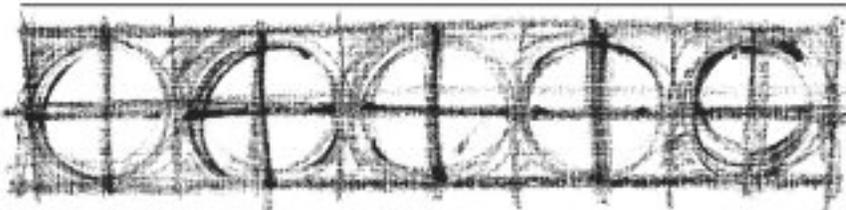


Scott E. Randolph--Greener Banducci Shoemaker, PA
Steven R. Rausch--Idaho Estate Planning & Business Law Center
Norman G. Reece Jr.--Norman G. Reece, PC
Paul E. Remy--Remy Law Offices
Janine P. Reynard--Boise
Steven A. Richards--Grimes & Reese, PLLC
Steven V. Richert--Pocatello
Corey J. Rippee--Eberle, Berlin, Kading, Turnbow, McKlveen & Jones, Chtd.
Darren S. Robins--Swafford Law Office
James D. Ruchti--Cooper & Larsen
Christine M. Salmi--Perkins Coie, LLP
M. Anthony Sasser--Cooper & Larsen
Lance J. Schuster--Hopkins Roden Crockett Hansen & Hoopes, PLLC
Justin R. Seamons--Idaho Falls
L. Jeff Severson--Boise
Sara Shepard--Sara Shepard, Lawyer, PLLC
Ann K. Shepard--Shepard Law Offices, PLLC
Bret W. Shoufler--Ludwig, Shoufler & Miller, LLP
Karen L. Silva--Silva Law Offices, PLLC
E. Brent Small--Meyers & Thomsen, PLLP
Curtis R. Smith--Idaho Falls
Bruce Michael Smith--Moore Smith Buxton & Turcke, Chtd.
Ellen N. Smith--Trout Jones Gledhill Fuhrman, PA
Scott Joseph Smith--Racine, Olson, Nye, Budge & Bailey, Chtd.
Dean C. Sorensen--Cantrill, Skinner, Sullivan & King, LLP
James Alphonse Spinner--Service, Spinner & Gray
Frances R. Stern--Frances R. Stern Law Office
Steven M. Stoddard--Rader, Stoddard & Perez, PC
Richard W. Stover--Eberle, Berlin, Kading, Turnbow, McKlveen & Jones, Chtd.
Jeffrey R. Sykes--Meuleman Mollerup, LLP

Robert W. Talboy--Ellsworth, Kallas, Talboy & DeFranco, PLLC
Glenda M. Talbutt--Brady Law, Chtd.
Diane M. Tappen--Eberharter-Maki & Tappen, PA
Brendon C. Taylor--Merrill & Merrill, Chtd.
Julie s. Tetrick--Greener Banducci Shoemaker, PA
Stanley J. Tharp--Eberle, Berlin, Kading, Turnbow, McKlveen & Jones, Chtd.
W. John Thiel--Boise
Stevan H. Thompson--Woolf, Combo & Thompson
Aaron N. Thompson--Dial, May & Rammell, Chtd
Steven A. Thomsen--Meyers & Thomsen, PLLP
Dale P. Thomson--Thomson Law Offices, Chtd
Aaron J. Tolson--Wright Wright & Johnson, PLLC
Brian T. Tucker--Anderson Nelson Hall Smith, PA
Marie T. Tyler--Holden, Kidwell, Hahn & Crapo, PLLC
Louis L. Uranga--Uranga & Uranga
Robert W. Vail--Howell & Vail, LLP
Yvonne A. Vaughan--Greener Banducci Shoemaker, PA
Lori A. Villegas--Great West Casualty Company
Carol T. Volyn--Racine, Olson, Nye, Budge & Bailey
Andrew Joseph Waldera--Moffatt, Thomas, Barrett, Rock & Fields, Chtd.
Cydni Waldner--J.R. Simplot Company
Robert A. Wallace--Robert A. Wallace, Lawyer

Matthew Lloyd Walters--Elam & Burke, PA
Bret Walther--Bret Walther Law Office, PLLC
Jerry M. Ward--Jerry M. Ward, Attorney At Law
Peter W. Ware Jr.--Eberle, Berlin, Kading, Turnbow, McKlveen & Jones, Chtd.
Andrew M. Wayment--Wright Wright & Johnson, PLLC
Larry F. Weeks--Larry F. Weeks, Attorney At Law
Dennis C. Weigt--Weigt Law Offices, Chtd.
B. Joseph Welch Jr.--Boise
Carole I. Wesenberg--Quane Smith, LLP
Jesse M. Wheeler--Thomsen Stephens Law Offices, PLLC
Brent L. Whiting--Racine, Olson, Nye, Budge & Bailey, Chtd.
Mark E. Wight--Idaho Estate Planning and Business Law Center
Todd Jennings Wilcox--Wilcox & Hallin, PLLC
Robert David Williams--Quane Smith, LLP
Brent Thomas Wilson--Hall, Farley, Oberrecht & Blanton, PA
Colette F. Wolf--Boise Cascade, LLC
Lisa Wood--Law Office of Lisa A. Wood
Wade L. Woodard--Greener Banducci Shoemaker, PA
Aaron J. Woolf--Woolf, Combo & Thompson
Christopher E. Yorgason--Capital Development, Inc.
Terri R. Yost--Givens Pursley LLP

IDAHO LAW FOUNDATION



Helping the profession serve the public



IDAHO COURTS

Chief Justice Gerald F. Schroeder
Idaho Supreme Court

STATE OF THE JUDICIARY

Presented on January 8, 2007



Governor Otter, Mr. Speaker, Mr. President, Mr. President Pro Tem, my colleagues on the Supreme Court, Judges of the Court of Appeals, Constitutional Officers, distinguished members of the Senate and House of Representatives, and fellow citizens of Idaho.

This will be the last time I will address this honorable body. After thirty-eight years as a judge in Idaho I will retire sometime this coming summer. I will retire three blocks from where I was born. Hopefully the remarks I make today will not amount to a sentimental journey but will bring forward whatever insight I have into the future based upon having worked in every level of court, serving during the tenures of seven governors, and enjoying the association with the Legislature during four decades. Idaho has retained the personal touch where people mean more than ideologies, quality more than political label and decency more than self-promotion. I have had the honor of being appointed to judicial office by two great governors from opposing parties—Governor Andrus and Governor Batt. I have had the pleasure of growing up in legal life and friendship with former Governor Risch. I will leave the choice of my successor to Governor Otter, a fellow graduate of my college, whom I trust to act in the highest interest of the public.

So far as the House and Senate are concerned I have learned that if public needs are adequately articulated these bodies will act. Cataloguing the monuments of reform I have seen come through

these bodies would be the subject of a semester in law school. Good people have risen to the top and have done good things.

Last year the Legislature took an unprecedented step in adding four new magistrate judge positions and two new district judgeships. With the public pounding at the courthouse doors for resolution of its legal problems this was a tremendous step. Together with the senior judge programs it translates into timely justice.

The agenda that the Court has this year is short, but the consequences are significant for the future.

To the extent funding and personnel allow, the drug courts will continue to grow. There is a consensus on the validity of these programs both in terms of human values and economy.

The Legislature has been aggressive and creative in addressing funding, and we look to you for continued support. In conjunction we hope to expand mental health courts which often partner for solutions with the drug courts in providing incredible savings as alternatives to the high cost of prison for offenders and hospitalization of their damaged babies.

We will renew our requests for legislation to insure the stability of the judicial retirement fund. This is critical for financial responsibility and for the recruitment of the type of people you want to enter the judiciary.

Over twenty-five years ago there was a major effort to solve the burgeoning appellate caseload that threatened to delay the public's business. After an extensive study the Court recommended the creation of a Court of Appeals to handle cases assigned to it by the Supreme Court, and the Legislature approved the concept.

