

The Advocate

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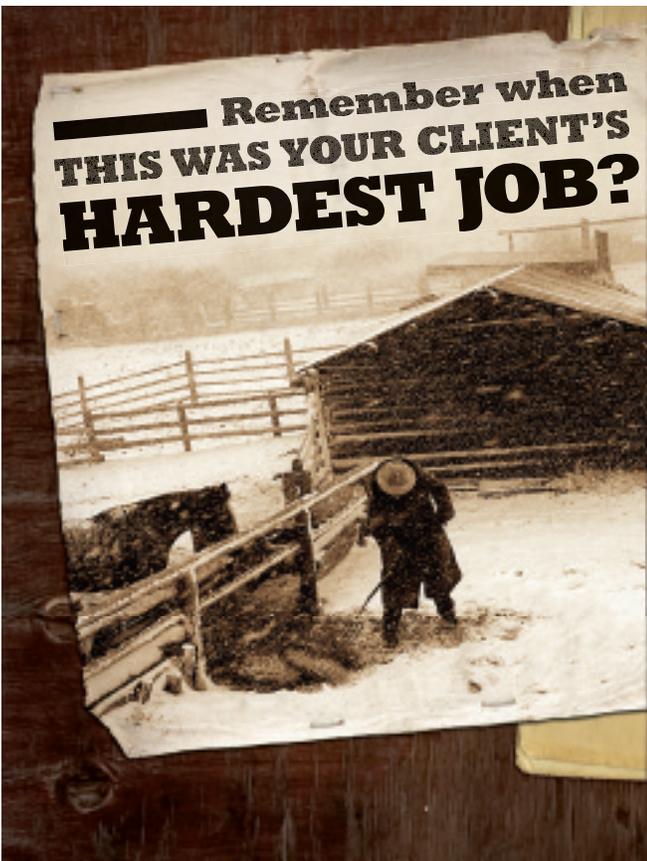
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ON THE COVER

The cover photograph was taken by attorney Nancy Monson, Idaho Falls. The blue lotus is extremely rare and very fragrant. It is symbolic of two Buddhist goddesses—Lakshmi, goddess of wealth, fortune, love and beauty; and Saraswati, goddess of knowledge, music, and the arts. It was taken at the Norton Simon Museum in Pasadena.

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IDAHO STATE BAR

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In Idaho, 350 young people participate in the statewide Mock Trial competition each year.

For example, there's McKay.

Through his experience in this year's Mock Trial, McKay learned that you don't need to get first place to be a winner. Little did he know when he agreed to participate on Kimberly High's Mock Trial team that he would end up in state finals, trying his team's case at the Idaho Supreme Court. Although Kimberly didn't win that day, the judges agreed that they gave a spectacular performance. Thanks, in part, to McKay's contribution, Kimberly's second place finish earned them a place at the American Mock Trial Invitational.

Along the road to the national competition, McKay learned first hand about the judicial process and gained a greater understanding of the dedication it takes to be successful. As McKay shared, "I have learned to never underestimate my own potential."

All students deserve the opportunity to participate in activities that inspire them to greatness, and with the support of **Law Related Education** and the help of people like you, many more will.

Help young people like McKay continue to have the opportunity to participate in Mock Trial activities. Send your donation today.

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STATE JUDICIAL SELECTION—THE GOOD, THE BAD, AND THE UGLY

Terrence R. White



The title has no relation to this column—just something to catch the reader's eye. Seriously though, a question that comes up repeatedly is how we select, train, and, yes, discipline the judiciary in this state.

The selection process is, as we all know, different for magistrates than the district and appellate judges. Basically, each judicial district has a magistrate commission charged with the selection of magistrate judges. To a certain extent, this is a political process initially and then, once appointed, the judges only stand for retention elections. This process seems to have a lot of appeal to the magistrates. The question is, are we happy with the process and the judges it produces? The answer to that seems to vary from judicial district to judicial district. I have not heard any suggestions or a desire to change the process in any major way. The conclusion seems to be that the magistrate selection system is working as well as any alternative system.

The process for district and appellate judges seems more problematic. The process may be purely political wherein the candidate runs for office. While this creates some interesting media advertising campaigns, it raises a question of whether the "best and the brightest" are willing to become involved in a political race for a non-political (one would hope) position. We have seen contested races for District and Supreme Court positions in recent years, with two current Supreme Court Justices a product of that system.

The Idaho Legislature, recognizing there could be improvement in the district and appellate court appointment selection process, enacted legislation creating the Idaho Judicial Council. This body is

charged with recommending judicial applicants to the Governor for appointment to unexpired terms caused by death or resignation and also to oversee the discipline of judges. There are seven members on the Judicial Council including the Chief Justice of the Idaho Supreme Court—two of those members are lawyers and one is a district judge. The Idaho State Bar Commissioners recommend for appointment the lawyers and district judge appointments which must be confirmed by the Idaho State Senate. The Governor appoints the remaining members with the confirmation of the Idaho State Senate. The positions must be evenly balanced between Democrats and Republicans (with the judges deemed independent and nonpolitical) and also geographically. As a practical matter, this means Boise (Fourth District with the most lawyers in the state) and Nampa/Caldwell have no lawyer representation on the Judicial Council at present. The last lawyer appointment was required to go to a Democrat from North Idaho, which it did. The process seems designed to provide the best possible model for independence and review of candidates. The question is, "Is it working as intended?"

If one takes a look at the last District Judge appointment process from the Fourth District one would wonder, just looking at the numbers and not the applicants, what is wrong? Exactly 3 applicants from the Fourth District applied to the Judicial Council (one private practitioner, one attorney general employee, and one magistrate) with only two other out-of-district applicants. Why does this happen? Is it salary? Is it the process one has to go through? Is it the risk of standing for contested elections? Is it the working conditions? It would seem someone somewhere should undertake a study of why so few apply for a position carrying so much power and, presumably, prestige (although that may be a little hard to determine from some of the media treatment of the judici-

ary). As an aside, the last time the city of Nampa advertised for new firefighters, it received well over 100 applications, all of which had to have at least EMT certification, and many were paramedics.

Since the Judicial Council is charged by the Legislature with the responsibility of selecting and recommending the best and the brightest to the Governor for appointment, is there something the Council could do to re-examine its ways? Can we do what we are doing better and more effectively? Here are a few suggestions, offered only as food for thought.

1. When the notice of a position is made public, instead of keeping the applicants secret until after the deadline for applications, why not consider making them public information immediately so lawyers in practice and the general public will give pause to make sure they are comfortable with the applicants ;and, if not, look at getting qualified individuals to apply.
2. If there appears to be a shortage of applicants, extend the time limit for applications and become proactive—make some calls to individuals, firms, and government agencies to encourage qualified applicants.
3. The process of getting input from attorneys should be reviewed. The names of the lawyers making comments should be known to the Judicial Council. This is not a place for secrecy. The Council needs to know who supports a candidate and why, as well as who feels a candidate is not qualified and why. The process can be controlled to prevent the concern many practitioners have of retribution against their clients in subsequent proceedings.
4. Consider, if lawyer input is desired, having the State Bar conduct a poll of its members and have

them rank their preferences. This could be handled fairly easily and could be segregated by judicial district. Arguably, Fourth District input on a Fourth District judge would be more valuable than from another judicial district, and vice versa, on those cases. All judicial districts have legitimate input on appellate positions.

5. Go through a preliminary review process. There is no reason to have personal interviews with applicants

as a matter of courtesy. This is the serious business of selecting those who will have responsibility for the judicial branch of government.

The Judicial Council approach to selecting judges seems the best approach to filling positions when appointments are required. The concept is logical and well thought out. Some thought and re-examination of the process is always appropriate because almost everything can be improved upon in some fashion. Let's

make it better, get more qualified applicants, and continue to strive for a strong and professional judiciary.

Terrence R. White is a partner in the Nampa law firm of White Peterson, PA. He is serving a six-month term as President of the Idaho State Bar Board of Commissioners. He represents the Third and Fifth Districts. Terry grew up in New Plymouth, Idaho, and has his undergraduate and law degrees from the University of Idaho.

FEDERAL COURT INFORMATION

U.S. COURTS, DISTRICT OF IDAHO - COMMUNITY OUTREACH GRANT FUNDS

The Board of Judges for the District of Idaho, in conjunction with the Lawyer Representatives, announced they will have \$8,100 available for the 2008 Community Outreach Grant Program. The grant program's purpose 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. Each grant must be related in some way to community education. Preference will be given to non-profit agencies or organizations.

The deadline for the grant is May 1, 2008. Mailed applications must be post-marked no later than May 1, 2008. Emailed applications must be in a .pdf format and sent to Cameron Burke: Cam_Burke@id.uscourts.gov. Further details can be accessed at www.id.uscourts.gov. For more information, or if you don't have access to the Internet you can contact Cameron Burke, Court Executive, U.S. Courts, 550 W. Fort Street, MSC 039, Boise, Idaho 83724, (208) 334-1373.

FEDERAL COURT PRO BONO ATTORNEY PANEL

We are continually looking for attorneys who are willing to accept either a limited or general purpose appointment to work on pro se cases in the federal court. Most of the cases involve civil rights claims. The Pro Bono Program description for the court appears on our website under Community Outreach. The program will reimburse attorneys for out-of-pocket expenses on cases.

Carol Craighill coordinates the pro bono pledges received from attorneys in Idaho and forwards to us the ones, indicating that the attorney will accept a civil rights case.

Thank you for any assistance you can provide to our Pro Bono Program's attorney panel.

Denise M. Asper
Staff Attorney
ADR Program Director
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INFORMED CONSENT TO MULTIPLE REPRESENTATION UNDER RULE 1.7

Brad Andrews
Bar Counsel

I recently came across an Arizona Bar Ethics Committee Opinion (Opinion) that addresses one of the most common questions to Bar Counsel’s Office, the representation of two or more clients in a single matter and whether potential conflicts among the clients are consentable under Rule 1.7. (Arizona State Bar Committee [Committee] on the Rules of Professional Conduct, Op. 07-04, 11/07)

The Opinion emphasized that not all conflicts are consentable under Rule 1.7 and noted that before a lawyer seeks consent to multiple representation under Rule 1.7, the lawyer must reasonably believe that competent and diligent representation can be provided to each client. (I.R.P.C. 1.7(b)(1)). The Committee noted that to make that threshold determination, an attorney should become sufficiently familiar with the facts underlying the proposed representation. Following that consideration, multiple representation may be improper or may require special disclosures.

The Committee explained that once a lawyer determines that potential conflicts are consentable, the lawyer generally is required to discuss with the prospective clients the potential risks and advantages of the representation to assure that each prospective client fully appreciates the risks and has the opportunity to ask questions. The Committee noted that in most cases the requirement to confirm informed consent in writing under Rule 1.7 does not supplant the need for an actual discussion or conference with each client.

The Committee acknowledged that no one-size-fits-all template can be crafted for the disclosures needed to obtain informed consent, because informed consent depends in large part on the nature of the potential conflicts and the nature of the risks involved given the facts and circumstances of each particular matter. Naturally, the degree of each client’s legal sophistication is a factor that also bears on how detailed the disclosure should be.

The Committee noted that to convey enough information to enable each prospective client to make an informed decision about the proposed multiple representation, a lawyer should disclose:

1. The potentially conflicting interests of other clients;
2. The potential courses of action that may be foreclosed or limited by the multiple representation;
3. The effect of the representation upon the client’s confidential information and on the attorney-client privilege;
4. Any reservations the lawyer would have about the representation if the lawyer were representing only the client being advised; and
5. The consequences on the representation if one client subsequently withdraws consent to the joint representation.

Although the opinion emphasized that the particular disclosures to be made depends on the facts and circumstances of each particular matter, the Committee discussed the following general topic areas that should be considered and covered during the process of seeking informed consent to propose multiple representation. Since those topic areas are the same issues I frequently discuss with lawyers calling about Rule 1.7, I found the Committee’s summary useful to me and the Bar. The topic areas to cover in the process of seeking informed consent to multiple representations include:

1. Conflicting testimony.

The lawyer should identify any potential testimonial conflicts and explain how they would impair the claims of each individual client. In some cases, known testimonial conflicts may make it impossible to accept the representation, even with client consent.

2. Conflicting settlement positions.

The lawyer should disclose that

there may be conflicts among clients with respect to settlement, and discuss the advantages and disadvantages of individual settlement offers, as opposed to aggregate offers. If an aggregate settlement offer is received, the lawyer should reevaluate whether additional disclosure and consent is required under Rule 1.8(g).

3. Attorney-client privilege.

The lawyer should explain to each client that the attorney-client privilege cannot be asserted among jointly represented clients during the pendency of the matter, and that the privilege does not apply to disputes between joint clients. (See also I.R.E. 502)

4. Confidentiality.

The lawyer should make known that an attorney’s normal confidentiality obligation does not apply as between jointly represented clients, and that information imparted to the lawyer by one co-client shall be shared with the other co-clients, if it is necessary for the representation. The lawyer should explain that if one joint client instructs the lawyer not to share information with other joint clients, a conflict is created that may require the lawyer’s withdrawal from the joint representation. (See also comments [29]-[33] to I.R.P.C. 1.7).

5. Withdrawal in event of conflict.

Counsel should also disclose that the lawyer may be forced to withdraw if an untenable conflict arises during the representation, and that expense and delays could result if withdrawals become necessary.

Finally, as I often discuss with Idaho lawyers calling about these issues, the Opinion notes, “Lawyers must evaluate on an ongoing basis whether future developments in the case create issues that require additional disclosures and consent to the

multiple representation or possible withdrawal.”

If you would like to review the Arizona State Bar Committee’s Opinion 07-04 in its entirety, it is available online: www.myazbar.org/ethics. (To read the opinion you will need to enter 07-04 in the search field under the Search Ethics Opinion bar.)

Hopefully, this checklist will assist you in evaluating whether potential conflicts are consentable and if so, how best to obtain informed consent under I.R.P.C. 1.7. As always, if you have any questions about a potential conflict in a particular case, feel free to contact me at (208) 334-4500.

Brad Andrews was selected Bar Counsel of the Idaho State Bar in March 2003. He is general counsel to the Board of Commissioners and chief disciplinary counsel. Prior to his service as Bar Counsel, he was a partner with Jones, Gledhill, Hess, Andrews, Fuhrman, Bradbury & Eiden in Boise. His practice emphasized civil litigation and business transactions. Before entering private practice, he was an Idaho Deputy Attorney General and clerked for United States District Judge Harold L. Ryan. He received his B.A. from Miami University and his J.D. from George Washington University.

DISCIPLINE

NOTICE TO RAYMUNDO G. PEÑA OF CLIENT ASSISTANCE FUND CLAIM

Pursuant to *Idaho Bar Commission Rule* 614(a), the Idaho State Bar hereby gives notice to **Raymundo G. Peña** that a Client Assistance Fund claim has been filed against him by former client Rodney Baumgartner in the amount of \$3,000.00. Please be advised that service of this claim is deemed complete fourteen (14) days after the publication of this issue of *The Advocate*.

NOTICE TO P. BRUCE PALMER OF CLIENT ASSISTANCE FUND CLAIM

Pursuant to *Idaho Bar Commission Rule* 614(a), the Idaho State Bar hereby gives notice to **P. Bruce Palmer** that a Client Assistance Fund claim has been filed against him by former client Russ Bergman in the amount of \$400.00. Please be advised that service of this claim is deemed complete fourteen (14) days after the publication of this issue of *The Advocate*.