There have been no changes in the Court of Appeals since its creation. It operates with the same number of judges and staff as it did in the 1980's. But its caseload is over three and a half times

greater than when it began. Rather than come to this body this year saying we need another judge or two, we have initiated a study to determine what may be necessary for the long term.

The Dean of the Idaho Law School, Don Burnett, has agreed to chair the Blue Ribbon panel that will conduct this analysis. The Dean was a driving force in the creation of the Court of Appeals and served on the Court itself. He was both an architect and builder of an institution that has done far more than should have been expected of it. When the Court comes back to the Legislature it will be with something that is practical and farsighted.

Recently we began analyzing the idea of moving the law library that the Court maintains. This was a space and security issue, but as we thought about it other potentials emerged. Could this evolve into a learning center that would reach out to the law school and the needs of the other colleges and universities in the State?

We share many common interests with each of our schools. We have utilized most of the schools for studies, academic expertise. Law does not exist apart from history, science economics, sociology, psychology. Education should not exist apart from life as it is actually lived.

There is the potential of drawing disparate elements of our intellectual system together to create something unique in the country — an apprentice program that opens the mysterious doors of the legal system to undergraduates who may learn and benefit — a system that allows advanced students at the law school to learn at the highest level.

I am not talking about moving the law school to Boise — I want to retire with all my body parts still intact. What we have is a potential of partnering with the practical and intellectual interests that cross over to the benefit of all. It is time to open our imaginations and the dialogue.

Last year the Legislature increased judicial salaries. It moved the Supreme Court from 49th in the country to 47th and maintained the trial courts at 47th. We will be asking for an increase this year. I'm not going to talk much about statistics. I am going to talk about the realities of what you expect from judges.

Magistrate Judges routinely deal with caseloads that would have been unthinkable when I started as a judge, but it goes beyond numbers. They routinely tell a person that he or she is going to lose custody of a child, the most precious thing in that person's life.

They routinely must take a person's freedom, deprive a person of a livelihood because he or she cannot be licensed to drive, determine multi-million dollar probates, wrestle for solutions for abused children, fashion sentences for juvenile offenders, attempting to guess the future consequences, and on and on.

District Judges routinely must decide the most difficult civil litigation, often times determining the life or death of a business and the financial future of individuals who have been terribly injured. They clean up the social garbage created by psychopaths, sociopaths, child molesters. They must stand against pressure when constitutional guarantees demand a result that is different from cries of vengeance – and they suffer from that. Ultimately they may be required to face another human and say "you must die." I have done that. I have stood closer than I am to any legislator in this room and looked a man in the eye I sentenced as he was executed.

And we are paid less than many deputy prosecutors, assistant city attorneys, law school professors, deans in universities – and those folks aren't overpaid.

The public expects judges to be intellectually superior, to isolate themselves from normal social contacts, to forego normal business opportunities. The age and experience requirements ask lawyers in the prime of their experience to give up much more lucrative opportunities. Persons such as myself, retired Judge Schwartzman, retired Judges Ray Durtschi and George Reinhardt, sitting federal district judge Ed Lodge would not have been eligible to enter the judiciary under present requirements. The number of appli-

cants for judicial positions does not tell the story. The reality is that the pool of candidates that you want to see is shrinking. Professional requirements, caseloads and compensation, the reality of costly elections after giving up other financial opportunities, are all taking their toll.

The comment is made that the salary of a Supreme Court Justice seems like a lot of money in the small communities. Whatever the validity of that perception, I will comment on the consequences of it. It is desirable to have geographical balance on the Court. In the past that existed. Over time that reality has faded. Many lawyers from outside the Boise area simply cannot afford to give up their homes and move to Boise.

In the past Justices on the Supreme Court tended to remain for many years. That is no longer the case. Turnover on our Court has become almost routine.

Idaho is extremely fortunate to have the persons on the Court who are my colleagues. It has been several years since I introduced them, and many in the House and Senate may not be familiar with them.

Vice Chief Justice Linda Copple Trout traveled to every county in the state as Chief Justice listening and learning from local officials and citizens, bringing that message back to the Court. She has been at the forefront of increasing access to the courts for persons who would otherwise be closed out.

Justice Daniel Eismann is a distinguished, highly decorated combat veteran who brings an incredible level of intellectual discipline to the Court. He was a pioneer on the drug courts and relentlessly pursues improvement in the legal process.

Justice Roger Burdick has brought a vast depth of legal and judicial experience to the Court as a former prosecutor, public defender, magistrate, district judge and administrative district judge, including a distinguished term as the Snake River Basin Adjudication judge. His common sense and understanding of people are invaluable assets not often found.

Justice Jim Jones is another highly decorated combat veteran -- the classic citizen who has served his Country and State in war and in peace as Attorney General. He brought the Court a deep commitment to doing the right thing, backed up by a

legal career of exceptional depth and distinction.

Judges throughout the state have stepped up to the challenges of extreme social change, increasingly complex caseloads and the expanding expectations that people have for solutions from the courts. They are doing the best they can with what they have. Help them out the best you can. You'll be proud of them, and they will serve this State well.

Justice Gerald F. Schroeder was born in Boise on September 13, 1939. He attended public schools in Caldwell and Baker, Oregon, where he graduated as salutatorian. He received a B.A. degree in history from the College of Idaho, graduating magna cum laude, and received his law degree from the Harvard Law School. He holds an honorary doctorate degree from Albertson College of Idaho.

Following graduation from law school Justice Schroeder was in private practice in Boise until he became an Assistant United States Attorney for the District of Idaho. In 1969 he was appointed Ada County Probate Judge where he served until 1971, when court reform eliminated the various city and county courts, and he was appointed as a Judge in the Magistrate Division for the Fourth District. In 1975 Governor Andrus appointed him as District Judge in the Fourth District, where he served nineteen years, thirteen years as administrative judge. On January 20, 1995, Governor Batt appointed him to the Idaho Supreme Court. The Supreme Court elected him to the position of Chief Justice for a four-year term beginning September 1, 2004.

Justice Schroeder has served on the Board of Directors of the Boise Philharmonic, the Boise Opera, and the Boise Racquet and Swim Club, including two terms as President, and served on the adjunctive faculty at Boise State University for a number of years. He has been active in the tennis community, including numerous tournament and sectional titles and participation in several national championship tournaments.



IDAHO COURTS

Michael Henderson
Legal Counsel, Idaho Supreme Court

THE ADMINISTRATION OF JUSTICE: A MASS OF NUMBERS

Numbers cannot tell the entire story of a complex human endeavor like the administration of justice. But they can provide a reference point for considering the work performed by the Judiciary. The caseload numbers from the Idaho Supreme Court's Annual Reports for the last few decades create an interesting picture of the growth of the task undertaken by the courts. To make it simpler (for both writer and reader!) we can look at the reports from mid-decade, the reports from 1975, 1985, 1995 and 2005.

The growth in the appellate caseload has been particularly striking. "1975 Supreme Court Caseload Sets Record," read a headline in the January 1976, edition of *The Advocate*. The article went on to relate that the 307 appeals filed that year were "by far the greatest number of new appeals since reliable records have been maintained for the Court." And that number was certainly a dramatic increase from the 155 appeals filed just three years earlier in 1972. But that was only a portent of things to come.

The upward path of appellate filings (they reached 402 in 1980) prompted the formation of the Court of Appeals, which began operating in 1982. And none too soon, as it turned out. In 1985, 404 appeals were filed. But by 1995, that number had grown to 788—a 95% increase in one decade. The growth had been almost entirely on the criminal side. Between 1985 and 1995, civil and agency appeals went from 277 to 271 (although, anecdotally, the complexity of the civil appeals had increased). But criminal appeals had soared from 127 to 517.

2005, saw a continuation of this trend. There were 258 civil and agency appeals, but 799 criminal appeals, for a total of 1,057. The bulk of the criminal cases were assigned to the Court of Appeals, whose three judges shouldered a far heavier load than in years past—577 cases, compared to 371 in 1995 and 149 in 1985. The Supreme Court is currently studying ways

to address the growing burden of Idaho's second highest court.

In 1975, 12,625 cases were filed in district court—but this included 4,205 domestic relations cases, which were then handled at that level. By 1985, domestic relations cases had been assigned to magistrate judges, and the district court caseload dropped to 9,948—still a substantial increase from the 8,420 non-domestic relations cases that had been filed ten years earlier. By 1995, the cases filed in district court had increased to 16,211. The increase was mainly in criminal cases: 10,750 in 1995, compared to 4,142 in 1985. In 2005, 20,683 cases were filed in the district court, 13,208 of them being criminal cases.

It should come as no surprise that much of the increase in the felony caseload came from drug cases. In 1985, 310 drug cases were filed in district court. Ten years later, this number had grown to 2,293. And in 2005, the number of felony drug cases was 3,880.

As the figures indicate, the workload of district judges has increased dramatically during the last 20 years. The number of cases filed per district judge in 1985 was 301; by 1995, it was 450. And in 2005, it was 530. In that year there were 39 district judges, only six more than in 1985. (The Legislature added two new district judge positions in 2006, one each in Kootenai and Canyon Counties.)

The magistrate division saw a dramatic increase in its caseload from 1975. In that year there were 237,585 cases filed in the magistrate division; in 1985 there were 319,483, a 34% increase in one decade. And in 1995 there were 453,492, a 42% increase. The number of cases filed in the magistrate division in 2005 – 452,869 – was almost the same as it had been ten years earlier. But the upward trend may be resuming. 2006 saw a 4.1% increase to 471,478 magistrate division cases. Particularly noteworthy were increases from 2005 of 15.1% in DUI cases and 5.2% in juvenile cases.

The Judiciary has managed to keep pace, while holding the increase in judicial positions to a minimum, through innovative court management. In recent years, the use of senior judges has provided a cost-effective means of handling the growing caseload. With the Census Bureau projecting that Idaho's population will increase 52.2% between 2000 and 2030, reaching two million, the challenge will certainly continue.



Michael Henderson is Legal Counsel for the Idaho Supreme Court. He previously served as a Deputy Attorney General for 18 years (seven of those years as Chief of the Criminal Law Division), and before that was a Deputy Prosecuting Attorney in Ada, Blaine and Twin Falls Counties.

The Advocate Remembering 50 Years

1957—Boise Junior College offered a course in business law with both day and evening classes. John Druash conducted the class. Instruction in commercial law was scheduled by Link's School of Business College with John McFadden lecturing.

1972—Retired Chief Justice William Dunbar Keeton, 87, died in Boise. He was appointed to the Idaho Supreme Court in 1949. He retired in 1959.

1972—One set of the Idaho Code, complete with desk book sold for \$150.

1979—The City of Boise was seeking to retain an attorney to act as an administrative hearings officer on certain City employee grievances.

1989—The Law Firm of Lukins & Annis announced that Edward W. Kok and Robert D. Loomis joined their firm.

1990—400 attorneys donated over \$20,000 to the Idaho Law Foundation when paying their licensing fees.

COURT INFORMATION

OFFICIAL NOTICE SUPREME COURT OF IDAHO

Chief Justice
Gerald F. Schroeder

Justices
Linda Cople Trout
Daniel T. Eismann
Roger S. Burdick
Jim Jones

2nd Amended - Regular Fall Terms for 2006

Boise..... December 1, 4, 6, and 8

Regular Spring Terms for 2007

Boise..... January 3, 5, 8, 10, and 12

Boise..... January 29, 31, and
February 2, 7, and 9

Boise (Twin Falls appeals)..... February 28, and
March 2, 7, and 9

Coeur d'Alene and Lewiston..... April 2, 3, 4, 5, and 6

Boise (Eastern Idaho appeals)..... May 2, 4, 7, 9, and 11

By Order of the Court
Stephen W. Kenyon, Clerk

NOTE: The above is the official notice of setting of the year 2007 Spring Terms of the Idaho Supreme Court, and should be preserved. A formal notice of the setting of oral argument in each case will be sent to counsel prior to each term.

IDAHO SUPREME COURT ORAL ARGUMENT DATES As of March 1, 2007

Friday, March 2, 2007 - BOISE

8:50 a.m.	Garcia v. Windley	#32274
10:00 a.m.	Lane Ranch v. City of Sun Valley	#32545
11:10 a.m.	Withers v. Bogus Basin	#33098

Monday, March 5, 2007 - BOISE

8:50 a.m. OPEN

10:00 a.m.	Ramos v. Dixon	#33095
11:10 a.m.	McKinley v. Guaranty National Insurance	#32500

Wednesday, March 7, 2007 - BOISE

8:50 a.m.	Turner v. City of Twin Falls	#32884
10:00 a.m.	Vanderford v. Grief	#31047/31163
11:10 a.m.	State v. Diaz	#32422

Friday, March 9, 2007 - BOISE

8:50 a.m.	ISP v. Real Property in Cassia County	#32593
10:00 a.m.	Bach v. Miller	#31658
11:10 a.m.	Thompson v. Ebbert	#32743

Submitted on the Briefs

Dorea Enterprises v. City of Blackfoot	#32826
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Monday, April 2, 2007 - COEUR D'ALENE

8:50 a.m.	Kiebert v. Quirin	#31708
10:00 a.m.	Griffin v. Anderson	#32617
11:10 a.m.	Fenwick v. Idaho Dept. of Lands	#32690

Tuesday, April 3, 2007 - COEUR D'ALENE

8:50 a.m.	Cowles Publishing Co. v. ICRMP	# 32195/32206
10:00 a.m.	McDaniel v. Inland Northwest Renal Care Group	#32539
11:10 a.m.	Wilhelm v. Frampton	#32922

Wednesday, April 4, 2007 - COEUR D'ALENE

8:50 a.m.	Clark v. Spokesman-Review	#32565
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DTE recused pro tem

10:00 a.m.	Chapin v. Linden	#32946
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11:10 a.m. OPEN

Thursday, April 5, 2007 - MOSCOW

8:50 a.m.	Follett v. City of Elk River	#32543
10:00 a.m.	Super Grade, Inc. v. Dept. of Commerce & Labor	#32695
11:10 a.m.	State v. Christiansen (Petition for Review)	#33527

Friday, April 6, 2007 - LEWSITON

8:50 a.m.	Watson v. Watson	#32237
10:00 a.m.	Campbell v. Reagan	# 32879

11:10 a.m. OPEN

Submitted on the Briefs

Straub v. Smith	#33348
State v. Jane Doe	#32362

COURT INFORMATION

OFFICIAL NOTICE COURT OF APPEALS OF IDAHO

Chief Judge
Darrel R. Perry
Judges
Karen L. Lansing
Sergio A. Gutierrez

4th Amended - Regular Fall Terms for 2006

Boise.....December 5 and 7

Regular Spring Terms for 2007

BoiseJanuary 9, 11, 16, and 18

Boise.....February 6, 8, 13, and 15

Eastern Idaho.....March 12, 13, 14, 15, and 16

Northern Idaho.....April 9, 10, 11, 12, and 13

BoiseMay 8, 10, 15, and 17

Boise.....June 5, 7, 12, and 14

By Order of the Court
Stephen W. Kenyon, Clerk

NOTE: The above is the official notice of setting of the year 2006 fall terms of the Court of Appeals, and should be preserved. A formal notice of the setting of oral argument in each case will be sent to counsel prior to each term.