LETTER TO THE EDITOR

Dear Editor,

Public Reprimand??? I fail to see that Mr. Bergesen’s conduct rises to the level where he deserves to be sanctioned.

Clearly, Judge Schmidt was totally wrong in not giving a self-defense instruction in the battery case, and for the life of me, I can’t figure out what Rick did wrong with Judge Copsy.

I think Rick deserves a public commendation for being what we criminal defense lawyers so often are not—unafraid to stand up and demand justice

from a system that all too often rides roughshod over our clients and then just buries them.

I’m proud of Rick Bergesen. I hope I have as much courage as he does.

Klaus Wiebe

Wiebe & Fouser, PA

Editor’s Note: *Richard A. Bergesen’s Public Reprimand appeared in the December 2007 issue of The Advocate.*

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2007—THE IDAHO STATE BAR YEAR IN REVIEW

Diane K. Minnich



Another year has passed, a year with new activities and challenges as well as the administration of the Bar's ongoing programs and operations. Below are the highlights of the Bar's work in 2007.

ANNUAL MEETING

The 2007 Annual Meeting was held at the Centre on the Grove in Boise. The programs were excellent and attendance was an increase over 2007, but disappointing given the number of attorneys in the Treasure Valley. The Commissioners and staff continue to consider how to alter the annual meeting so it appeals to more attorneys. Suggestions are always welcome.

ANNUAL MEETING			
	2006 Sun Valley	2007 Boise	Change
Total Attendees	333	378	+14%
Attorneys & Judges	197	227	+15%

ADMISSIONS

Reciprocal Admission – In October 2006 the Idaho Bar Commission Rules governing reciprocal admission were amended. The new rules expanded the states that Idaho will accept reciprocal applicants to 25 states.

In 2007, 78 attorneys were admitted through the reciprocal admission process. Since the program began in October 2001, 383 attorneys have been admitted reciprocally.

BAR EXAM		
Years	Applicants	Pass Rate
2006	206	79%
2007	211	76%

LICENSING/MEMBERSHIP

As of December 2007, of the 5,053 lawyers licensed by the Idaho State Bar,

3,988 were active members, 174 judges, 43 house counsel members, 843 affiliate members, and 5 emeritus attorneys.

ISB MEMBERSHIP		
12/06	12/07	Change
4,880	5,053	+ 3.6%

BAR COUNSEL

In 2007 there were 8 formal charge cases opened and 6 closed.

DISCIPLINE			
	2006	2007	Change
Phone Inquiry	1,038	1,168	+ 12.6%
Grievances	448	414	- 7.6%
Complaints Opened	125	91	-27.5%
Ethics Questions Answered	1,414	1,548	+ 9.5%

FEE ARBITRATION

The number of fee arbitration cases filed was down from 2006 to 2007; 55 cases were opened in 2006, 43 were opened in 2007.

CLIENT ASSISTANCE FUND

Five CAF claims were opened and three cases were closed, 13 cases were pending at the end of the year.

CLIENT ASSISTANCE FUND CLAIMS		
Year	Claims	Total Paid
2006	17	\$ 1,990
2007	14	\$52,333

LAWYER REFERRAL SERVICE

You will notice a decrease in the number of calls and referrals from 2006 to 2007. We initiated our Lawyer Referral Service Online in April 2007. This feature allows online users to make choices without having to wait to contact our LRS during office hours. Although we can't track online users the

way we can track phone calls, we have heard from clients and attorneys the system works well. Our percentages of individuals receiving a referral contacting an attorney remains about the same at 36%. The LRS continues to work closely with IVLP and other agencies to provide referrals for callers to attorneys and other appropriate services.

LAWYER REFERRAL SERVICE			
	2006	2007	Change
Calls	9,057	7,841	-13%
Referrals	6,334	4,605	-27%

CASEMAKER

The Casemaker legal research library continues to offer a comprehensive, easily searchable, continually updated database of caselaw, statutes and regulations. The service is available to all ISB active members and judges. At the end of 2007, 28 state bar associations offered the service. Case law for all 50 states was added in 2007. To access Casemaker, go to the ISB website, www.idaho.gov/isb. Each eligible attorney has a password; your username is your Bar number. If you need your password or have any comments or recommendations for improving the Casemaker services, please contact Annette Strauser or me.

DISTRICT COURT OPINIONS ONLINE

In 2007, the Bar investigated how to provide State District Court Opinions online. In early 2008, on a voluntary basis, opinions of Idaho District Judges will be available on Casemaker.

SECTIONS

The sections of the Bar continue to actively assist their members with education, public service activities and opportunities to meet and work with attorneys that practice in similar areas. One new section was established in 2007, the Diversity Section, bringing the total to 19 sections of the Bar. Section membership increased in 2007 from 2,385 to 2,499.

LEGAL EDUCATION CONCLAVE

As has been reported in *The Advocate* several times, the Bar co-sponsored the Legal Education Conclave in July 2007. The UI College of Law continues to use the discussions and findings of the conclave in its future planning efforts.

GROUP HEALTH BENEFITS

Also in 2007, the Bar studied the feasibility of creating a group health benefit program for Idaho lawyers, their employees, spouses and dependents. In early 2008 an application to form a self-funded MEWA was submitted to the Idaho Department of Insurance (DOI). If approved by the DOI, health benefit plan options could be available in spring 2008.

The work of the Bar is accomplished with the help of hundreds of volunteers each year. The Idaho legal community is committed to improving the profession and serving the public. Special thanks for the time, energy and expertise so many of you devote to serving the Bar.

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DUNN CARNEY ALLEN HIGGINS & TONGUE LLP is pleased to announce that Tamsen L. Leachman has joined the firm, Of Counsel. Leachman will draw from her 14 years of experience representing employers in all areas of employment law to support the firm's growing workplace law practice. Leachman will represent employers in labor and employment disputes, and provide counsel, training and advice to management and business owners, focusing on prevention through compliance.

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INTRODUCTION TO IDAHO WOMEN LAWYERS, INC.

Deborah E. Nelson
Givens Pursley LLP

In 1987, a handful of women lawyers in Boise formed Idaho Women Lawyers, Inc. (IWL) with the goal of improving opportunities for women and minorities in the legal profession and justice system in Idaho. Their numbers grew and even included a few men, but after several years the organization became inactive.

In 2002, another handful of women lawyers, motivated by the same goal, revived the organization. Since then, the organization has grown to include about 75 members statewide.

Probably the biggest function IWL serves for its members is the opportunity to be connected with other women lawyers. Our monthly luncheons, CLEs and other events, email lists, and referral directory all provide opportunities for networking, mentoring, referring clients, announcing or inquiring about jobs, and sharing news.

IWL is also taking active steps to help women lawyers achieve positions of power; as managers, partners, judges, division chiefs, and elected officials. We hope these same efforts will help to promote other forms of diversity in the upper echelons of Idaho's legal community.

In 2006, IWL co-sponsored with the ISB Litigation Section a CLE titled "How to Get on the Bench in Idaho." IWL's goal was to demystify the basic steps for becoming a judge at every level so that we can increase the number of qualified women and minority applicants for judicial positions.

During that CLE, then Idaho Supreme Court Justice Linda Copple Trout commented that one of the things that helped her feel comfortable with pursuing a judgeship was the fact that members of IWL helped her prepare for the judicial commission interviews using questions they had compiled from attending other interviews.

The new IWL Board was inspired by this comment and decided to follow this example set by the organization's founders. IWL members now regularly attend judicial interviews for the purpose of encouraging women to pursue judicial positions and helping women candidates prepare for interviews.

Early in 2007, IWL worked with Boise State University to conduct a statewide survey of men and women members of the Idaho State Bar, assessing the status of women lawyers in Idaho. The interesting results, summarized in this edition of *The Advocate*, were compiled and analyzed by Dr. Will Rainford, Associate Professor at Boise State University.

Ultimately, we hope that IWL's efforts to understand and improve the opportunities facing Idaho's women lawyers will improve the system for everyone—by calling attention to the increasing demand by both men and women for work-life balance; by increasing the diversity of our Bar, our workplaces, our senior management and our judiciary; and by improving the level of understanding and communication among all members of the Bar about our profession.

IWL is honored to sponsor this edition of *The Advocate*, which it last did in June 2004. The articles discuss the practices, opportunities and perceptions of women attorneys in Idaho and provide insight into the practice of law in Idaho generally.

Deb Kristensen's article about the recent selection of Candy Wagahoff Dale to succeed Chief United States Magistrate Judge

Mikel H. Williams, celebrates the historic event of having the very first woman judge on the federal bench in Idaho, 118 years after the District of Idaho was formed.

Kira Dale Pfisterer's article about part-time work strategies and Kate Ball's article about work-life balance note some of the difficulties and offer some suggestions for trying to juggle a successful career with a full life outside of work.

Emile Loza's article discusses the uncharted path women face in male-dominated professions including law, business and technology. Kimberly Evans Ross's article describes some interesting lessons learned at the two-day ABA Women in the Law Leadership Academy, including tips about mentoring, marketing, leadership and networking.

Nancy J. Monson's article explains the challenges and successes of women lawyers in Southeast Idaho as over twenty women lawyers from that region band together to support each other and to form a new regional chapter of IWL.

Lynn Lubamersky's article compares the status and practices of women lawyers in Idaho with women lawyers nationally. Dean Donald Burnett discusses the increasing levels of diversity and excellence at the University of Idaho Law School.

ABOUT THE AUTHOR

Deborah E. Nelson is completing her 4th year as President of Idaho Women Lawyers, Inc. She is a partner in the Boise law firm of Givens Pursley LLP where she practices land use, water, environmental and real estate law. She is the mother of two young children and is married to lawyer and now stay-at-home-dad, Keith Donahue.

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118 YEARS IN THE MAKING: A WOMAN TAKES THE FEDERAL BENCH IN IDAHO

Deb Kristensen
Givens Pursley, LLP



Candy Wagahoff Dale is the first woman to serve on the federal bench in Idaho.

In 1890, the state of Idaho was admitted to the Union and organized as one judicial district—the District of Idaho. President Benjamin Harrison nominated James H. Beatty to serve as Idaho’s first United States District Judge. Since then, Idaho has had a long list of distinguished judges representing the District of Idaho as district, magistrate and bankruptcy judges, as well as serving on the Ninth Circuit Court of Appeals. But, a woman has never served on the federal bench in Idaho. On December 2, 2007, Chief United States District Court Judge B. Lynn Winmill announced that this dubious

distinction would end. One hundred eighteen years after its creation, the District of Idaho will welcome its first female member to the Bench. Candy Wagahoff Dale, will succeed Chief United States Magistrate Judge Mikel H. Williams on March 30, 2008.

Ms. Dale is a well known and highly respected trial attorney with the Boise law firm Hall, Farley, Oberrecht & Blanton where she has long practiced business litigation and employment law. She has served on numerous professional organizations, including as Past President of the American Inn of Court No. 130 (Boise), the Federation of Defense and Corporate Counsel, the Management Labor & Employment Roundtable, the Board of Directors for the Federal Defender Services of Idaho, the Idaho Law Foundation’s CLE Committee and as a member of the Advisory Council for the University of Idaho College of Law. She is a frequent author and lecturer on employment law topics and, to that end, has earned a reputation as one of Idaho’s premiere employment lawyers. In addition, Ms. Dale is well known to the members of the federal bench in Idaho based on her years of service to the District as a Lawyer Representative to the Ninth Circuit Conference of United States Courts, a member of the Ninth Circuit’s Advisory Board and as a member of the Gender Fairness and Long Range Planning Committees for the District.

Despite her many accomplishments and seemingly “natural fit” for the law, Ms. Dale did not originally set out to pursue such a career. Instead, after graduating from Borah High School in Boise, she enrolled at the College of Idaho in Caldwell in a secondary education focusing on math and English. After spending a semester in Oxford, England on an American exchange program, however, Ms. Dale felt her horizons had been significantly broadened. Upon returning to the College of Idaho she enrolled in a political science class. She loved the class so much that she approached her professor and advisor from the math department about attending law school. In Ms. Dale’s words, “they virtually signed me up for the LSAT and encour-

aged me to pursue law.” Her math advisor counseled that the “logic of mathematics was a perfect foundation for law.” Apparently, he was right.

After graduating *cum laude* in a self-designed program focusing on mathematics and English, Ms. Dale attended the University of Idaho College of Law. There she served as Editor-in-Chief of the Law Review, received the Idaho Law Foundation Scholarship for 1981-82, and graduated in the top ten of her class in 1982, *cum laude*. She was one of fewer than twenty women in her graduating class. While in her third year of law school, Ms. Dale met and fell in love with Jim Dale, whom she would later marry in June 1984. Upon graduating, Ms. Dale joined the Boise law firm Moffat Thomas Barret & Blanton, eventually being elected shareholder of the firm. In 1988, she and some of her colleagues left Moffat Thomas to create their own firm; Hall, Farley, Oberrecht & Blanton, where she has practiced ever since and currently serves as President of the firm.

Ms. Dale and her husband have one daughter, Lindsay, who is a senior at Boise High School (and loves wearing her “Beat Borah” shirt around her mother). Ms. Dale proudly reports that Lindsay is an accomplished dancer, having attended summer intensive ballet training programs the past three years in Connecticut, Boston and Italy, and is currently applying to colleges in New England so she can pursue both her academic interests and passion for ballet and modern dance. In her free time, Ms. Dale and her family like to go to McCall to spend time on and off the lake in the summer and to ski at Brundage in the winter.

Judge Dale said, “I’m mindful of how my mother always encouraged me to pursue an education so I could be a ‘lady’ professional in a traditionally male field.”

When asked about her friends’ and family’s reaction to her selection as a United States Magistrate Judge for the District of Idaho, Ms. Dale responded that everyone has been very supportive, proud and excited for her and for the fact that she has achieved this professional goal. Her only regret, she notes, is “that my mother [Elaine Wagahoff] ... is not alive to join in the moment. However, I’m mindful of how my mother always encouraged me to pursue an education so I could be a ‘lady’ professional in a traditionally male field.” As a final note, Ms. Dale adds that her mother was “fine with lady ‘lawyer’ but I’m sure she’s turning cartwheels knowing I will be the first female member of the federal bench in Idaho.”

Ms. Dale’s appointment to the federal bench in Idaho is a significant accomplishment not only for her personally and professionally, but for all citizens of Idaho. As Chief Magistrate Williams commented, “Candy W. Dale brings a wealth of litigation experience to the bench, is held in high regard by her peers, and is one of the most respected trial lawyers in Idaho.” As such, the citizens of the State of Idaho will be well served when they appear in Judge Dale’s court-

room. Moreover, her appointment—breaking the 118-year tradition of a male-only federal bench in Idaho—is empowering to others. As described by former United States Supreme Court Justice Sandra Day O'Connor:

For both men and women, the first step in getting power is to become visible to others—and then to put on an impressive show. The acquisition of power requires that one aspire to power, that one believe that power is possible. As women then achieve power and exercise it well, the barriers fall. That's why I'm optimistic. As society sees what women can do, as women see what women can do, there will be even more women out there doing things—and we'll all be better off for it.¹

Based on her impressive history, there can be little doubt that we're in for an "impressive show" when Judge Dale takes the bench on March 30, 2008.