IDAHO COURT OF APPEALS ORAL ARGUMENT DATES

As of March 1, 2007

Tuesday, March 13, 2007 - BOISE

9:00 a.m.	OPEN	
10:30 a.m.	Knutsen v. State	#32386
1:30 p.m.	Dutt v. State	#32021

Tuesday, April 10, 2007 – MOSCOW

9:00 a.m.	Curlee v. Kootenai County	#32794
10:30 a.m.	Hausladen v. Knoche	#32610

SAG recused JRW pro tem

1:30 p.m.	Berry v. Ostrom	#32561
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Wednesday, April 11, 2007 – MOSCOW

9:00 a.m.	State v. Bloom	#31935
10:30 a.m.	State v. Quick Release Bail Bonds	#32460

SAG recused JRW pro tem

1:30 p.m.	State v. Dominguez	#32126
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Thursday, April 12, 2007 – MOSCOW

9:00 a.m.	State v. Kemmish	# 32812
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SAG recused JRW pro tem

10:00 a.m.	State v. Cheeney	# 32625
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SAG recused JRW pro tem

11:00 a.m.	State v. Kaminski	# 32375
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SAG recused JRW pro tem

The Advocate **Remembering 50 Years**

1958—Practicing Attorney fees was \$25.00 for all attorneys except those whose admission to the bar was less than three years. They paid \$15.00.

1978—Ronald L. Kull, who was Executive Director of the Idaho State Bar from 1970 through September 1978 was hired as ED of the Alaska State Bar.

1985—Bar Gems

“Under the Federal Rules of Evidence it is no longer necessary that a homicide precede a dying declaration.”

“Business is booming for Lawyer Smith. However, he is wearing more hats than he has heads, and that’s a problem.”

Idaho Supreme Court and Court of Appeals
NEW CASES ON APPEAL PENDING DECISION
(UPDATE 02/01/07)

**CIVIL APPEALS
PROCEDURE**

1. Does a party's failure to appear at an administrative hearing before the Board of Equalization or the Board of Tax Appeals result in a failure to exhaust administrative remedies?

Charles J. Blanton v. Canyon County
S.Ct. No. 33439
Supreme Court

2. Did the court err in finding the plaintiff's complaint for damages based on allegations of abuse were barred by the statute of limitations set out in I.C. § 5-219 and I.C. § 6-1701?

Veronica Glaze v. James Deffenbaugh
S.Ct. No. 33303
Supreme Court

SUBSTANTIVE LAW

1. Was Foley an "interested party" as defined in the Structured Settlement Protection Act, I.C. § 28-9-109?

Howard R. Foley v. Jamie R. Grigg
S.Ct. No. 33059
Supreme Court

2. Whether the scope of a "reasonable . . . audit or inspection" under I.C. § 30-14-411(d) is limited to "records" required to be made or maintained by I.C. § 30-14-411(c).

Vondean Renee Karel v. Dept. of Finance
S.Ct. No. 33191
Supreme Court

SUMMARY JUDGMENT

1. Did the court commit error in finding the June 22, 2000, option to purchase was not exercised and in granting summary judgment to Paz?

Cristo Viene Pentecostal Church v. State of Idaho
S.Ct. No. 32280
Supreme Court

2. Whether the court erred in finding Wickersham was a trespasser at the time she was bitten by a dog and in granting summary judgment to Brown.

Jeannette A. Wickersham v. Craig Brown
S.Ct. No. 33235
Court of Appeals

**TERMINATION OF PARENTAL
RIGHTS**

1. Whether the court erred in finding the father was aware of the mother's drug use and that he failed to take any action to stop the use and protect Baby Jane Doe.

State of Idaho v. John Doe
S.Ct. No. 32732
Supreme Court

POST-CONVICTION RELIEF

1. Did the court err in dismissing Dopp's petition for reasons other than those stated in the state's motion for summary dismissal?

Sidney D. Dopp v. State of Idaho
S.Ct. No. 32803
Court of Appeals

2. Did the court err in denying Esquivel's motion for appointment of counsel?

Carlos Esquivel v. State of Idaho
S.Ct. No. 32689
Court of Appeals

3. Did the court err in summarily dismissing Ford's petition for post-conviction relief?

Kenneth K. Ford v. State of Idaho
S.Ct. No. 32229
Court of Appeals

QUIET TITLE

1. Whether the court erred in denying the Downey's motion to amend the court's findings of fact.

Krystal D. Downey v. Morris E. Vavold, Jr.
S.Ct. No. 33279
Supreme Court

CONTRACT

1. Did the court err in determining the statute of limitations had not run on collecting the amounts claimed by the plaintiff for the years 1995, 1996, and 1997?

Christa Ann Horkley v. James J. Horkley
S.Ct. No. 32885
Supreme Court

**CRIMINAL APPEALS
PLEAS**

1. Whether the court erred in denying Hill's motion to withdraw his guilty plea that was made before sentencing.

State of Idaho v. Clifford R. Hill
S.Ct. No. 33097
Court of Appeals

PROCEDURE

1. Did the trial court err by not requiring that the State of Idaho submit a Notice of Hearing on its motion for summary judgment?

Bonneville Co. Pros. Atty. v. U.S. Currency
S.Ct. No. 32800
Court of Appeals

2. Did the magistrate correctly deny Burtlow's motion to dismiss because the state did not violate either his statutory or constitutional right to a speedy trial?

State of Idaho v. Daniel Burtlow
S.Ct. No. 32999
Court of Appeals

**SEARCH AND SEIZURE –
SUPPRESSION OF EVIDENCE**

1. In light of Cruz's parole agreement, did the district court err in concluding that Cruz had an expectation of privacy in his girlfriend's apartment, and was therefore entitled to suppression of evidence of the bindles of methamphetamine he dropped on the floor?

State of Idaho v. Ernesto Cruz
S.Ct. No. 31880
Court of Appeals

2. Did the court err in finding that the initial entry and search of Gamble's residence was made pursuant to consent given by Gamble?

State of Idaho v. Deborah Kay Gamble
S.Ct. No. 32471
Court of Appeals

3. Did the court correctly apply the law in denying Metzger's motion to suppress the physical evidence obtained from her truck after the officer opened the driver's side door to check the vehicle identification number on the door frame and saw raw marijuana on the floor at Metzger's feet?

State of Idaho v. Christina D. Metzger
S.Ct. No. 32813
Court of Appeals

SUBSTANTIVE LAW

1. Was Watkins Sixth Amendment right to confrontation violated through the admission of Dr. Finis' testimony regarding things she had been told by her lab assistant?

State of Idaho v. Vance A. Watkins
S.Ct. No. 32710
Court of Appeals

SENTENCE REVIEW

1. Did the court err by denying Nelson's motion for credit for time served?

State of Idaho v. Patrick Lewis Nelson
S.Ct. No. 33029
Court of Appeals

JURISDICTION

1. Must the district court's order suspending sentence and placing Goodrick on probation be vacated because the court was without jurisdiction twenty-eight days after the expiration of the retained jurisdiction period to suspend Goodrick's sentence and place her on probation?

State of Idaho v. Kendra Lynn Goodrick
S.Ct. No. 32511/32512
Court of Appeals

EVIDENCE

1. Was there sufficient evidence such that a reasonable jury could find that the value of the stolen Diamond C saddle exceeded \$1,000?

State of Idaho v. Russell D. Cooper
S.Ct. No. 31971/32485
Court of Appeals

2. Did the district court err by denying Farlow's pre-trial request for disclosure of the identity of the state's confidential informant without first conducting an *in camera* examination to determine whether the informant possessed information that was material to Farlow's defense?

State of Idaho v. Martin R. Farlow
S.Ct. No. 32012
Court of Appeals

3. Did the court abuse its discretion by admitting into evidence a vial containing methamphetamine that came from a needle-syringe found on the front seat console of Mattmiller's car at the time of his arrest?

State of Idaho v. John W. Mattmiller
S.Ct. No. 32779
Court of Appeals

4. Is there sufficient evidence of prior felony convictions to support the finding that Pinon is a persistent violator?

State of Idaho v. Natividad Joel Pinon Jr.
S.Ct. No. 32548
Court of Appeals

INSTRUCTIONS

1. Did the court err by declining to give Kaminski's instruction on constructive possession?

State of Idaho v. John Kaminski
S.Ct. No. 32375
Court of Appeals

Summarized by:

Cathy Derden

Supreme Court Staff Attorney

(208) 334-3867



Perkins Coie congratulates Melanie Rubocki on her promotion to Partner.