ABOUT THE AUTHOR

Deb Kristensen is a partner with the Boise law firm of *Givens Pursley LLP*, where she practices commercial litigation. She is former President of the Idaho State Bar and currently serves as a Lawyer Representative for Idaho to the Ninth Circuit Conference of U.S. Courts. Deb is also the author of the book, *1895-1975: The First 50 Women in Idaho Law*, which chronicles the lives of Idaho's earliest women lawyers.

ENDNOTES

¹Sandra Day O'Connor, *The Majesty of the Law: Reflections of a Supreme Court Justice*, pp. 200-201. New York: Random House (2003).

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WHEN THREE FILL TWO: PART-TIME STRATEGIES FOR FULL-TIME JOBS

Kira Dale Pfisterer
U.S. District Court

Kate Ball, Dan Gordon, and I share two full-time job positions with United States Magistrate Judge Larry M. Boyle. At the federal court, a full-time schedule is set at 40 hours per week. The three of us work reduced schedules for a straight, pro rata reduction in pay: Dan works 36 hours, Kate works 24 hours, and I work 20 hours per week. We find our schedules extremely satisfying—so satisfying, in fact, that we decided to write an article about it.

Kate and I have had the good fortune of working reduced schedules for the bulk of our careers as attorneys. I have worked part-time for two different law firms before working part-time for the federal district court. Kate has worked part-time in two different capacities at the federal district court and also worked part-time in private practice. Dan had never worked part-time but did not hesitate to take reduced hours when he started working for Judge Boyle. Dan describes his motivation to work a reduced schedule as follows:

Having practiced law in a private firm for nearly eight years, I came to realize the importance of a work/life balance that is easier to ignore the busier you get. When offered the opportunity to participate in a federal clerkship on a somewhat reduced schedule, I jumped at the chance. Not only did I always want to participate in a clerkship following law school, I also welcomed the part-time opportunity to strike the balance that seemed to elude me over the last several years. While certainly not impossible under a full-time arrangement, my current part-time situation highlights the importance and necessity of striking that balance. Whether it is a function of personal well-being or family commitments, I've found that a part-time schedule allows me to pursue other important aspects of my personal life— not just work.

As quaint and pretty a picture as we paint, we did some research, and the national statistics do not necessarily reflect our experience.

WHAT IS FULL-TIME IN THE LEGAL FIELD?

It is difficult to describe a typical full-time schedule for an attorney, since attorneys may practice in a variety of settings, including in-house positions, private practice in different practice areas for firms of different sizes, and, of course, government work of all varieties. Despite these different options, the United States Department of Labor describes the following "Working Conditions" for attorneys:

Salaried lawyers usually have structured work schedules. Lawyers who are in private practice may work irregular hours while conducting research, conferring with clients, or preparing briefs during nonoffice hours. Lawyers often work long hours, and of those who regularly work full time, about half work 50 hours or more per week.

U.S. Department of Labor Bureau of Labor Statistics, Occupational Outlook Handbook, <http://stats.bls.gov/ocos053.htm#conditions> (last visited December 3, 2007).

Additional information from the National Association of Law Placement (NALP) offers similar statistics. NALP gathers information from all employers that interview at law schools throughout the nation. NALP reported in April 2007 that associates in private practice worked on average 2,065 hours per year, and 1,850 of those hours were billable. *Id.*

Only two Idaho law firms are included in the NALP survey, and both, Stoel Rives LLP and Holland & Hart LLP, report that they require associates to bill 1,800 hours per year. *See* <http://www.nalpdirectory.com> (last viewed December 3, 2007). In order to bill 1,800 hours a year, an associate who takes two weeks of vacation or sick time must bill 36 hours per week. Depending on individual efficiencies, it makes sense that such an associate will probably work about 45-50 hours per week to achieve the 36 hours of billable time.

Because the data available is somewhat limited, it is difficult to know for certain how many hours attorneys are working. Nonetheless, it is not a stretch to assume that attorneys generally work hard, and it is not atypical for attorneys to work up to 50 hours per week.

PART-TIME SCHEDULES AND THE ELUSIVE WORK LIFE BALANCE

For the last two years in December, NALP has released its data on part-time lawyers. *See* <http://www.nalp.org/press/index.php> (last visited December 3, 2007). In 2006 and 2007, the press releases accompanying the part-time data were both entitled, "Few Lawyers Work Part-Time, Most Who Do Are Women." *Id.* The 2007 NALP study states: "Most large firms make part-time schedules available to their experienced attorneys, but just 5.4% of attorneys were working part-time in 2007, and most of them, about 75%, were women. This reflects the fact that women are much more likely to be working part-time than men." *Id.*

At the same time, both men and women report dissatisfaction with the traditional work-life balance associated with the practice of law. The Boston Bar Association created a task force on professional challenges for lawyers and found:

Men and women consistently state that they want rewarding legal careers and meaningful participation in the lives of their families. *Men and women* are making career and employment decisions based on their employers' policies and practices with respect to work-family balance.

Boston Bar Association Task Force on Work Life Balance, *FACING THE GRAIL; Confronting the Cost of Work-Family Imbalance, An Implementation Plan for Addressing Work-Life Issues in the Legal Profession*, Appendix A, <http://www.bostonbar.org/prs/wfc-plan.htm> (last visited December 3, 2007) (emphases added).

Our personal experiences here in Boise also suggest that men are equally interested in finding new ways to achieve a satisfying work-life balance. While Dan does not have children, he enjoys the outdoors and traveling in his free time. In addition, when I worked a

reduced schedule at Stoel Rives, the only other associate working part-time in the Boise office was a man. Curt McKenzie reduced his hours to accommodate his responsibilities as an Idaho State Senator. We set up our schedules differently but both worked 75% of the annual billable hours for a straight 25% pro rata reduction in pay. Curt worked full-time for most of the year but would reduce his hours significantly during the legislative session. I, on the other hand, took two mornings off each week for the entire year.

Similarly, Holland & Hart has made arrangements for several individuals to work reduced schedules for a variety of reasons, including a need to take care of medical issues, a commitment to care for elderly parents, and a desire to have more time at home with young children. Two of the individuals working reduced hours are male. Moreover, at Holland & Hart, the part-time attorneys include contract attorneys, partners, and associates on the partnership track. At least one person has made partner even though she worked a reduced schedule.

In short, reduced hours may appeal to both men and women depending on their professional goals and personal circumstances. In addition, as Holland & Hart has demonstrated, a reduced schedule does not have to result in a stagnated career.

HOW TO APPROACH THE TOPIC

Before you start a formal process, send out some feelers. Speak to the senior attorneys with whom you work most closely and see if they can support your decision. If so, you can rely on their buy-in as you move through the necessary administrative steps to achieve your goals.

Follow the part-time procedure if your firm has one. I have worked part-time for two different law firms. My first part-time experience at Stoel Rives was structured, in large part, by the firm's part-time policy. Having that kind of structure was great, because I had a lot of confidence in the firm's commitment to part-time attorneys and a procedure to follow that helped the firm have confidence in the part-time process.

If there is no part-time procedure, define your goals and see if the firm can accommodate what you want. My second part-time experience was for a new, smaller firm, Greener Banducci & Shoemaker. Without a policy in place, I simply worked with the managing partner and set up a mutually-agreeable schedule. I worked per hour and was paid an hourly rate that increased at certain threshold amounts. For example, I earned x for the first 20 hours, x plus \$10 for the next 10 hours and x plus \$20 for any additional hours. I thought the arrangement worked really well, since I had to pay for extra child care as my hours increased, and I was compensated accordingly. The arrangement worked well for the firm, too, since they billed clients for my time at a rate of about three times what they paid me per hour.

However, you may need to wait until you have more experience at a firm, agency, or business before seeking a part-time option. Many employers are willing to offer part-time opportunities only to people who have worked for or with the employer and, therefore, are a "known quantity." It makes sense then to put in some time up-front, demonstrating your work product and work ethic to an employer before asking for a reduced schedule.

Kate worked as a summer associate for Holland & Hart before asking for a part-time schedule, and the individual who first sought a reduced schedule at Holland & Hart's Boise office had worked closely with Holland & Hart's attorneys while employed elsewhere and

had demonstrated her skill and reliability. Amanda Brailsford, the hiring partner at Holland & Hart, advised that it is best to approach your employer with a written plan for your alternative schedule, keeping in mind a couple of things. First, employees often need to work a minimum number of hours to qualify for health insurance benefits under a firm's plan. Second, approximately the first third of what you bring in to a law firm through your billable hours goes to overhead; it is the last third brought in that generates profit for the firm.¹ The end result is that, for a part-time employee, many employers are not willing to provide a salary that is a pro rata reduction of the full-time salary based on the number of hours the employee will work. There may be some accommodation in salary needed to allow the firm to meet its overhead and salary obligations and still make a profit. Kate offers the following practical advice:

When approaching an employer, you should keep your expectations realistic, both from a perspective of whether you can make the part-time alternative work and meet your billable hours with the plan you propose and considering your employer's needs and policies. You also should carefully consider whether you can afford to work part-time given that the salary reduction may not track proportionally with the reduction in hours. Many attorneys leave law school with debt equal to what it would cost to buy a small home. However, even if part-time is not an option right now, there are other alternative work arrangements that may be available, particularly the opportunities for telecommuting created by the many technological tools available for our use.

Another obvious way to approach a reduced schedule is to apply for part-time positions. It seems that there are increasing opportunities to work part-time posted on the Idaho State Bar website. Another federal law clerk, Carol Keating Mills, who took almost five years off from work, waited to re-enter the field until a part-time position was advertised. Carol described her experience as follows:

It was my good fortune not to have to seek part-time employment; rather, it found me. I had recently relocated to Boise, and as a new mother, I elected to not look for a job immediately. I had worked for Judge Winmill a few years earlier, and a part-time clerkship opened up in his chambers. When he called and asked if I would consider taking the position, I knew it was a chance I could not pass up. I worked as his part-time law clerk for two years, but when I had my second child, I chose the life of a stay-at-home Mom. I was out of the workforce, with the exception of about three months, for almost five years. The transition was difficult, especially at first, but that precious, hands-on time with my children is something I would never trade.

Having already experienced the benefits of part-time employment, I made no plans to seek anything else. When my third child was in preschool, I began to leisurely scout around for possible part-time job opportunities. A friend emailed me about a half-time opening in the federal courts, this time with Judge Pappas in bankruptcy court. Having always had an interest in bankruptcy, and realizing these part-time opportunities do not come along

very often, especially the permanent positions, I applied and fortunately was hired. Now I work a schedule that allows me to be there to see my children off to school, and I'm home before they get back. I work longer, but fewer, days during the summer. I still get the intellectually stimulating employment experience that I want, but also have the time and flexibility to do such things as volunteer in the schools and take my children to after-school activities.

I am grateful for the opportunities that have come my way for part-time work. I have been able to "have it both ways" in a manner not available to everyone, and I realize how fortunate I am.

Carol's sentiments about feeling grateful to "have it both ways" were expressed by many of the parents interviewed for this article who have elected to work part-time. It certainly makes life a little easier if you can afford to do it. However, it is of note that many of us have another source of income contributing to our household finances and making a part-time option possible.

OTHER PRACTICE IDEAS

This article is focused on the experience of part-time attorneys. However, there are other alternatives to reducing one's hours that also provide attorneys with flexibility or otherwise enhance the work-life balance.

When Kate first graduated from law school and started a Ninth Circuit clerkship, she earned the distinction of becoming the first law clerk in Judge Trott's chambers to have a baby during her clerkship. Rather than reduce her hours, Kate returned to work after the baby's birth with the baby in tow. As Kate explained, "My co-clerks and all of the chambers' staff were very supportive of the situation. Nonetheless, as wonderful as these accommodations were, I ended up spending a great deal of time working at home to make up for the time lost at work feeding, changing, and occasionally entertaining the baby."

I had a similar experience. By necessity, I kept a portable crib at the office during my son's first year, as he was sick so frequently at child care. It allowed me to be available to the other attorneys at the firm to talk through drafts of briefs and that kind of thing. For me, it was difficult. I tend to work best when I divide my time clearly between home and work. I experience a great deal of stress when I struggle to play both roles at once.

Of course, bringing your baby to work does not work well after the child becomes mobile. Other options to consider are staggered hours or working from home. After struggling with child care, my husband and I hired a nanny for a short time. To reduce the cost, we staggered our hours. I worked full-time from 7 a.m. to 3 p.m., and my husband worked from 10am to 6pm. Such a schedule helped us minimize the cost of stable child care.

As for working from home, clearly many lawyers do this, including contract lawyers and solo practitioners. As our workplaces become increasingly high-tech, this option should be more readily available for all types of attorneys. To give it a preliminary trial, you may choose to work from home one day a week. If you can avoid the kitchen and the laundry room and actually get your work done, this may be a wonderful option for you!

One last piece of advice, if you choose to work part-days or want to work at home for half the day, I have found it best to stay at home

in the morning. It is much more difficult to let go of things at work and go home at lunch-time than it is to go in late and leave at a reasonable hour. If you have kids, check with your child care provider as well. Many child care facilities do not provide a part-day, part-time option. If they do offer part-time child care, it typically includes full days, two or three days a week.

INCENTIVES FOR EMPLOYERS

This article focused on the benefits of a reduced schedule from the employees' point of view. Of course, employers are better able to retain happy employees and happy employees are presumably more productive. Nonetheless, Judge Boyle reports additional benefits associated with hiring three part-time clerks rather than two full-time clerks. Judge Boyle enjoys the diversity in education, background, and perspective provided by having a third lawyer on his staff. He tells us that he is pleased to have three lawyers with nearly 20 years of combined experience in clerking and practice. Additionally, Judge Boyle appreciates having at least two law clerks in chambers each day and the benefit of three experienced lawyers to contribute to a heavy case load.

Moreover, in my experience, and as confirmed by Judge Boyle, part-time attorneys typically work more than their allotted hours. For example, hiring two attorneys to job share often leads to the productivity of 1.5 attorneys working full-time.

CONCLUSION

For many years, I was self-conscious about my reduced schedule. For that reason, I cherished the words provided by one of my mentors, Tom Banducci. When I first asked Tom if he could support my pursuit of a part-time schedule, he agreed whole-heartedly and almost without hesitation. His reasoning was this: Every lawyer works a part-time schedule, since you can never devote unlimited energy to each case or even each client. Tom explained that I would simply juggle fewer cases. And for those of us trying to juggle family responsibilities with work, I offer my dad's sage wisdom: you never regret the time spent with family.

If you are interested in pursuing these topics further, please consider the following web-sites: the Project for Attorney Retention ("PAR"), an initiative of The Center for WorkLife Law of the University of California Hastings College of Law, <http://www.pardc.org>, and the National Association of Legal Placement ("NALP"), <http://www.nalp.org>. Both web sites offer more information on part-time employment for both employees and employers.

ABOUT THE AUTHORS

Kira Dale Pfisterer is a staff attorney for Magistrate Judge Larry M. Boyle. She job shares with Dan Gordon and Kate Ball, who helped in the preparation of this article. When not working, Kira can be found herding two small boys around town or running faithfully in the foothills.

ENDNOTES

¹This is known as the "Rule of Three," which contemplates that an employee will bill three times his or her pay. An example of the rule: Salary X 3/Annual billable hours (1/3 for salary, profit, and overhead). Timebilling in the Legal Environment, <http://www.chss.montclair.edu/leclair/LS/timebill.html> (last visited Dec. 3, 2007).

IT'S YOUR TURN

Kate Ball
U.S. District Court

It happened again two weeks ago. My four-year-old starting vomiting at about 1:00 a.m. on a weeknight. Somewhere between changing everyone's pajamas and putting at least two sets of sheets into the washer, probably around 5:00 a.m., I turned to my husband and said, "it's your turn." He knew I meant his turn to try and juggle his work schedule and/or beg the grandparents to take on a sick kid for a day. I did it two weeks before when pink eye and ear infections were rampant in our house.

My husband and I are both attorneys, and I am usually on the losing end of the "who's going to stay home" discussion. The reason is simple: I work in the public sector, on a less-than-full-time schedule, and my husband is a partner in private practice, where each day usually includes a date—the kind that cannot be canceled—with a judge.

This would never have been an issue for June and Ward Cleaver. Ward would have gotten a good night's sleep and June would have stayed home the next day, perfectly coifed, wearing a string of pearls and a pretty house-dress, and deftly balanced the needs of a sick child with her household. As Jim Cook, an attorney and spouse of attorney Mary York, says (with a laugh): "If you want Leave it to Beaver, don't marry a lawyer."

But for my husband and I, at that 5:00 a.m. brainstorming session on how we could meet our work obligations and take care of our frequently ill child, it was too late to avoid marrying a lawyer. Instead, it became just another time when I asked myself why we thought that both of us working as lawyers and raising four kids would be a realistic way to live.

Fortunately, kids heal and thoughts settle when the sleep deprivation wears off. It always makes me think though about how best to balance work, family (whether you have your own children or it's your parents and siblings for whom you want to make time), friends, and that ever-important "me" time. That's why I am writing this article, in the hopes that some of the suggestions to keep life and work in perspective, provided by lawyer couples trying to balance their work and home relationships, will generate some ideas for all of us working in this exciting, yet demanding, profession. The focus is on lawyers who live with a partner, but some of the principles should be helpful to anyone who is involved in relationships with people at work or at home.

THE PROBLEM WITH A LIFE LACKING BALANCE

To put the problem into perspective, I will cite a few of the statistics, even though most of us are generally familiar with the personal challenges that come along with a legal career. The U.S. Department of Labor's research reveals that "[l]awyers often work long hours, and of those who regularly work full time, about half work 50 hours or more per week."¹ Some statistics reported by Notre Dame Magazine in 1999 are interesting:

Thirty years ago, most partners billed between 1,200 and 1,400 hours per year and most associates between 1,400 and 1,600 hours. Today, over half of the associates and almost a quarter of the partners in private practice bill at least 2,000 hours per year. In the biggest and most pres-

tigious law firms, almost everyone bills close to 2,000 hours, and many bill 2,500 hours or more.²

The divorce rate among lawyers appears to be higher than the divorce rate among other professionals.³ Lawyers "suffer from alcoholism and use illegal drugs at rates far higher than nonlawyers."⁴ In fact, "[o]ne group of researchers found that the rate of alcoholism among lawyers is double the rate of alcoholism among adults generally."⁵ Studies also show that lawyers suffer from major depressive disorder at a rate 3.6 times higher than non-lawyers who shared similar key socio-demographic traits.⁶

SUGGESTIONS FOR FINDING A BALANCE

It's not all doom and gloom though. There are many lawyers who love their work and maintain a healthy, fulfilled personal life. Two of those lawyers are friends of mine, Lora Rainey Breen and Sean Breen, both private practitioners in small law firms. They were willing to share their game plan for creating balance between work and home. It's simple, just three components:

As Jim Cook, an attorney and spouse of attorney Mary York, says (with a laugh), "If you want Leave it to Beaver, don't marry a lawyer."

COMMUNICATION

The first is "communication," and it is number one for a reason—it is perhaps the single most important thing a busy couple can do to keep things flowing smoothly. As Lora can attest: "Fail to communicate, and prepare for havoc." There are so many ways to communicate in today's world: face-to-face, e-mail, cell phone, text messaging, teleconferencing, home/office phones, electronic and hard copy calendars and lists, etc. ... we should use them. "At the very least," says Lora, "a couple should have a good idea of what is on each other's calendars." Although it seems simple, it doesn't always happen (and, according to Lora, "the next thing you know, your spouse is calling you from a conference in Chicago and you're standing in the kitchen wondering where he/she is and why he/she hasn't fixed anything for dinner, and where are the children ...").

Paula Landholm Kluksdal, a partner with Hawley, Troxell, Ennis, & Hawley, LLP, and her husband John Kluksdal, an attorney with Hepworth, Lezamiz & Janis, Chtd., have one person in the family keep a master calendar to help avoid conflicts between meetings or evening events. With both of them in private practice, it is important to note closings or hearings which will alter the normal routine.

My husband and I have a similar practice. I take my husband's work calendar at the end of each week and update it with our social events, my work-related meetings and hearings, and our childcare arrangements for the next week. If I want to make certain he knows about a meeting or event, I have his secretary put it on her calendar, and she reminds him of the appointment.

COOPERATION

Number two on Sean and Lora's list is "cooperation," defined to include "sharing the work," which allows them to share the fun. As

Lora explains, “for most couples, life is jam packed with ‘chores’ and social commitments, as well as fun occasions with family and friends and you don’t have to be a family law attorney to know that if one spouse is doing all the work, and the other is having all the fun, this situation isn’t going to last very long.” In short, “[i]t’s all about balance, sharing, give and take.”

Jim Cook, a lawyer at Idaho Legal Aid, and Mary York, a partner at Holland & Hart, feel fortunate to have the same hobbies and interests. When they are not at work they share in the cooking and cleaning and then spend their “fun” time together, backpacking, hiking, camping, and traveling. They even help each other stay healthy by running together at least three times per week. John and Paula Kluksdal also run together, and they take their kids along to provide more family time.

It is harder to stay connected if you do not have many hobbies or interests in common with your partner. One of the themes that came out when I visited with lawyers about this topic is that finding even one activity both you and your partner like to do, and making time to engage in that activity together at least a couple of times per month, can make a big difference. Even just going for dinner or lunch with your spouse a couple of times a month can impact your home life in a positive way.

I am fortunate to have a husband who pays the bills in a timely manner, makes the kids’ lunches, is responsible for administering medication, and is the only one who brushes teeth properly. (My four-year-old tattles on me if I do not brush her or her sister’s teeth for the full two minutes). In exchange for the many, many responsibilities he has taken on so that our children will grow up with lovely teeth and regular meals, I take responsibility for the laundry, grocery shopping, and dry cleaning. We also both enjoy spending our free time with our kids, so we end up spending most of our out-of-work time together. We can always count on going out for at least a couple of dates each year, because we both always need to attend a CLE class or two each year. We also calendar time together that does not involve work-related activities or our children. The key is to calendar in advance a date with your spouse and not wait for a time when you have nothing else going on; otherwise, you might wait forever!

One additional idea for finding more time for your relationships is to out-source as many chores as you can. The idea was first suggested to me by one of my male law professors. He urged some of us planning to go into private practice to consider using a dry-cleaning delivery service and hiring someone to help clean our homes. There are also stores that will deliver to your home groceries ordered online, but this usually involves a fee for the convenience. *See, e.g.*, <http://albertsons.com/store/?market=11>. Sometimes though, it’s worth it.

Finally, building social networks outside your home relationship can be invaluable. The Kluksdals feel fortunate to have a close network of family and friends to rely on and they, in turn, try to be available to help out their family and friends. A side benefit has been that their kids are close with their extended family, family friends, and neighbors. Relying on our extended family and social relationships is a great way to help foster those relationships and to provide a network of support for our families and communities.

CONSTRUCTIVE COMMENTS

Third on the Breens’ list of helpful tips is “constructive comments.” Lora notes that “when it comes to family life, negative com-

ments and complaining do nothing but inhibit communication and cooperation.” Instead, she tries to think of constructive options to present, and she offers to help put them into play, even when complaining seems so much easier. Sean has some fall-back advice, instead of complaining you can always just smile and say, “Yes, Dear.”

One of the things Paula Kluksdal finds most important is making a commitment to your partner that they will always have you in their court or, put another way, on their team. There are so many things that demand attention, knowing that someone is there to support you and thinks you are doing a great job even when you are exhausted or have had a bad day helps make you feel like it’s all worth it. Communicating this team commitment to your partner can help them, and you, during the tough times.

FINAL THOUGHTS

I crafted this article around the assumption that lawyers married to each other have a more difficult task in finding time for things other than work because our jobs can be so time-consuming. As it turns out, however, I was reminded that being married to a lawyer can be a real advantage. Jim Cook accurately observes that a lawyer spouse is much more likely to understand when you have to work part of the weekend to finish a brief due on Monday than is the spouse who has never faced such a deadline.

One more thing to consider is that finding time outside of work to engage in meaningful relationships and take care of our emotional and physical health is not just important to married lawyers. An unmarried co-clerk in my office works on a reduced schedule in an effort to “strike the balance” between his personal and professional life. He works very hard, does a great job, but still makes time to go hiking, fishing, and to spend time with friends. Hopefully, we can all maintain a healthy balance to better enjoy our professional and personal lives.

ABOUT THE AUTHOR

Kate Ball is a career law clerk for the Honorable Larry M. Boyle, United States Magistrate Judge for the District of Idaho. She has clerked for two circuit judges with the Ninth Circuit Court of Appeals and was in private practice at Holland & Hart LLP before starting her career clerkship. When not working for Judge Boyle, Kate spends her time with her four children and her husband, Jim, who is a partner in the law firm Manweiler, Breen, Ball, & Hancock.

ENDNOTES

¹U.S. Dep’t of Labor, Bureau of Labor Statistics, Occupational Outlook Handbook, <http://www.bls.gov/oco/ocos053.htm#conditions> <http://www.bls.gov/oco/ocos053.htm#conditions> (last visited Dec. 1, 2007) (emphasis added).

²Patrick Shiltz, *Those Unhappy, Unhealthy Lawyers*, NOTRE DAME MAGAZINE (August 1999), available at <http://www.nd.edu/~ndmag/legl2f99.htm> (last visited Dec. 1, 2007).

³*Id.* (discussing a study comparing the incidence of divorce among lawyers to the incidence of divorce among doctors using data from the 1990 census, which “found that the percentage of lawyers who are divorced is higher than the percentage of doctors who are divorced”).

⁴*Id.*

⁵*Id.*

⁶*Id.* “For example, researchers affiliated with Johns Hopkins University found statistically significant elevations of major depressive disorder (“MDD”) in only three of 104 occupations: lawyers, pre-kindergarten and special education teachers, and secretaries.”

MUCH HAS CHANGED: DIVERSITY AND OPPORTUNITY AT THE UNIVERSITY OF IDAHO COLLEGE OF LAW

Donald Burnett
Dean, University of Idaho College of Law

In legal education, diversity and excellence go together. As noted by Justice Sandra Day O'Connor, writing for the Supreme Court majority in *Grutter v. Bollinger* (the Michigan law school case):

[C]lassroom discussion is livelier, more spirited, and simply more enlightening and interesting when the students have the greatest possible variety of backgrounds.... [N]umerous studies show that student body diversity promotes learning outcomes, and better prepares students for an increasingly diverse workforce and society, and better prepares them as professionals.... These benefits are not theoretical but real, as major American businesses have made clear that the skills needed in today's increasingly global marketplace can only be developed through exposure to widely diverse people, cultures, ideas, and viewpoints.¹

Achieving excellence with diversity has been a challenge at the University of Idaho, given our location and the demography of the region. In 1999, when a panel of consultants examined strategic directions for the College of Law, the panel noted that “[o]nly 26.4% of the student body is female, the lowest percentage of women found in any law school in the country, and only 4.1% of the student body comprises racial and ethnic minorities. Four of the 13 tenured or tenure track faculty are women but there are no minorities among the faculty or professional staff.”²

Much has changed—for the better—in the years since those words were written. The representation of women in our incoming classes climbed to 40% by 2005, then to 49% in 2006 and 49.5% in 2007. The average for all American Bar Association-accredited law schools was 46% in 2006, the most recently reported year.³ The representation of minority students also increased during the same period, reaching 12% in 2005, 17% in 2006, and 19.6% in 2007. The average for all ABA-accredited schools was 22% in 2006.⁴

Contrary to popular opinion in some quarters, advances in diversity do not diminish a commitment to quality; to the contrary, they reinforce it. During our recent period of growth in diversity, the LSAT scores for all law students have increased. The median score rose from 153 in 1999 to 155 in 2007, the 25th percentile rose from 149 to 151, and the 75th percentile rose from 156 to 159. (These are significant movements within the compressed spectrum of LSAT scores.) Moreover, during this period, Idaho residents have continued to be strongly represented among the incoming students. The percentage has remained fairly stable, usually about 60%, and actually reached 64.5% in 2007.

What are the reasons for these advances in diversity and quality? There are many, of course. One contributor has been an increase in scholarship grants, making the College of Law more accessible and attractive to all students. Due largely to our generous alumni and friends, the total amount of grants has increased from \$256,028 in fiscal year 1999 to \$697,711 in fiscal year 2007. Equally important to our progress has been the phenomenon that “success breeds success.”

An institution making advances in diversity and excellence attracts attention from a broader array of potential students—not only from those in underrepresented groups, but also from “majority” students who realize, as Justice O'Connor observed, that an education enriched by diversity will enhance their preparation for the legal profession.

Another vital factor, noted by the 1999 strategic directions panel, is diversity among the faculty and professional staff. Since 1999, the number of women holding tenure or tenure-track faculty positions has increased from four to six (including a new hire who will begin work in 2008). In addition, three of the six faculty members holding “instructor” positions are women. Racial and ethnic diversity on the faculty has increased from zero in 1999 to two members of the regular teaching faculty (including our new hire) plus a member of our law library faculty. Diversity within the professional staff—zero in 1999—is now reflected in four women and one minority member who have J.D. degrees and hold full-time professional staff positions.

Diversity and excellence are also expressed in special lectures and programs. For example, four of our recent Bellwood lecturers have brought diversity to this important annual event: Justice Ruth Bader Ginsburg, national Legal Services Corporation executive director Helaine Barnett, Justice Alan Page of the Minnesota Supreme Court, and Equal Justice Initiative executive director Bryan Stevenson. Recent commencement speakers have included Deborah Leff, president of the Public Welfare Foundation and past director of the John F. Kennedy Presidential Library, as well as Chief Justice Linda Copple Trout of the Idaho Supreme Court. In 2005 the College of Law cosponsored the Idaho State Bar's landmark program honoring and celebrating Idaho's “first fifty” women admitted to the bar.

The College also has been blessed with talented student leaders and active student organizations that demonstrate the value of diversity. In each of the last four years, students have elected women to serve as presidents of the Student Bar Association – a position of executive responsibility within the College and of important influence in the governance of the University. Organizations such as the Women's Law Caucus and the Multicultural Law Caucus have been joined in recent years by the Sexual Orientation Diversity Alliance and the Support Advocates for Hispanic/Latino Support and Awareness in contributing to a positive learning environment for all students. They are complemented by organizations such as the Federalist Society, the J. Reuben Clark Society, and the Public Interest Law Group in providing a diverse array of viewpoints and service opportunities.