Her practice will continue to focus on corporate and business law with an emphasis on corporate governance, corporate finance and securities compliance, mergers and acquisitions, technology transfer and licensing, start-up and emerging growth company counseling, and general business counseling.

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2007 COMMUNITY GRANT FUNDS AVAILABLE

The District of Idaho has announced that a total of **\$7,300** will be available for the Community Grant Program for 2007. The purpose of this Program is to enhance public trust and confidence in the judiciary, promote better understanding of the judiciary and legal processes, and improve communication with the public about the role of courts and the legal process. This grant funding must be related in some way to community education. The application should briefly describe the organization, association or group, the date it was organized, its history and purpose, and the tax status of this group. The application must be submitted or co-signed by an active member of the Bar of the United States District and Bankruptcy Court for the District of Idaho. Only one application can be submitted by a single organization or entity. Preference will be given to non-profit agencies or organizations. Deadline for completed applications is April 1, 2007. Applications and other information on this Program is available on our website at

UPDATE ON NEW COEUR D'ALENE COURTHOUSE

The official groundbreaking ceremony for the construction of the new Federal Courthouse in Coeur d'Alene took place on February 13th. The three-story structure will be located off of Highway 95 and Mineral Drive, adjacent to the Hecla

Mining Building, in a forest-like setting. The new Courthouse will contain two full-size courtrooms and judges chambers, a grand jury room, the Clerk's Office and ancillary space. The building will also house U.S. Probation & Pretrial Services, the U.S. Attorney and U.S. Marshal Service. This project is expected to be completed in late summer of 2008.

NEW PUBLIC DISTRICT COURT CALENDAR

The Court recently implemented a new trial calendar software program used internally to schedule all court hearings and proceedings. This necessitated the creation of a new public calendar on our website. The new calendar is actually a report from our CM/ECF electronic filing system, largely developed by local court staff. The new public calendar offers enhanced options for viewing court schedules, including the ability to filter by judge and location. The user can also select a specific case number to obtain information on any case-related schedules. You can preview the new public calendar on our website at [under Calendars](#).

HANDS-ON TRAINING FOR NEW COURTROOM TECHNOLOGY

On January 10th, the Court held four training sessions to demonstrate the operation and features of the new evidence presentation equipment recently installed in courtrooms 5, 6 & 7. The new equipment includes computer inputs which allow the display of video from a comput-

er as well as document cameras for the projection of hard copy or paper exhibits. Approximately one hundred attorneys, legal assistants, trustees and other end-users attended these sessions. Techniques for connecting to the wireless network (WiFi system) were also reviewed. After the formal instruction was concluded, attendees were invited to try out the new equipment in a "non-pressure" setting. Parties who wish to test out their hardware with the new equipment should contact the courtroom deputy for the Judge assigned to their respective case or Courtroom Services Supervisor Kathy Stutzman at 334-9327

COURTROOM #7 RENOVATION PROJECT

Courtroom #7 (Judge Boyle) is currently being renovated for the purpose of the installation of new technology and new evidence presentation equipment. It is hoped that the construction will be finished in early March. Until then, a weekly schedule will be posted on our Internet showing the exact courtroom number and location where Judge Boyle's matters will be heard.

REVISED DATA FOR BANKRUPTCY "MEANS TESTING"

The Census Bureau's Median Family Income Data and Administrative Expense Multipliers necessary to complete the Bankruptcy "means test" have been updated and will apply to cases filed on or after **February 1, 2007**. The IRS National

Standards for Allowable Living Expenses and Local Standards for Transportation and Housing and Utilities Expenses will be updated later this year. On our WebPage you will find a direct link to the relevant material contained on the U.S. Trustee's website.

ENHANCEMENTS TO ONLINE ECF TESTING & CERTIFICATION

A new version of the on-line registration and certification process has recently been implemented. Though the changes are primarily transparent to the user, on-

line registrants will be able to take an on-line ECF certification exam that automatically provides feedback as to passing or failing. When the user passes the certification, an e-mail is forwarded to the appropriate court personnel so that the ECF account can be created and login/password information e-mailed to the filer.

Don't worry; we will still hold hands-on, in-person classes for those who wish to learn the ECF process in a classroom environment. The next scheduled class is April 24 at 1:30 p.m. To register for the

class, click on the "ECF Certification/Registration" link on our Internet site and look for the "Class Schedule" hyperlink.



Tom Murawski is an Administrative Analyst with the United States District and Bankruptcy Courts. He has a J.D. and Masters in Judicial Administration.

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Idaho State Bar 2007 Professional Awards Nomination Form

The Idaho State Bar Board of Commissioners is now soliciting nominations for the 2007 Professional Awards. These awards were initiated by the Board of Commissioners to highlight members who demonstrate exemplary leadership, direction and commitment in their profession.

2007 DISTINGUISHED LAWYER

This award is given to an attorney (or attorneys) each year who has distinguished the profession through exemplary conduct and many years of dedicated service to the profession and to Idaho citizens.

PROFESSIONALISM AWARDS

The awards are given to at least one attorney in each of Idaho's seven judicial districts who has engaged in extraordinary activity in his or her community, in the state, or in the profession, which reflects the highest standards of professionalism.

PRO BONO AWARDS

Pro bono awards are presented to the person(s) from each of the judicial districts that has donated extraordinary time and effort to help clients who are unable to pay for services.

SERVICE AWARDS

Service awards are given each year to lawyers and non-lawyers for exemplary service to the Bar and/or Idaho Law Foundation.

Recipients of the awards will be announced at the Bar's Annual Meeting, held this year July 18-20 in Boise. The Distinguished Lawyer and service awards will be presented at the annual meeting. Professionalism and pro bono awards will be presented during each district's annual resolutions meeting in the fall.

Please use a separate form for each nomination.

Nominee: _____

Award: _____

Address: _____

City: _____ **Zip:** _____

Please describe the nominee's activity in your community or in the state, which you believe brings credit to the legal profession and qualifies him or her for the award you have indicated. Attach any other supporting documents to this form.

Your Signature: _____ Date: _____

(Please print your name): _____

Address: _____

City: _____ Zip: _____

Telephone: _____ Email Address: _____

Nominations must be received by March 29, 2007.

Send to: Executive Director, Idaho State Bar, PO Box 895, Boise ID 83701, fax (208) 334-4515

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Merlyn W. Clark

Mr. Clark serves as a private hearing officer, federal court discovery master, neutral arbitrator and mediator. He has successfully conducted more than 500 mediations. He received the designation of Certified Professional Mediator from the Idaho Mediation Association in 1995. Mr. Clark is a fellow of the American College of Civil Trial mediators. He is a member of the National Roster of Commercial Arbitrators and Mediators of the American Arbitration Association and the National Panel of Arbitrators and Mediators for the National Arbitration Forum. Mr. Clark is also on the roster of mediators for the United States District Court of Idaho and all the Idaho State Courts.

Mr. Clark served as an Adjunct Instructor of Negotiation and Settlement Advocacy at the Straus Institute For Dispute Resolution, Pepperdine University School of Law in 2000. He served as an Adjunct Instructor at the University of Idaho College of Law on Trial Advocacy Skills, negotiation Skills, and Mediation Advocacy Skills. He has lectured on evidence law at the Magistrate Judges Institute, and the District Judges Institute annually since 1992.

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Attorneys at Law

Edward D. Ahrens, Kevin M. Chen, Darin DeAngeli,
James K. McBain, Sharon D. Powers and Stephen L. Pruss
are Pleased to Announce:

Nicholas S. Marshall, J.D., LL.M.

Has Been Admitted as Partner of the Firm.

Nick received his B.A. in Economics from the University of Puget Sound, his J.D. from the University of Idaho and his LL.M. in taxation from New York University. Nick is licensed to practice in Idaho and California.

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COMING EVENTS

3/1/07 – 4/30/07

These dates include Bar and Foundation meetings, seminars, and other important dates. All meetings will be at the Law Center in Boise unless otherwise indicated. Dates might change or programs may be cancelled. The ISB website contains current information on CLEs. If you don't have access to the Internet please call (208) 334-4500 for current information.