Students entering the University of Idaho College of Law have always been welcomed into a distinctively collegial community. Today, this collegiality embraces diversity in all its forms, including a wide-open appreciation for multiple perspectives and backgrounds. Idahoans can be proud that their law school links excellence with diversity, providing a complete education and genuine opportunity for all.

ABOUT THE AUTHOR

Don Burnett, a Pocatello native, is the Dean of the University of Idaho College of Law, a former member of the Idaho Court of Appeals, and a former President of the Idaho State Bar. Further information about the College of Law is available at <http://www.law.uidaho.edu>.

ENDNOTES

¹ 539 U.S. 306, 330 (2003) (internal quotation marks and citations omitted).

² Frank T. Read, *et al.*, "Strategic Directions in Legal Education for Idaho: The Report of a Special Panel Appointed by the President of the University of Idaho (January 8, 2000)," published in *The Advocate* (June 2000), 15, 21.

³ ABA data on law school admissions and other aspects of legal education may be obtained on-line at <http://www.abanet.org/legaled/statistics/stats.html>.

⁴ *Id.* Diversity in Idaho's legal profession is also rising. The percentage increases are smaller than the percentages for law school enroll-

ments, primarily because recent graduates comprise a relatively small fraction of the total membership of the bar. Membership surveys conducted by the Idaho State Bar in 1994, 1999, and 2007 show steady growth in the representation of women: 15% in 1994, 20% in 1999, and 26% in 2007. Changes in racial and ethnic diversity have been slower and less steady: 3% in 1994, 6% in 1999, and 5% in 2007. Further information about the membership surveys can be obtained directly from the Idaho State Bar.

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GAUGING THE GLASS CEILING IN IDAHO

Deborah E. Nelson
Givens Pursley, LLP

Will Rainford
Professor, Boise State University

In spring 2007, Idaho Women Lawyers, Inc. and Boise State University Associate Professor Will Rainford, Ph.D., surveyed 250 male and 250 female Idaho lawyers about their legal careers—including career satisfaction, prospects for promotion, and ability to achieve a work-life balance—and about their perceptions of the status of female lawyers compared to male lawyers. The results of this survey, summarized here, were originally presented and discussed at the Idaho Women Lawyers, Inc. program at the Idaho State Bar Annual Meeting in July 2007.

PRIMARY RESEARCH QUESTION

How do male and female lawyers in Idaho perceive career opportunities for women in the legal profession?

SURVEY METHODOLOGY

Exactly 250 male and 250 female members of the Idaho Bar Association were randomly selected to receive a survey with about 100 questions. The survey was sent by email only, with a brief explanation of the survey’s purpose and a link to the survey website. Reminder emails were sent to the selected survey recipients over a several-week period.

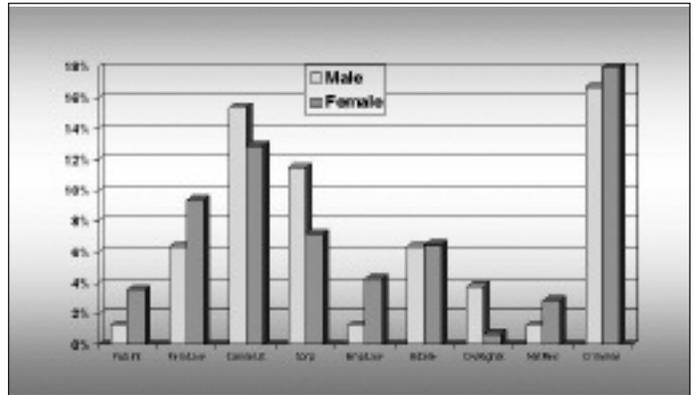
SURVEY PARTICIPATION

Dr. Rainford collected and analyzed the confidential and anonymous responses using univariate and bivariate analyses. All percentages identified in this summary are approximate.

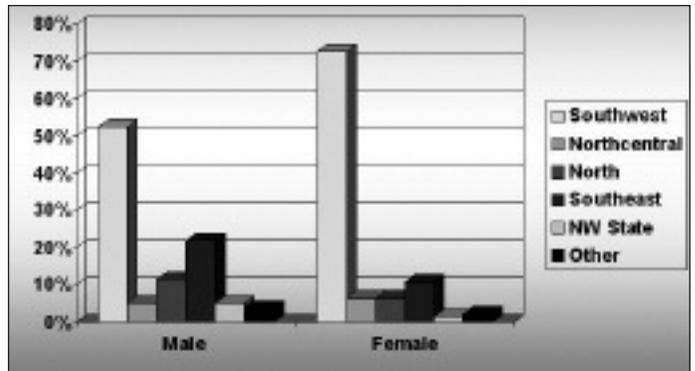
Of the 250 male recipients of the survey, 31% responded. Of the 250 female recipients of the survey, 56% responded. Of the total survey respondents, 36% were male and 64% were female. The information is presented using text, tables, and charts for ease of understanding.

RESPONDENTS SELF-REPORTED FACTS—AVERAGED BY GENDER		
	Female	Male
Annual Income	\$69,000	\$90,000
Number of Years Practicing Law	Just under 13	Just over 18
Hours of Paid Work Per Week	41	44
Practice in Law Firm	About 40%	About 50%

Q. What area of law do you primarily practice in?



Q. Where is the geographical location of your practice?



RESPONDENT’S SELF-PERCEPTION ABOUT THEIR LEGAL CAREERS

- Q. I feel that I get paid what I deserve.**
Females: 37% strongly agree or agree, 14% are neutral, and 49% disagree or strongly disagree.
Males: 54% strongly agree or agree, 23% are neutral, and 23% disagree or strongly disagree.
- Q. I feel that it is more important to be a good spouse or significant other than to be a good lawyer.**
Females: 70% strongly agree or agree, 25% are neutral, and 5% disagree or strongly disagree.
Males: 75% strongly agree or agree, 18% are neutral, and 7% disagree or strongly disagree.
- Q. I am proud to be known as a lawyer.**
Females: 86% strongly agree or agree, 10% are neutral, and 4% disagree or strongly disagree.
Males: 89% strongly agree or agree, 6% are neutral, and 5% disagree or strongly disagree.

Q. I enjoy the work I do as a lawyer.

Females: 79% strongly agree or agree, 10% are neutral, and 11% disagree or strongly disagree.

Males: 79% strongly agree or agree, 16% are neutral, and 4% disagree or strongly disagree.

Q. I feel that my peers respect the work I do as a lawyer.

Females: 85% strongly agree or agree, 10% are neutral, and 5% disagree or strongly disagree.

Males: 81% strongly agree or agree, 16% are neutral, and 3% disagree or strongly disagree.

Q. I feel that my clients are happy with the work I do.

Females: 85% strongly agree or agree, 13% are neutral, and 2% disagree or strongly disagree.

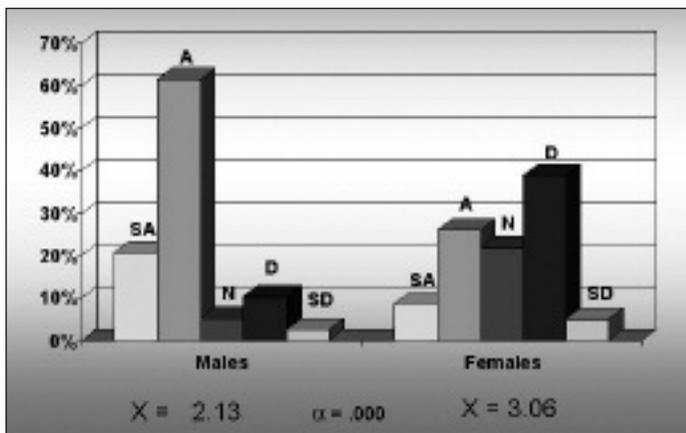
Males: 86% strongly agree or agree, 14% are neutral, and 0% disagree or strongly disagree.

RESPONDENT'S SELF-PERCEPTION ABOUT THEIR LEGAL CAREERS

Q. Do women have the same career opportunities as men?

Females: 34% strongly agree or agree, 21% are neutral, and 45% disagree or strongly disagree.

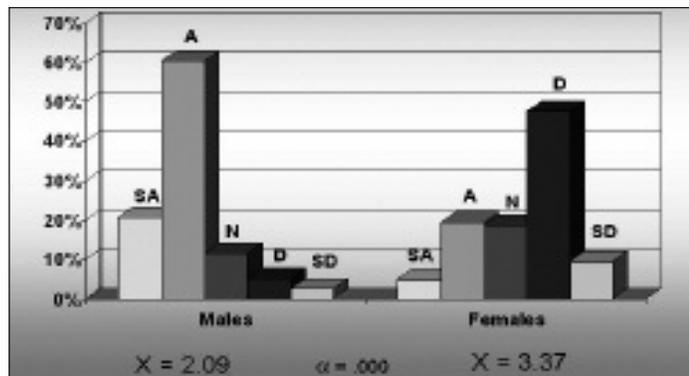
Males: 82% strongly agree or agree, 6% are neutral, and 12% disagree or strongly disagree.



Q. Do women earn just as much money as men for similar work?

Females: 24% strongly agree or agree, 19% are neutral, and 57% disagree or strongly disagree.

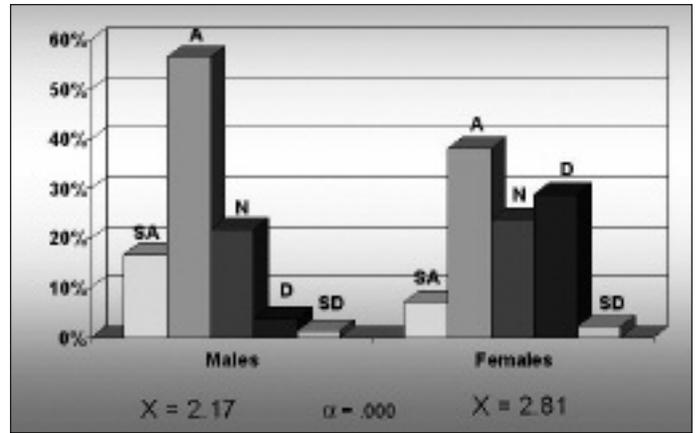
Males: 81% strongly agree or agree, 11% are neutral, and 8% disagree or strongly disagree.



Q. Do clients have equal respect for men and women lawyers?

Females: 46% strongly agree or agree, 22% are neutral, and 32% disagree or strongly disagree.

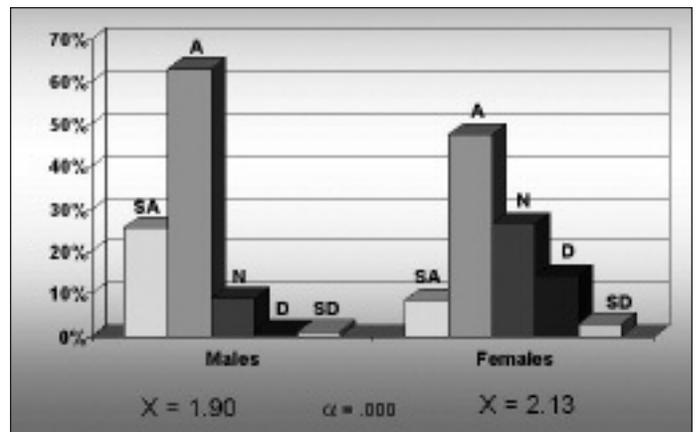
Males: 74% strongly agree or agree, 21% are neutral, and 5% disagree or strongly disagree. -



Q. Do judges have equal respect for men and women lawyers?

Females: 57% strongly agree or agree, 27% are neutral, and 16% disagree or strongly disagree.

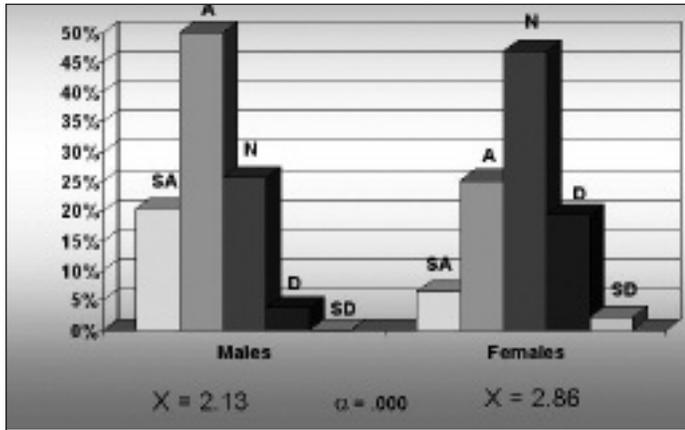
Males: 89% strongly agree or agree, 9% are neutral, and 2% disagree or strongly disagree.



Q. Do juries have equal respect for men and women lawyers?

Females: 32% strongly agree or agree, 47% are neutral, and 21% disagree or strongly disagree.

Males: 71% strongly agree or agree, 25% are neutral, and 4% disagree or strongly disagree.



PERCEPTIONS ABOUT MALE ATTORNEYS VERSUS FEMALE ATTORNEYS, BY GENDER

Q. Who is more empathetic as a lawyer?

Females: 5% said males; 95% said females.

Males: 28% said males; 72% said females.

Q. Who is more able to handle stress as a lawyer?

Females: 43% said males; 57% said females.

Males: 82% said males; 18% said females.

Q. Who is more honest as a lawyer?

Females: 17% said males; 83% said females.

Males: 39% said males; 61% said females.

Q. Who is more abrasive as a lawyer?

Females: 79% said males; 21% said females.

Males: 61% said males; 39% said females.

Q. Who is more able to negotiate?

Females: 36% said males; 64% said females.

Males: 64% said males; 36% said females.

ABOUT THE AUTHORS

Deborah E. Nelson is completing her 4th year as President of Idaho Women Lawyers, Inc. She is a partner in the Boise law firm of Givens Pursley LLP where she practices land use, water, environmental and real estate law. She is the mother of two young children and is married to lawyer and now stay-at-home-dad, Keith Donahue.

Dr. Will Rainford is an Associate Professor of Social Work at Boise State University. His areas of research and teaching expertise include research and statistical methodology, poverty studies, economic self-sufficiency policies and programs, and social development theory. Dr. Rainford obtained his Doctorate from UC-Berkeley, his Master of Social Work from Washington University in St. Louis, and his Bachelor of Social Work from San Jose State University.



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THE ODYSSEY: ONE WOMAN ATTORNEY'S JOURNEY IN ENTREPRENEURSHIP

Emile Loza

Technology Law Group, LLC

Homer's *Odyssey*, circa 700 B.C., is an epic story of heroic struggle and adventure, of creative intelligence, and of commitment in the darkest of times. It weaves a tangled, tragic, and ultimately triumphant tale of the hero's journey home after the long Trojan War. Most influential on Western culture, the writing's title, *Odyssey*, has become a word in English meaning an ambitious, classic, larger-than-life journey. A short synopsis demonstrates why.

Our hero is the shrewd and intelligent Odysseus. He leaves his wife, Penelope, and his infant son to fight for ten years in the Trojan War. The journey home takes our hero another ten years during which Athena, goddess of heroic endeavor and wisdom, protects him and the sea god Poseidon punishes him. Storms drive Odysseus' fleet off course, and the monster Cyclops captures Odysseus and his sailors. Odysseus escapes and Aeolus bestows upon him a precious gift, a bag containing all the winds to carry our hero and his fellows safely home. The foolish fellows, however, open the bag while Odysseus sleeps, the gift forever lost and Aeolus disinclined to bestow another. Later, the cannibal Laestrygonians destroys the entire company except Odysseus and his crew. Potions then turn most of the crew into swine. Our hero resists the potion, thanks to intercession by the god Hermes and bringing Odysseus into the favor of Circe, the witch-goddess, who gives him rest and frees his men. A year passes thus. Odysseus then travels to the world's westernmost reaches, where he makes sacrifices and invokes help from the spirits. After receiving spiritual guidance, he travels back to Circe's island and, with her aid, avoids and overcomes many perils: the Sirens; the hydra-headed monster, and the whirlpool. Disaster rains again, however, when Odysseus' men ignore warnings about hunting sacred cows belonging to Helios, the sun god. Outraged, Helios wrecks their ship. All but Odysseus drown. Finding him washed ashore on her island, the goddess Calypso helps Odysseus, but compels him to stay for seven years. Finally escaping, our hero is befriended by the Phaeacians who, enthralled by his story, help him home to Ithaca. After unraveling intrigues at home, Odysseus eventually makes himself known to Penelope, and they reunite, our hero's journey completed.

To the American author Joseph Campbell, the *Odyssey* and other legendary stories of struggle and triumph have larger and timeless meaning. In his 1949 seminal book, *The Hero with a Thousand Faces*, Campbell examines the patterns in these mythical stories of heroism and considers the universal truths that they convey about an individual's journey of self-discovery and self-transcendence, his or her role within society, and the interplay between that personal journey and one's societal role. As Campbell and others observed, these stories exhibit the same sequence of events and can be viewed as telling the same story, the so-called monomyth.

The monomyth has a recognizable pattern. It begins with a call to adventure, which our hero must accept or decline. The adventure then takes our hero on a road of trials as to which he or she succeeds or fails. Our hero achieves his or her goal, viewed as a boon in the

monomyth, and thereby often gains vital knowledge of him- or herself. Success or failure then awaits our hero as he or she returns to the ordinary world. The hero's return heralds one of the real triumphs of the hero's journey when the hero improves the world by using or applying the boon. Campbell encapsulates the monomyth thusly: "A hero ventures forth from the world of common day into a region of supernatural wonder. Fabulous forces are there encountered, and a decisive victory is won. The hero comes back from this mysterious adventure with the power to bestow boons on his fellow man."¹

Gender references aside, lawyers in entrepreneurial practices and other endeavors can relate to the monomyth, the hero's journey, the odyssey. For women in male-dominated professions, like law, technology, and the sciences, the entrepreneurial journey often seems more gargantuan and overwhelming. There seem to be fewer gods to intercede on our behalves and help us along the way, although there are some truly golden ones out there. There certainly are more evil monsters to outwit and battle, as bitter experience reveals.

One of the more difficult parts of the entrepreneurial journey, the hero's journey, for women, is perhaps, however, that because we are women, there are fewer mapmakers, fewer course-charted, fewer pathfinders and pioneers who have traveled the ways before us and have bequeathed us the maps, business experiences, social and business networks, the tricks of the trade that we need to succeed. In many ways, being an entrepreneurial woman attorney is uncharted territory, a journey to the westernmost reaches of the world.

It is not a journey for everyone. Real and perceived risk is part of the landscape, and to journey through the entrepreneurial odyssey, one must face this risk, manage it, and work to minimize it. Eleanor Roosevelt, one of our first women political leaders, said: "You gain strength, courage and confidence in every experience in which you really stop to look fear in the face. . . . You must do the thing you think you cannot do."² Succinctly put, you've got to gut it out.

Catalyst, the nation's leading women's research organization, and the National Association of Women Business Owners (NAWBO) have conducted comparative research and analyses of risk-taking by female entrepreneurs and their male counterparts. A recent NAWBO study revealed that women entrepreneurs are substantially more likely than men to take risk investing in their respective companies. In addition, more than seventy percent (70%) of those female risk-takers reported success in their investments.³

Not only is the hero's journey fraught with risk, it is not one characterized by the lack of failures, betrayals, reversals of fortune, and other monstrous events. Being an entrepreneurial female attorney is a singular endeavor and, like the experiences of our sisters in science and technology, one that the singularity of which seems to render more visible to those we aspire to serve, collaborate with, and influence. For this reason and because we have so few role models among the ranks of female attorneys, scientists, and engineers, it is perhaps a natural response to question one's own judgment, common sense, and intuition when these trials occur. What is more helpful, produc-

tive, and imminently more liberating than such self-flagellation is a correction to one's thinking and the realization that these events are learnings. Painful, destructive, and infuriating, yes, they are. When we glean these learnings, however, we take away knowledge and the wisdom of experience so that we can avoid or overcome murderous monsters and painful events in the years to come. As a good friend and sister small business founder says, she has a master's degree from the school of hard knocks. I know precisely what she means.

So what is it that drives a person, much less a woman scientist-technologist-attorney, to undertake the odyssey? Even a golden god has advised at least one former entrepreneur not to start a business, in that instance, a technology business. He said that the personal costs were just too high. Floored upon hearing that advice, I asked him why then did he co-found his huge technology company? The answer: "We had to." Apparently, he and his fellow co-founders were attempting a product for which they could not locate an integrated circuit component that would perform the required functions, and they were dead set on making that product.

In looking forward to the beginning of our sixth year in business at Technology Law Group, I realize that my answer to the why is just that: I had to. The "had to" came in when I began looking for employment toward the end of my deeply appreciated clerkship for the Honorable Sergio Gutierrez at Idaho's Court of Appeals. Opportunities presented themselves, but at an unacceptably low rate of pay. Other firms, even ones that professed to know better, responded with a resounding lack of resonance to my stated goal to have a technology-focused legal practice. Partners at other firms understood my vision, but had no positions then open for a beginning lawyer, if experienced technology professional.

Although highly desirous of remaining in Idaho, the odds of doing so looked increasingly slim. In attempting to gently break the news of our possible relocation to my family, it was indeed my then-seven-year-old love of my life who laid down the law and emphatically informed me, "I'm an Idaho spud, mama, and I'm not moving!"

Oddly enough, that funny little episode seemed to set things straight. It had to. Shortly thereafter, the kindest of mentors, a skilled, gentlemanly in-house intellectual property attorney and another of the golden gods, and his principle clients, more golden gods, made the most remarkable opportunity available to me. With that, Technology Law Group was born, humbly in the spare bedroom, but born nonetheless.

As I have learned and now believe, chance favors a prepared mind, and serendipitous events have a special way of unfolding when one follows a course of integrity and hard work. I was perfectly prepared and willing to work hard, very hard, and very creatively. Great good fortune came my way. I reached out and grabbed it, and I have never, well, almost never, looked back.⁴

I have a second answer to the why question: I wanted to. All of my life from the time I was a little, snaggle-toothed girl on the farm, collecting eggs and tadpoles, until today, I have had an unquenchable curiosity, a keen intellect, and an all-embracing passion to know. This love of learning drove me from a successful, but in the end, predictable profession in technology marketing and health care administration. It drove to multiple jobs because, well, I just grew bored.

Today, I work with virtual and real multimillionaires, young and young-at-heart software programmers who have figured out how to crack a nut and make a tidy sum, large companies and institutions in

the thrilling process of transforming themselves into beacons of industrial and academic leadership, and mid-sized businesses in legacy industries becoming paragons in the new knowledge-based economy. I work with engineers of all types, geneticists, researchers, lawyers around the world and in organizations here at home, economic development professionals, linguists, librarians, technology advocates in and out of government, students, and geeks *extraordinaire*. These people and their work thrill me. I am deeply passionate about what they do and about what I and my treasured team do to support them in their own passions for excellence.

Perhaps I am Odysseus, called upon now to feast and then to suffer, but always to toil, create, discover, build, and grow, always to journey toward that place I call home. Here in beautiful, becoming Idaho, in my own private Idaho, I am grateful for the days now and in the future when I can give back all that I have learned, all my boons, to those who will benefit the most: the learners, my colleagues, the entrepreneurs, the creative, the women who will follow me, the brave undaunted. Then I can say that I have truly arrived home.

ABOUT THE AUTHOR

Emile Loza is founder and managing attorney of Technology Law Group, LLC, an international, intellectual property, and Internet law firm in Boise. Emile serves on the board of Kickstand, and chairs its Strategic Community Partners Committee. She is a member of the ABA's China and International Trade Committees and Intellectual Property and International Law Sections. She is past-chair of the Bar's Intellectual Property Law Section; past co-chair of the ABA Intellectual Property Section's Licensing Committee 413, and past-chair of the Licensing Executives Society's Internet and eCommerce Committee. She holds a law degree from The George Washington University Law School, a master's degree in business administration from the University of Houston, and a bachelor's degree in science and technology.

ENDNOTES

- ¹ Joseph Campbell, *The Hero with a Thousand Faces* 30 (1949).
- ² Eleanor Roosevelt, *You Learn by Living* 29-30 (1960).
- ³ Lois P. Frankel, See Jane Lead: *99 Ways for Women to Take Charge at Work* 56 (2007).
- ⁴ The almost, I credit to the monsters.

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LAWYERS, LEADERS, AND LEVELING: A REPORT FROM THE WOMEN IN LAW LEADERSHIP ACADEMY

Kimberly Evans Ross

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

On November 8-9, 2007, the American Bar Association's (ABA) Commission on Women in the Profession hosted the Women in Law Leadership Academy in Chicago, Illinois. This was the third and largest such academy to be hosted by the ABA, with over 400 attorneys in attendance from 42 states. There were only two attorneys at the conference representing Idaho—my Boise associate, Rebecca Rainey and me. I mention this last fact with some disappointment, because in more than ten years as a lawyer, I have never attended a more interesting or more worthwhile legal educational event, and I wish that more of my Idaho colleagues had been there.

As the title of the seminar subtly suggests, the Academy is designed with the goal of building and promoting the leadership skills of early-to-mid-level career women. But this, like most of the blurbs that find their way into the promotional materials for events of this kind, tells very little about the actual content of the conference. This is why I returned from the Academy with the intention of sharing with my colleagues (both male and female) some of the surprising insights I learned there.

I say surprising because any time you attend a seminar with the word "Women" in its title, there is naturally some expectation that the content of the presentations will focus on discrimination statistics, glass ceilings, and how-to-get-around-those-good-ol'-boys-standing-so-belligerently-in-our-way. But, this conference was different. Yes, there was a break-out session on Women's Initiatives in the Workplace (which, although I opted not to attend in favor of a session on marketing, I am sure was both informative and useful), but it was not these kinds of human resource related issues that dominated the conference.

The initiative theme that resonated throughout the seminar dealt not so much with the ways in which women could strive to obtain a position of social power, as much as it was an acknowledgement that we are already in a position of social power. We are attorneys. We are leaders. We have arrived. That being the case, what exactly are we doing with ourselves? With our careers? Are we successfully promoting ourselves and living up to our responsibility to inspire and lead the generation behind us? If not, what is it that we need to do to begin proactively directing our professional lives?

The host attorneys, guest speakers, and attendees directed the majority of their dialogue toward answering some of those questions. The titles of some of the panel discussions demonstrate the general framework under which these discussions were fostered, and in further illustration of my point, I'll offer you some of the notes that I took away from these sessions:

THE GOOD MENTOR: HOW TO FIND ONE, HOW TO BE ONE

The practice of law is an apprenticeship profession. The primary concepts that law school teaches are how to think like a lawyer and enough of the law to pass the bar exam. Everything

else you need to know can be learned on the job, and most of that is not written down—anywhere. If you want to be a good lawyer, get a good mentor. If you want to be a great lawyer, get a great mentor. And not just one—you should have several. No one person is likely to have all of the time or all of the skills that you will require in order to train yourself thoroughly in this profession. Finally and most importantly, the only guaranteed way to get and keep a great mentor is to be a great mentee. If you want the time and attention of a senior partner, you need to be prepared to offer something of value in return. The more useful you make yourself, the better your mentor network will be.

MARKETING 101: HOW TO WIN AND KEEP THE BUSINESS

Most entry-level associates do not start out marketing their skills to outside clients. The "clients" to whom these young lawyers market their skills are the "Rainmakers," those senior partners who bring the business that keeps everyone else employed. So how does a new associate get this work? The same way they get work from outside clients later on—by demonstrating their usefulness and willingness to serve the particular needs of that client, by demonstrating proficiency at the tasks they are delegated, and sometimes, by taking the initiative to establish the relationship in the first instance. Bottom line, do the kind of work that makes your "client" look good, and chances are you'll keep getting good work. Ultimately, if a young associate can learn to master the skill of marketing her services in-house, she will be ahead of the curve at marketing to outside clients when those opportunities present themselves.

TAKE INVENTORY AND TAKE CHARGE! CAREER AND LEADERSHIP PLANNING WORKSHOP

As a mid-to-entry level associate, do you possess all of the core competencies that your law firm is looking for in a partner? Do you even know what they are? Do you have a plan for achieving them? If you can't articulate a specific vision for your future career, then you're not likely to make it happen. This session was a practical skills seminar on goal setting and action plans. I found it to be a challenging exercise, despite my belief that I already had a set of workable career plans in mind.

SURVIVING NETWORKING AND LOVING IT

This session was my personal favorite. The presenter was Diane Darling, founder and CEO of Effective Networking, Inc. and author of "The Networking Survival Guide and Networking for Career Success." There was very little about Diane's presentation that I did not find useful, if not fascinating. For example, name tags should be worn high on your right shoulder, ladies. Why? Because when you shake a person's hand, their line of sight travels naturally up your arm to your name tag. To place it elsewhere requires them to peruse the span of your torso (i.e., look across your chest) in order to find your name. Another sur-

prising revelation was that most professional women have to learn how to do a handshake. Why? Because it is not part of our cultural indoctrination to shake hands as a form of casual greeting. If I happen to run into an old school mate, I do not ordinarily shake her hand. I do not shake hands with my neighbors, and I have never had the mother of one my son's playmates offer to shake hands with me. Outside of the professional environment, unless I know someone well enough to walk up and hug them, my greeting to casual acquaintances does not usually involve any form of physical contact. Not so with men. For men, shaking hands is the same as saying "hello." It's natural. It's normal. It's expected. And it's something that women have to learn as part of the development of their professional persona. For this reason, Diane's presentation included a five-minute practice session on "The Handshake." When to shake, how to shake, how not to shake—all of it. Afterward, I did not talk to a single attendee who did not agree that some of Diane's practice pointers were among the most useful and practical lessons they'd ever been given.

I could go on, but hopefully I've fulfilled my intention of convincing at least some of the early-to-mid-career Idaho lawyers reading this to consider attending next year's ABA

Women in Law Leadership Academy. In addition to the fabulous opportunity to meet so many other attorneys from all over the nation, I personally took away from this Academy a slightly new perspective on my role as a woman with a professional career. This newfound perspective is not something one usually gets out of a legal conference. I enthusiastically encourage you to seize opportunities to attend events that are sometimes a little out of your "ordinary" types of events; you never know what you will learn!

ABOUT THE AUTHOR

Kimberly D. Evans Ross is a partner in the Idaho Falls office of *Moffatt, Thomas, Barrett, Rock & Fields, Chtd.*, practicing primarily in the areas of commercial litigation and employment law. Ms. Ross graduated from law school with honors from the University of North Carolina at Chapel Hill in 1997. She clerked for the Honorable William L. Stocks, Chief Judge of the United States Bankruptcy Court for the Middle District of North Carolina, from 1997-1998, and J. A. Turnage, Chief Justice for the Montana Supreme Court, from 1998-1999. Ms. Ross practiced for five years in the Bozeman, Montana, area before joining *Moffatt Thomas* in 2004.