(DATES MAY CHANGE OR PROGRAMS MAY BE CANCELLED)

MARCH 2007

- 1 Final Licensing Deadline**
- 1 July Bar Exam First Applicant Deadline
- 2 Northern Idaho Regional Mock Trial Competition,
Nez Perce County Courthouse, Lewiston
- 3 Treasure Valley Mock Trial Competition,
Ada County Courthouse, Boise
- 3 Idaho Falls Mock Trial Competition,
Bonneville County Courthouse, Idaho Falls
- 3 Twin Falls Mock Trial Competition,
Twin Falls County Courthouse, Twin Falls
- 8 CLE: ISB Intellectual Property section present:**
Intellectual Property Due Diligence in
Mergers and Acquisitions
- 9 CLE: ISB Workers Compensation section present:** Annual Workers Compensation Seminar, Sun
Valley Resort, Sun Valley
- 9 – 10 CLE: ISB Litigation section present:** Trial Skills
Academy, Federal Court, Boise
- 15 CLE: ISB Young Lawyers section present:**
Obtaining Venture for a Startup Business
- 15 – 17 ABA Bar leadership Institute, Chicago**
- 19 State Mock Trial Competition Quarter Finals,
Ada County Courthouse, Boise
- 20 State Mock Trial Competition Semi Finals,
U.S. District Court, Boise
- 20 State Mock Trial Competition Finals,
Idaho Supreme Court, Boise

- 21 *The Advocate* Editorial Board Advisory meeting
- 21 - 24 Western States Bar Conference, Hawaii
- 22 Idaho Supreme Court Annual Memorial Ceremony,
Idaho Supreme Court, Boise
- 23 CLE: ISB Family Law section present:** Everything
you Always Wanted to know about a Custody Case

APRIL 2007

- 1 Licensing Deadline**
- 1 July Bar Exam First Applicant Deadline
- 6 Idaho State Bar Board of Commissioners Meeting,
Coeur d'Alene
- 12 February 2007 Idaho State Bar Exam results released
- 13 CLE: Idaho Law Foundation present:** Handling
your first or next Judgment Collection Case
- 15 – 17 ABA Bar leadership Institute, Chicago
- 18 CLE: ISB Young Lawyers section present:**
Negotiating a Real Estate Transaction
- 18 *The Advocate* Editorial Board Advisory meeting
- 20 Idaho Law Foundation Board of Directors Meeting
- 21 - 24 Western States Bar Conference, Hawaii

Save the Date

July 18-20, 2007

The Idaho State Bar 2007 Annual Meeting. July 18 to 20, 2007 at Boise Centre on the Grove. Expanded exhibitor hall, great CLE programs on Law Practice Management topics, receptions, entertainment, awards!

IN MEMORIAM

**HON. JOHN C. HOHNHORST
1952 - 2007**

Fifth District Judge John C. Hohnhorst of Twin Falls passed away Saturday, February 3, 2007, in Salt Lake City while awaiting a lung transplant. He was 54. A son of the Magic Valley, John (known by most as "Hohnhorst") was born in Jerome on Dec. 25, 1952, to John Jefferson and Alpha (Walker) Hohnhorst. He grew up in Hazelton, graduating from Valley High School in 1971. Migrating to Moscow he attended the University of Idaho, earning a bachelor's degree in political science in 1975, followed by a juris doctorate, cum laude, in 1978. Hohnhorst loved his years at the U of I, where he was a member of Phi Kappa Tau fraternity. Throughout his life, he remained a Vandal to the core.

In August 1978, he went into the private practice of law with the Twin Falls firm of Hepworth, Nungester & Felton, and was made a partner in 1981. He maintained a busy and successful civil litigation practice for 23 years and was very proud of what he was able to accomplish for his clients. He particularly excelled in appellate advocacy. During these years, he served as president and commissioner of the Idaho State Bar, as president of the 5th District Bar Association, and as a member of the University of Idaho College of Law Advisory Committee. He was a Fellow of the American Academy of Appellate Lawyers, a member of the Idaho Trial Lawyers Association, the American Bar Association, the American College of Trial Lawyers, and the American Agricultural Law Association.

Hohnhorst was appointed to the 5th District Bench by Governor Dirk Kempthorne in 2001, where he has served with distinction. While the intellectual challenge of his cases always energized him, it was his ability to make positive contributions to his community that most satisfied him.

He served on many Supreme Court committees and was a leader among his peers. As a judge, he was respected for his legal knowledge, work ethic and commitment to justice.

Hohnhorst married Raelene Casper of Idaho Falls on December 29, 1979. They are the parents of three children; Jennifer, Rachel and John; all of Twin Falls. He is also survived by a brother, Charles Hohnhorst of Jerome; mother-in-law, June Casper of Twin Falls; sisters-in-law, Mauna (Rocky) Eller of Twin Falls and Juneal (David) Kerrick of Caldwell; brother-in-law, George (Shari) Casper of Pocatello; nephews, Tom Hohnhorst, Sam Eller, and Ryan Eller, residing locally; plus numerous cousins, nieces and nephews. He was preceded in death by his parents; and a sister-in-law, Marge Hohnhorst.

John and his family were most appreciative during his illness for the consideration and assistance given by his fellow 5th District judges, 5th District Trial Court Administrator Linda Wright, the Twin Falls County Courthouse staff, and the administrative office of the Supreme Court, in particular Patti Tobias and Corrie Keller. He was grateful for the many phone calls, e-mails, cards and visits from friends, family, the staff of Morningside School, and the legal community. Hohnhorst tried so very hard to survive his illness but was finally overcome. He leaves behind a legacy of keen intelli-

gence, quick wit, absolute integrity, a love for the law and unwavering loyalty to his friends, family and profession. He will be missed.

Memorial contributions may be sent to the Idaho Law Foundation, P.O. Box 895, Boise, ID 83701; the University of Idaho College of Law, P.O. Box 442321, Moscow, ID 83844-2321; and the Twin Falls County Youth Baseball program (Cal Ripken), in care of Bill Merritt, 333 Cedarpark Circle, Twin Falls, ID 83301.

**CRAIG H. NEILSEN
1941-2007**

Craig H. Neilsen, 65, died unexpectedly in his sleep November 19, 2006, at his Las Vegas home. He was born in 1941 in Logan, Utah, to Ray L. Neilsen and Gwen Hart Neilsen Anderson. As a child he moved with his family to Twin Falls, Idaho. Following graduation from Twin Falls High School, he earned a bachelor's degree in political science at Utah State University. He earned a masters in business administration and a J.D. from the University of Utah. After graduation he joined his father, Ray L. Neilsen, in his construction and real estate development firm in Twin Falls. Neilsen & Company was a construction and real estate development company. In 1984, he became president of Ameristar Casinos, Inc.

In 1985, on his way back to Twin Falls from his Ameristar properties in Jackpot, Craig was paralyzed in an automobile accident. He came away from the experience focused on improving the future of others similarly changed. Following rehabilitation, he returned to work and continued to expand all of his businesses. In 2003, he established The Craig H. Neilsen Foundation, which funds programs focusing on spinal cord injury research and rehabilitation, supporting research, clinical care and education.

In 2002, Craig was named the Best Performing CEO by the American Gaming Association (AGA). In 2005, he was inducted into the AGA Hall of Fame; and in 2006, he was named Outstanding Business Leader by the Buoniconti Fund to Cure Paralysis, the national fundraising arm of The Miami Project to Cure Paralysis.

Craig is survived by his son Ray H. Neilsen, daughter-in-law Nancy Neilsen, and stepdaughters Jaime Stam and Amanda (Howard) Byrd.