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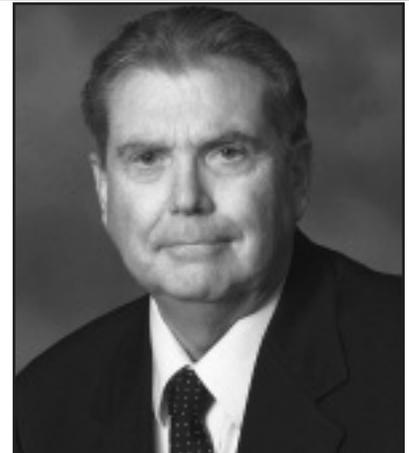
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THOUGHTS FROM A CONTEMPORARY COLONIST: THE NEW GIRL'S CLUB IS OPEN

Nancy J. Monson
Law Office of Nancy J. Monson

Continually, I am startled by the dearth of women attorneys in Southeastern Idaho. Currently, in Bonneville County, there is only one woman deputy prosecutor of eight positions (just recently hired after years of no female deputy prosecutors), no women public defenders, and of the nine larger law firms in Idaho Falls, only three employ women attorneys and generally only one. In the Seventh Judicial District, there are 18 judges (5 District and 13 Magistrate), and only two are women—both magistrates. To my knowledge, there has never been a female District Judge in the Seventh Judicial District. According to my compatriots in the Sixth Judicial District, the statistics are worse: currently, no women judges, nor any recollection of there ever being any.

In the seven years I have been practicing in this area, I have worked on only six cases where opposing counsel has been a woman, including the 14 months during which I was a deputy prosecutor and handled hundreds of cases. Most of these six cases were with the same woman as opposing counsel. In my daily practice, I am routinely asked by clients, business contacts, family, and friends, “where are all the women lawyers?” The comment is regularly made that I am the only woman lawyer they know.

Every year, at least once, the Bonneville County Court prepares and distributes a list of “Idaho Falls Area Attorneys.” Every year since I moved to Idaho (late 2000), when I have received an updated attorney list, I have eagerly reviewed it to see how many women this time. Over the years, the number has fluctuated but has always been shockingly low. Every time I reviewed an updated attorney list, I would wonder: “Where are all the women attorneys?” Why is our number so low? Every year, I had the thought that we needed to rally our small number, organize and vocalize, be *present*. Every year I intended to get that done and every year I was just too busy.

The local statistics have seemed all the more perplexing to me as I moved here from San Diego, California, where I had also practiced law for several years. During those years, I never once wondered where all the women attorneys were. At least one-half of the judges were women and generally one-half of all of my cases were with women as opposing counsel. When I attended law school (also in San Diego), more than one-half of my courses were taught by women attorneys, and certainly at least one-half of the students were women.

This year, when the most recent update to the attorney list was distributed in May, I again eagerly reviewed the list and counted. Approximately 173 attorneys were listed and of that number, I counted 11 women, including myself. Women numbered less than 10% of the local bar and in fact, were exactly 6% of the local bar. Most disturbing of all was the fact that of the ten other women on the list, I did not know—nor had I ever met—seven of them. I decided that something had to be done.

Within a few weeks after the updated attorney list was distributed, I had drafted a letter to the ten other women on the list. I even included an eleventh woman whom I knew personally but who was not on the list because she practices in Jefferson County. I cited statistics. I issued an invitation. I threw down the gauntlet. I hoped that perhaps

four or five women would respond and we could form a small, cohesive group that would at least support each other and be vocal.

What happened next was a miracle. First, I got a few telephone calls from women voicing interest. Then the e-mails started. Most of these telephone calls and e-mails were not from women to whom the letter was sent but from women who knew someone on the list and had heard about my invitation. Each telephone conversation and each e-mail informed me of other women in Southeastern Idaho who would be interested. The bold suggestion was made to seek out women attorneys throughout all of Southeastern Idaho, not just Bonneville County. A second letter was sent to more attorneys in Bingham, Bannock, Teton, Fremont, Custer, and Jefferson Counties. Within a month, I had a list of over 20 women attorneys in Southeastern Idaho.

Next, I took a giant leap of faith and with verbal confirmation from a handful of women to be present, I scheduled a meeting. I reserved a table for twelve at a local restaurant for August 1, 2007. I wondered if anyone would show. Ten ladies did. I considered it a smashing success.

Our group has continued to grow. We have now had four meetings. We have voted to become an official, local chapter of Idaho Women Lawyers, Inc., (IWL), a group of women attorneys organized and based in Boise. We have elected an executive committee to govern our group in the interim until we are formally organized as an IWL chapter. Our contact list now includes over 30 attorneys throughout Southeastern Idaho. We have agreed that, locally, our mission is to pursue the education, support, advancement, and protection of women generally, and specifically in the legal profession. I think we all feel like colonists, pioneers, if you will, which is an amazing feeling in 2007. Who knew there was still territory to settle?

Still, our invitation stands: Any woman in Southeastern Idaho who is pursuing law as a profession, who has attended or is attending law school, whether working or not, is welcome in our group. The New Girls' Club is open for business. We encourage other localities to initiate the process of organizing their local women attorneys and look forward to a time when no one has to ask: “Where are all the women lawyers?”

For information on joining the Southeastern Idaho Women Lawyers contact Peggy Hinman (208) 557-7885 (phinman@northwind-inc.com) or Mary Shea Huneycutt (208) 235-9585 (mshuneycutt@cableone.net).

ABOUT THE AUTHOR

Nancy J. Monson is a sole practitioner in Idaho Falls, Idaho, focusing on business law, criminal defense, family law, and estate planning. She received her B.A. from Brigham Young University and her J.D. from California Western School of Law. She is a member of the Idaho and California Bars. She is former Bonneville County Deputy Prosecutor and served two judicial clerkships, first for Judge Wayne Peterson and Judge Sheridan Reed of the San Diego Superior Court and second, for District Judge Jon Shindurling of the Seventh Judicial District Court.

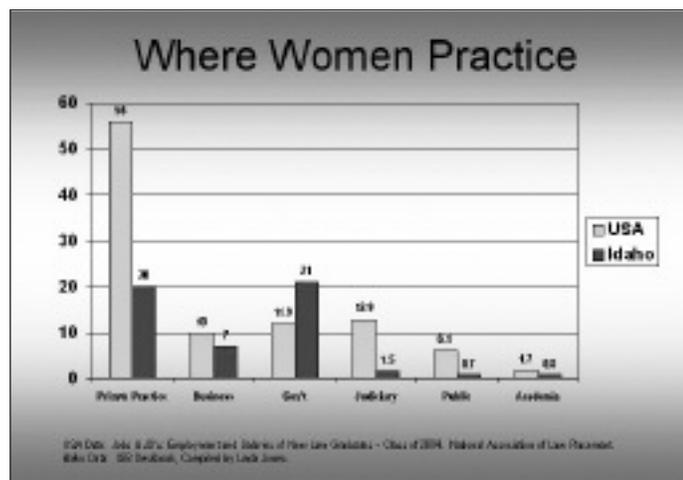
THE STATUS OF IDAHO WOMEN LAWYERS TODAY

Lynn Lubamersky
 Professor, Boise State University

This is a summary of research presented at the ISB Annual Meeting on July 18, 2007 in "Beyond the First 50: The Status and Impact of Idaho Women Lawyers Today." This article covers half of the research presented, but it does not include discussion of the survey of Idaho Women Lawyers conducted by Dr. Will Rainford nor the insights provided by attorney Betty Richardson and Bar Commissioner Newal Squyres. The article provides a marker for the progress of women lawyers in Idaho when compared with colleagues in the U.S.A. as a whole.

In 1988, the American Bar Association (ABA) Commission on Women issued its first report on *The Status of Women in the Legal Profession*, and it later issued subsequent reports in 1995 and 2003, in which the data revealed advancement in terms of the representation of women in the profession and an increased presence of women in law schools, in law firm partnerships, and in the judiciary.¹ In 2006, that same commission presented "A Current Glance at Women in the Law," in which several indicators were studied in an attempt to gauge the status of women in the law in the U.S.A.² The same indices were used to gather data for the state of Idaho in order to compare the status of women lawyers in Idaho with that of women lawyers in the U.S.A. Unfortunately, Idaho women do not fare as well as women nationwide.

When viewing the relevant comparisons for women lawyers in Idaho and the U.S.A., we find the following: There are 6% fewer women lawyers practicing in Idaho. We also see very few women lawyers in the Idaho judiciary, with only 1.5% of Idaho women lawyers serving as judges. Idaho also has the rare notoriety of being one of the two states in the Union that does not have a female Supreme Court Justice.



USA Data: Jobs & JD's: Employment and Salaries of New Law Graduates—Class of 2004. National Association of Law Placement. Idaho Data: ISB Deskbook, Compiled by Linda Jones.

PERCENTAGE OF WOMEN LAWYERS

Of the one million lawyers who practice in the U.S.A., 30% of them are women.³ The percentage of women practicing in Idaho is 24% of the state Bar.⁴

PRACTICE SETTINGS

One very significant way in which Idaho's women lawyers differ from their counterparts in the U.S.A is in the fact that 56% of the nation's women lawyers practice in a private law firm,⁵ while only 20% of Idaho's women lawyers are in private practice.⁶ In Idaho, there are more women lawyers working in government—21%⁷—compared with 11.9% of women attorneys in the U.S.A.⁸ Relatively similar numbers of women practice law in a business setting, with 7% of the total number of women lawyers in Idaho⁹ versus 10% in the U.S.A.¹⁰ Less than 2% of women lawyers are in academia in both Idaho and the U.S.A., and a similarly small group of women attorneys work in public interest law.¹¹ But that is where the similarities end. There are significantly more women attorneys who are judges in the U.S.A. (12.9%) as compared to Idaho (1.5%).¹²

WOMEN IN THE JUDICIARY

Approximately one quarter of our nation's judges are women.¹³ And 32% of the nation's Supreme Court Justices are women.¹⁴ This is not the case in Idaho, where there is a wide variation in women's representation in the judiciary. From a low of 8% of the Judges of the Magistrate Division to a high of 43% of Trial Court Administrators, women do not yet make up a significant percentage of Idaho's judiciary.¹⁵ Historically speaking, Idaho's women judges came late to the Bench; there were no female Idaho Court of Appeals Judges before 1990 and no

WOMEN IN THE JUDICIARY IN THE UNITED STATES			
Type of Court	Total Seats	Number of Women	Percentage of Women
District Court Judges	682	159	23.3%
Court of Appeals	178	42	23.6%
International Trade	9	3	33.3%
US Supreme Court	9	1	11.1%
State of Last Resorts	349	102	29.2%
Chief Justices	53	17	32.1%

Alliance for Justice Judicial Selection Database: Demographic Overview of the Federal Judiciary, as of June 2, 2006. See http://www.afj.org/judicial/judicial_selection_resources/selection_database/byCourtRaceGender.asp
 Judicial Selection and Retention Membership on State Courts of Last Resort by Sex. September 2006. National Center for State Courts. See http://www.ncsconline.org/WC/Publications/KIS_JudSelCOLRsex.pdf. Note: The state courts of last resort include the Oklahoma Court of Criminal Appeals and the Texas Court of Criminal Appeals.

female Administrative District Judges before 2003. There were no women District Court judges before 1983, nor were there any women Trial Court Administrators before that year. As of August 2007, there is no female Supreme Court Justice in Idaho, and this lack of female representation is shared with only one other state in the Union - the state of Indiana.¹⁶

WOMEN IN THE JUDICIARY IN IDAHO 2005-2006			
Type of Court	Total Seats	Number of Women	Percentage of Women
Supreme Court	5	1	20%
Court of Appeals	3	1	33%
Admin. District Judge	7	1	14%
Trial Court Administrator	7	3	43%
District Court	39	6	15%
Magistrate Court	83	7	8%
Idaho Blue Book 2005-2006			

WOMEN IN THE BAR

While women make up only 24% of the Idaho State Bar, they serve as 37% of the Idaho State Bar's Section/Division chairs.¹⁷ This compares favorably with the ABA, where women make up 30% of the bar nationally, but they do not hold 30% of the ABA leadership roles in any category.¹⁸

WOMEN IN THE AMERICAN BAR ASSOCIATION, MAY 2006			
	Total	Women	Percentage of Women
Members	382,948	114,244	29.8%
Board. of Governors	37	10	27%
Section/Division Chairs	28	8	28.6%
Committee Chairs	75	22	29.3%

WOMEN IN THE IDAHO STATE BAR, MAY 2006			
	Total	Women	Percentage of Women
Members	3,698	1,183	24%
Bd. of Governors	5	0	0%
Section/Division Chairs	19	7	37%
Committee Chairs	11	3	29%

RESEARCH QUESTIONS YET TO BE ANSWERED

This study did not answer the question of how fully women are represented among the partners of Idaho's law firms, which is an important indicator of their prominence in the Idaho legal community. In the U.S.A. as a whole, 17% of the partners, 44%

of the associates and 48% of the summer associates were women in 2006,¹⁹ but it is not clear if a similar breakdown prevails here. Another important indicator of equality within a firm would be relatively equal pay for male and female attorneys. The ABA Study found that women made 22.5% less than men did in an analysis of women lawyers' weekly salaries.²⁰ Will Rainford's survey findings indicate that women attorneys are paid less than men are, but the Idaho State government does not produce a data set similar to the employment figures of the U.S. government, thus this question remains to be answered.

Finally, Idaho has a relatively large number of women who are affiliate members of the Idaho State Bar, meaning that they are not active members. Our study finds that 718 women are active members of the Idaho Bar and 274 are affiliates—thus 23% of all the female members of the Idaho Bar are not in active practice.²¹ By following the model for this study presented by the ABA Current Glance, we chose to look at women attorneys who were practicing law. By taking this direction, we failed to look at those women who, for one reason or another, are not practicing law. Why—after going to all the time, trouble, and expense of earning a J.D. and passing the Idaho Bar exam—are women affiliates not in the practice of law? Harvard Law School Dean Kagan asked: "What prompts women lawyers to turn off the career highway? Just over two-thirds of women ... think personal and family responsibilities are the single largest barrier to women lawyers' advancement."²² It is important to discover why women trained as attorneys do not practice in such large numbers in Idaho.

ABOUT THE AUTHOR

Lynn Lubamersky, Associate Professor of History and member of the Gender Studies Advisory Board at Boise State University. Her publications include studies of the legal status of women and the history of the family. She received her A.B. in History from the University of California at Berkeley and her M.A. and Ph.D. degrees from Indiana University.

ENDNOTES

¹<http://www.abanet.org/women/ChartingOurProgress.pdf>.

²<http://www.abanet.org/women/CurrentGlanceStatistics2006.pdf>

³National Lawyer Population by State 2006. American Bar Association Marketing Research Department.

⁴Idaho State Bar Association.

⁵Jobs & JD's: Employment and Salaries of New Law Graduates-Class of 2004. National Association of Law Placement. (Hereafter referred to as "NALP 2004 Employment Data.")