**JAYSON HOLLADAY
1922 - 2007**

Jayson Holladay died on January 6, 2007. He was born August 11, 1922 to N.C. and Verna R. Holladay. He graduated from Pocatello High School in 1940, and married Ruth Roberts in 1942. They lived in Riverside, California before Jason served his country in World War II. He served in the European Theater of Operations with General Dwight D. Eisenhower's Supreme Allied Headquarters. His tour of duty was from 1942-1946. He saw duty with the headquarters in England, France, Belgium, Luxembourg and Germany. In 1948, he graduated from the University of Utah with a degree in journalism. In 1950, he was awarded his J.D. from the University of Utah College of Law. He then returned to Pocatello, where he practiced law for 48 years, from 1951 until 1999.

Jason never forgot his love of journalism. From 1962 to 1977 he wrote a weekly article for the *Idaho State Journal* entitled, "Ask Your Lawyer." He also wrote short stories, several of which were published. He was one of the founders and original incorporators of the University Racquet and Swim Club. He was a tennis enthusiast and avid support of the sport, and a former tournament player. From 1964 to 1971, he was a lecturer at Idaho State University in the School of Business Administration. He taught business law during the fall semesters and real property law during the spring semesters. He served as the president of the Southeastern Idaho Bar Association (currently the Sixth District Bar Association). In 1994, the Idaho State Bar awarded him with a Professionalism Award. He was very active in his church teaching the senior Sunday school class in his ward for over 30 years.

Jason's family was everything to him. He took loving and patient care of his daughter, Roanna for the years following his beloved wife Ruth's death in 1998. He is survived by his three children, Dawn (Bill Siems) of Spokane, Washington; Roanna, Pocatello, and Lance (Camille) Pocatello; three grandchildren, Zoe, Marcelle, and Mason; three brothers, Gene (Lorraine), and Bruce of Pocatello; and Lynn (Darlene) of Atlanta, Georgia.

CAROLYN KAY JUSTH 1947-2007

Carolyn Kay Justh, 59, of Post Falls, Idaho passed away February 9, 2007 at Kootenai Medical Center following a 15-month struggle with cancer. She was born September 10, 1947 in Astoria, Oregon to Rudy and Evelyn (Carlson) Hoening. Carolyn grew up and attended public schools in Kelso, Washington. She obtained her Bachelor of Arts degree from Northwest Nazarene College in 1968. Following graduation she taught at Lewiston High School for two years, then went on to become regional eligibility director for the Idaho Department of Health and Welfare.

Changing careers, she went on to obtain her law degree from the University of Idaho in 1976. She practiced first in Lewiston, ID and then in Coeur d'Alene, ID. From 1981 forward she practiced with the firm of Brown, Justh, and Romero, being in practice with R. Romer Brown for twenty-five years. Carolyn's law practice focused mainly on bankruptcy work and estate planning. She especially enjoyed working with clients in searching for solutions and helping them make decisions. She also greatly appreciated those at the law firm that respected one another as both professional and personal friends.

Carolyn's favorite hobbies included quilt making, bicycling, roller skating, and reading. She is survived by her husband of 39 years, John Justh at the home; her son, Allen Justh of Santa Clara, CA; and her mother, Evelyn Hoening of Longview, WA. She was preceded in death by her father, Rudy Hoening and her sister, Colleen Kessler.

—ON THE MOVE—

Mark D. Perison is pleased to announce the opening of Mark D. Perison, P.A. in the historic Foster's Building in the new BoDo development. He is a 1993 graduate, Cum Laude, from the University of Idaho College of Law, and served as a law clerk to the Honorable Darrel R. Perry on the Idaho Court of Appeals from 1993-1995. Most recently, he was an associate with William R.

Snyder & Associates, P.A. Mark is licensed in California as well as Idaho, and will continue his real estate and business practice from his office at 314 S. 9th Street, Ste. 300 in Boise. He can be reached at (208) 334-1200, PO Box 6575, Boise ID 83707 ID 83702, email mark@markperison.com

Erika E. Malmen has joined Perkins Coie as an associate in its Environment & Natural Resources practice. **Charina A. Neville** has joined its Labor & Employment practice as an associate. Both lawyers work in the firm's Boise office.

Prior to joining the firm, Erika worked for the U.S. Department of the Interior in Washington, D.C., serving first as an attorney for the Division of Land and Water and later as the acting special assistant to the solicitor. She also served as legal counsel to the Governor of Idaho's Office of Species Conservation.

Charina, a graduate of the University of Idaho, is part of a class of 42, first-year associates that have joined the firm since last fall.

Jason D. Scott has been named a partner in the law firm of Hawley Troxell Ennis & Hawley LLP, and is practicing out of their Boise office. Scott is a member of the firm's Commercial Litigation Practice Group, with expertise on disputes within the jurisdiction of federal courts. Before joining the firm, he served a two-year clerkship for U.S. District Judge B. Lynn Winnmill.

Scott also has passed the certified public accountant examination and serves as contributing editor of "Tort Law Desk Reference: A Fifty-State Compendium," published annually by Aspen Publishers. He is a graduate of Idaho State University and Duke University School of Law.

Sisson & Sisson, The Elder & Disability Law Firm has a new office location at 2402 West Jefferson Street, Boise, Idaho 83702. **Peter C. Sisson**, Certified Elder Law Attorney, (board certified by the National Elder Law Foundation, www.nelf.org) concentrates his elder law practice on helping seniors and their families navigate the long-term care maze. The firm offers comprehensive services that address the health, legal and financial issues families face when a senior needs chronic care, no matter whether that care is provided in the home or in a residential care facility. Telephone: (208) 387-0729; Facsimile: (208) 331-5009; email: petesisson@ida-hoelderlaw.com.

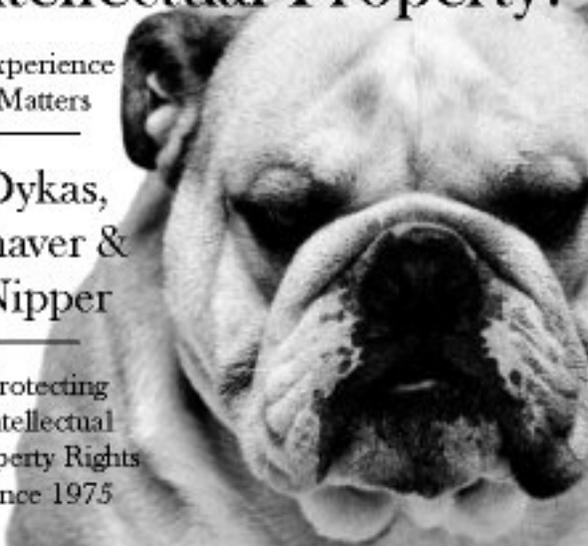
Mary York was recently announced as anew partner in Holland & Hart. Her practice is located in the Boise office. Her principal areas of practice are construction, eminent domain, real estate and land use litigation. She is an experienced trial lawyer and has represented clients in numerous condemnation proceedings, as well as a variety of construction and real estate litigation disputes. Prior to joining Holland & Hart's Litigation Department, she served as a Deputy Attorney General for the Idaho Transportation Department where she gained broad experience in transportation and construction-related matters. Mary served as a law clerk for the Chief Justice of the Idaho Supreme Court, Chas. F. McDevitt. She graduated from the University of Idaho College of Law and was the Editor-in-Chief of the Idaho Law Review.

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VICTIMS' RIGHTS CLINIC JOB DESCRIPTION

The University of Idaho is seeking to fill a temporary (one year), grant-funded part-time faculty position to direct, supervise and teach in its Victims' Rights Clinic and conduct grant administrative work. The Victims' Rights Clinic is funded with a grant from the National Crime Victim Law Institute. The person may also be asked to teach other related courses. This is a temporary, non-tenure track, clinical faculty position with continuation contingent on grant funding. In the Victims' Rights Clinic, students represent Idaho victims of felonies and violent misdemeanors in criminal cases, primarily in state court but occasionally in federal court as well. The Clinic also operates programs to inform crime victims of their rights under the Idaho Victims Rights constitutional amendment and statutes and the federal Crime Victims' Rights Act. Candidates must possess a J.D. from an ABA accredited school, and have been admitted to practice law for at least five years. A distinguished record of clinical teaching or practice-related experience in victims' rights law is highly desirable. We are seeking a skilled supervisor and communicator who can work effectively with students, clients, and other faculty. The position begins May 2007. Interested individuals should submit a letter of interest and a resume listing references to Committee Chair, VRC Search, University of Idaho College of Law, PO Box 442321, Moscow, ID 83844-2321 or apply on line at www.hr.uidaho.edu. The committee will begin considering applications on March 16, 2007 and will continue to accept applications until the position is filled. The University of Idaho, College of Law is an equal opportunity employer and welcomes applications from individuals of diverse backgrounds.

MARCH / APRIL CLE COURSES

Thursday, March 8, 2007 from 8:30 to 11:45 a.m. (MT) at the Law Center, Boise

Intellectual Property Due Diligence in Mergers and Acquisitions (3.0 CLE credits)

Sponsored by the ISB Intellectual Property Section

Join Mark Wittow and David Daggett, both from the Washington State law firm of K & L Gates, as they discuss intellectual property due diligence.

Friday, March 9, 2007 from 8:00 a.m. to 5:00 p.m. (MT) at the Sun Valley Resort, Sun Valley

Annual Workers Compensation Seminar (6.0 CLE Credits) RAC Approved

Sponsored by the ISB Workers Compensation Section

Join the Workers Compensation Section for this year's important seminar on Workers Compensation law. The agenda will include hot topics and the most recent information on trends in the practice.

Friday - Saturday, March 9 & 10, 2007 from 8:00 a.m. to 5:00 p.m. (MT) at the Federal Court, Boise

Trial Skills Academy (13.0 CLE Credits)

Sponsored by the ISB Litigation Section

The finest trial lawyers and judges in Idaho will help you develop and improve your trial skills. Take this opportunity to learn from experienced trial attorneys and to actually practice and receive pointers on your litigation performance.

Wednesday, March 15, 2007 from 8:30 a.m. to 9:30 a.m. (MT) at the Law Center

Sale or Acquisition of a Small Business (1.0 CLE credit)

Sponsored by the ISB Young Lawyers Section

This CLE will discuss the issues involved in negotiating and consummating the sale or acquisition of a small business. Featured speakers are Brian Hansen and Tobi Mott from Holland & Hart.

Friday, March 23, 2007 this full day seminar being held at the University of Idaho, Boise

Everything you Always Wanted to know about a Custody Case (CLE credits pending) (This seminar will be RAC approved)

Sponsored by the ISB Family Law Section

This full day seminar will review current child custody related case law and explore the use of mediation, custody evaluations and arbitration in custody litigation.

Friday, April 13, 2007 from 8:30 a.m. to 10:00 a.m. (MT) at the Law Center

Handling your first or next Post Judgment Collection Case (1.5 CLE Credits) (RAC Approved)

Sponsored by the Idaho Law Foundation

Join attorney Kimball Gourley from Trout Jones Gledhill Fuhrman, PA, as he explains the post judgment collections case including garnishments, levy, foreign judgments and implications of the Fair Debt Collections Practices Act.

Wednesday, April 18, 2007 from 8:30 a.m. to 9:30 a.m. (MT) at the Law Center

Negotiating a Real Estate Transaction (1.0 CLE Credit)

Sponsored by the ISB Young Lawyers Section

This seminar will discuss the issues involved in negotiating and consummating the sale or purchase of real estate and will be presented by Brent Williams, Avoture Business & Property Law.

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May 4, 2007 from 8:30 a.m. to 4:30 p.m. (MT) at the Boise Centre on the Grove

Practical Skills Seminar; Sponsored by the Idaho Law Foundation

May 7, 2007 from 8:30 a.m. to 4:30 p.m. (MT) at the Boise Centre on the Grove

Business and Corporate Law Section Annual Seminar; Sponsored by the ISB Business and Corporate Law Section

May 16, 2007 from 8:30 a.m. to 9:30 a.m. (MT) at the Law Center

Keeping your Clients Out of Employment Litigation; Sponsored by the Young Lawyers Section

July 18-20, 2007 at the Boise Centre on the Grove Idaho State Bar Annual Meeting

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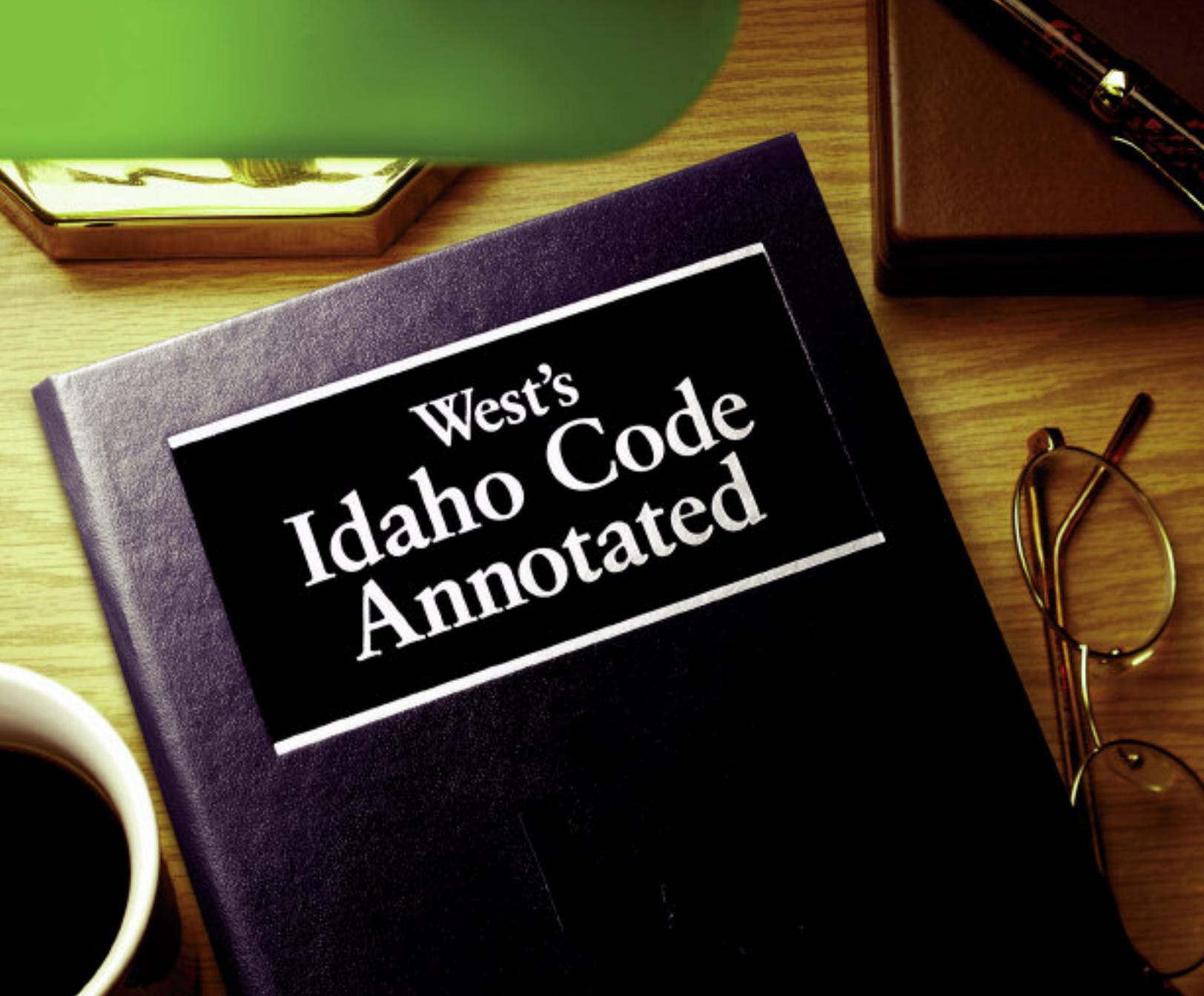
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