⁶Many thanks for this data set provided by Linda B. Jones, a partner at the firm of Holland & Hart LLP, Boise, Idaho. Jones painstakingly gathered this data from the *Advocate Deskbook* for this year. In an attempt to include only those female attorneys practicing in Idaho, she included in the data only those who listed an Idaho address. The 164 females listing an out-of-state address were not included in this study. (Hereafter referred to as *The Advocate Deskbook Jones dataset*.)

⁷Ibid.

⁸NALP 2004 Employment Data.

⁹*The Advocate Deskbook Jones dataset*.

¹⁰NALP 2004 Employment Data.

¹¹*Advocate Deskbook Jones dataset*; NALP 2004 Employment Data.

¹²*Ibid.*

¹³Alliance for Justice Judicial Selection Database: Demographic Overview of the Federal Judiciary.

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¹⁵*Idaho Blue Book 2005-2006.*

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¹⁸American Bar Association Marketing and Membership (as of May 2006).

¹⁹Women and Attorneys of Color at Law Firms - 2005. National Association for Law Placement, November 2005.

²⁰<http://www.bls.gov/cps/cpsaat39.pdf>.

²¹*The Advocate Deskbook Jones dataset*



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Idaho Supreme Court and Court of Appeals
NEW CASES ON APPEAL PENDING DECISION
(UPDATE 01/01/08)

CIVIL APPEALS
PROCEDURE

1. Whether the district court erred in granting Estay's motion to dismiss for failure to timely serve the complaint.

Herrera v. Estay
S.Ct. No. 34085
Supreme Court

CIVIL APPEALS
ATTORNEY FEES AND COSTS

1. Did the court abuse its discretion as to the amount of attorney fees and costs awarded to the Nickersons?

Lee v. Nickerson
S.Ct. No. 33896
Supreme Court

2. Whether the court misconstrued I.C. § 54-5201 et. seq. by applying it retroactively to deny a prevailing contractor its attorney fees in a mechanics' lien foreclosure action, when the contract was entered into and substantially all of the work done in 2005.

Gloe v. Branum
S.Ct. No. 34215
Supreme Court

CIVIL APPEALS
SUBSTANTIVE LAW

1. Did the court abuse its discretion in refusing to authorize payment of all of Dunn's bills for investigatory services?

Dunn v. Blaine County District Court
S.Ct. No. 32844
Court of Appeals

CIVIL APPEALS
MEDICAL INDIGENCE CLAIMS

1. Whether the Board erred in finding the patient was not a resident of Idaho under I.C. § 31-3502(12) for purposes of obtaining medical indigency benefits?

St. Alphonsus Medical Center v.
Ada County Board of Commissioners
S.Ct. No. 34233
Supreme Court

CIVIL APPEALS
SUMMARY JUDGMENT

1. Did the trial court err in granting summary judgment to the City and in finding there were no genuine issues of material fact in dispute?

Hansen v. City of Pocatello
S.Ct. No. 34277
Supreme Court

2. Did Theodore Johnson's actions amount to a breach of fiduciary duty to the beneficiaries?

Taylor v. Maile
S.Ct. No. 33781
Supreme Court

3. Whether summary judgment was appropriately granted against J-U- B Engineers, Inc., as to its claims against Security Insurance Company for breach of contract and related duties of good faith and fair dealing.

J-U-B Engineers, Inc. v.
Security Insurance Co.
S.Ct. No. 34239
Supreme Court

CIVIL APPEALS
EVIDENCE

1. Was there credible evidence to support the court's finding that Bettwieser was guilty of speeding?

State v. Bettwieser
S.Ct. No. 33798
Court of Appeals

CIVIL APPEALS
DIVORCE, CUSTODY, AND SUPPORT

1. Did the court abuse its discretion when it calculated Harris' potential employment income?

Harris v. Carter
S.Ct. No. 34002
Court of Appeals

CIVIL APPEALS
POST-CONVICTION RELIEF

1. Did the court err in summarily dismissing McCabe's petition for post-conviction relief and in finding he had failed to allege a genuine issue of material fact that either his trial or appellate counsel were ineffective?

McCabe v. State
S.Ct. No. 33636
Court of Appeals

2. Did the court err in summarily dismissing Hayes' claims of ineffective assistance of counsel?

Hayes v. State
S.Ct. No. 33451
Court of Appeals

3. Did the court err in denying Lane's ineffective assistance of counsel claim?

Lane v. State
S.Ct. No. 33220
Court of Appeals

4. Did the district court err in dismissing Dunlap's successive petition for post-conviction relief and in finding he failed to make a prima facie showing the claims in his successive petition fit within the exception of I.C. § 19-2719(5) because they were known or could reasonably have been known when he filed his first post-conviction petition?

Dunlap v. State
S.Ct. No. 33061
Supreme Court

5. Is the district court's dismissal of Harrell's successive petition for post-conviction relief void because the district court failed to rule on the motion to disqualify the court that was filed simultaneously with the petition?

Harrell v. State
S.Ct. No. 33273
Court of Appeals

CIVIL APPEALS
PROPERTY

1. Whether the court erred in granting a prescriptive easement to the Becksteads.

Beckstead v. Price
S.Ct. No. 33473
Supreme Court

2. Whether the Idaho County Board of Commissioners had sufficient evidence before it to declare a R.S. 2477 right of way along Race Creek and Kessler Creek.

Galli v. Dagerstrom
S.Ct. No. 33999
Supreme Court

3. Whether the court erred in deciding boundary lines between the parties on the basis of the surveyor's opinion without hearing testimony of the parties to the deeds as to their boundary intent.

Porter v. Bassett
S.Ct. No. 33828
Supreme Court

CIVIL APPEALS
HABEAS CORPUS

1. Did the court abuse its discretion by dismissing Drennon's claim that his denial of parole was due to retaliation?

Drennon v. Craven
S.Ct. No. 33713
Court of Appeals

2. Did the court err by dismissing Rose's petition for a writ of habeas corpus?

Rose v. Blades
S.Ct. No. 34154
Court of Appeals

**CIVIL APPEALS
JURISDICTION**

1. Did the court err in granting the defendants' motion to dismiss for lack of jurisdiction when the plaintiff failed to obtain leave of the bankruptcy court before filing a complaint in another jurisdiction against the bankruptcy trustee and appointed agent?

Hale v. Remax Realty
S.Ct. No. 33995
Supreme Court

**CRIMINAL APPEALS
PLEAS**

1. Did the district court abuse its discretion in denying Mayo's motion to withdraw her guilty plea?

State v. Mayo
S.Ct. No. 32514
Court of Appeals

**CRIMINAL APPEALS
RESTITUTION**

1. Did the court err when it denied Brixey's motion to modify his restitution order after the victim obtained a civil judgment for the amount of restitution?

State v. Brixey
S.Ct. No. 33520
Court of Appeals

**CRIMINAL APPEALS
SEARCH AND SEIZURE –
SUPPRESSION OF EVIDENCE**

1. Did the court err in denying the motion to suppress on the basis Adams had consented to the search pursuant to his felony probation agreement?

State v. Adams
S.Ct. No. 32876
Court of Appeals

2. Did the court err in denying Ballou's motion to suppress the evidence discovered during a search that his wife consented to both orally and in writing?

State v. Ballou
S.Ct. Nos. 33247/33248
Court of Appeals

3. Did the court err in failing to exclude the discovery of the plastic cup and in failing to find it was the product of an unlawful search of Savage's car?

State v. Savage
S.Ct. No. 34086
Court of Appeals

**CRIMINAL APPEALS
JURISDICTION**

1. Did the court lack jurisdiction to dismiss West's criminal conviction and order of restitution?

State v. West
S.Ct. No. 34093
Court of Appeals

**CRIMINAL APPEALS
SENTENCE REVIEW**

1. Did the court abuse its discretion in revoking Blanc's probation and imposing the original sentence when it did not consider reducing the original sentence pursuant to I.C.R. 35 or recognize other available sentencing alternatives?

State v. Blanc
S.Ct. No. 33879
Court of Appeals

**CRIMINAL APPEALS
EVIDENCE**

1. Did the court abuse its discretion in admitting into evidence a note written by a co-conspirator and in finding the note was properly authenticated and did not constitute inadmissible hearsay?

State v. Chacon
S.Ct. No. 33197
Court of Appeals

**CRIMINAL APPEALS
INSTRUCTIONS**

1. Did giving the aiding and abetting instruction constitute a fatal variance violating Johnson's right to due process and thus requiring that her conviction be vacated?

State v. Johnson
S.Ct. No. 33312
Supreme Court

**CRIMINAL APPEALS
PROBATION REVOCATION**

1. Did the court abuse its discretion in revoking Monzo's probation and in finding the violations were willful?

State v. Monzo
S.Ct. No. 33289
Court of Appeals

**Summarized by:
Cathy Derden
Supreme Court Staff Attorney
(208) 334-3867**

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If you still haven't paid your fees you must add a late fee payment – Active/House Counsel - \$50.00 or Affiliate/Emeritus - \$25.00 to your payment when you send it to the Bar. It must be physically received in our office by March 3, 2008. On March 4, 2008, the names of all attorneys who have not paid their 2008 licensing fees will be submitted to the Idaho Supreme Court for license cancellation. If you have questions please call the Membership Department (208) 334-4500 or astrause@isb.idaho.gov.

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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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OF INTEREST

IN MEMORIAM

KENNETH D. RANDALL 1937 - 2007

Retired Air Force Col. Kenneth Randall, 70, passed away on Dec. 11, 2007, in Williams, California. Ken was born in Craigmont, Idaho on May 23, 1937. He graduated from Craigmont High School and volunteered for the draft in June 1955.

Upon completion of his Army assignment, he returned to attend college at the University of Idaho, graduating with a degree in political science, followed by a law degree. He later earned a master's of business administration from the University of Southern California. He was a member of the Idaho State Bar from 1963-1964. After a short period in private practice, Ken joined the Air Force and served in the JAG Corps for 34 years. His years of service included tours of duty in Vietnam and Korea. His last 12 years of service were as a Chief Judge for the U.S. Air Force circuit court, most recently with the 5th Circuit. His years in the military provided many travels for him and his family, throughout the United States and Europe. He also was an avid reader and enjoyed waterskiing and boat ownership.

Ken is survived by his wife of nearly 48 years, Vauna; his two daughters, Jenifer and Jill; and three grandchildren. He is also survived by his three sisters, Jean Aaring, Rosemary Howell and Marlene Kroiss.

—ON THE MOVE—

Rob Roy Smith, has joined the Seattle office of Ater Wynne LLP. Rob is a federal Indian law attorney who has served as counsel to numerous Indian tribes and is an adjunct professor of Federal Indian Law at Seattle University School of Law. He works with tribes throughout the Pacific Northwest, Southwest and Oklahoma, advising Indian tribal clients and those doing business in Indian Country on all aspects of federal law, including economic development, natural and cultural resource protection, taxation, tribal sovereignty and gaming.

Rob is admitted to practice before several tribal courts, the United States Supreme Court, the United States Tax Court, and the Ninth Circuit Court of Appeals, as well as in Washington, Oregon and Idaho. You can contact Rob at Ater Wynne, LLP, 222 S.W. Columbia, Suite 1800, Portland, Oregon 97201, (503) 226-1191.

Cynthia Yee-Wallace, has joined Perkins Coie, LLP, as an associate in the Boise office's litigation practice. Prior to joining the firm, Cynthia was an associate in the Boise law firm Davison, Copple, Copple & Cox. Prior to that, she was a legal intern with the Ada County Prosecutor's Office. Cynthia received her undergraduate degree and her law degree from the University of Idaho. She can be reached at Perkins Coie, P.O. Box 737, Boise, ID 83701, (208) 343-3434.

Regina McCrea has joined the law firm of Owens & Crandall, PLLC, Coeur d'Alene, as associate attorney. She grad-

uated with high honors from the University of Arkansas at Little Rock William H. Bowen School of Law. Before joining Owens & Crandall, she practiced insurance defense litigation with Ronald G. Morrison in Spokane, Washington. She is admitted to practice in Idaho and Washington, including the United States District Courts for the District of Idaho and the Eastern District of Washington. Her current practice areas include general litigation, business litigation, construction law, real property and contracts.

Linsey E. Mattison has joined the law firm of Owens & Crandall, PLLC, Coeur d'Alene, as associate attorney. She graduated from the University of Idaho with a B.S. in Psychology and received her J.D. from Gonzaga University School of Law. Before joining the firm, she worked as a deputy prosecutor for Kootenai County. She is a member of the Idaho State Bar and the Kootenai County Bar Association. Ms. Mattison is admitted to practice in Idaho and in United States District Court for the District of Idaho. She represents clients in both civil and criminal matters.

You can contact Regina and Linsey at Owens & Crandall, PLLC, 1859 N. Lakewood Dr., Suite 104, Coeur d'Alene, ID 83614, (208) 667-8989.

Jeremy Chou has joined the law firm of Givens Pursley, LLP in Boise. He received a B.A. in Political Science from Baylor University and his J.D. from the Washington College of Law, American University. In 1996, he started his law career in Idaho. However, in 1999, he relocated to Washington D.C. to serve as a Representative of the Governor for Governor Dirk Kempthorne. In 2000, he joined the D.C. law firm of Wright Robinson Osthimer & Tatum. In 2003, he returned to Idaho to work in the Attorney General's Office, Civil Litigation Division. Jeremy's practice will focus on government affairs and litigation.

Justin Fredin has joined the law firm of Givens Pursley, LLP in Boise. He received his B.S. in Planning and Resource Management from Brigham Young University, and his J.D. from the University of Iowa College of Law. After graduation, he began his legal career at Mahoney, Silverman & Cross in Joliet, Illinois, where he represented municipalities and other local government entities. His practice will focus on land use.

You can reach Jeremy and Justin at Givens Pursley, LLP, P.O. Box 2720, Boise, ID 83701, (208) 388-1200.

Michael Kessinger, has joined Goicoechea Law Offices, LLP, Lewiston, as an associate. Prior to joining the firm, Michael was an associate in the Lewiston law firm Whitehead, Amberson & Caldwell. His practice will continue to focus on assisting injured workers, Social Security claimants and victims of personal injury. He can be reached at Goicoechea Law Offices, P.O. Box 287, Lewiston, ID 83501, (208) 743-2313.

—RECOGNITION—

Martin C. Hendrickson, Boise, has been named as a partner at Givens Pursley LLP. He received his undergraduate degree from the University of Idaho, and was awarded his J.D. from the

Texas Tech University School of Law. Previous to joining Givens Pursley in 2006, he was in a private practice. His current focus is primarily on commercial litigation, real estate related litigation, and medical malpractice. He is admitted to practice in all state and federal courts in Idaho, as well as the Ninth Circuit Court of Appeals. Martin has a Martindale-Hubbell "CV" rating. He is a member of the ISB Litigation Section and the Idaho Association of Defense Counsel.

Robert F. Thomas, Boise, has been named a partner in the law firm of Hawley Troxell Ennis & Hawley LLP. His focus is on personal and business tax issues, including estate planning, probate, tax-exempt entities, pension plans and corporate taxation law. He is co-program chair of the Boise chapter of the Western Pension Benefits Conference. He received his under-graduate degree from the University of Idaho, and was awarded his J.D. from the University of Idaho College of Law. He also holds a master's degree in taxation from the University of Washington College of Law.

Matthew Hicks, Boise, has become a partner in the Boise office of Holland & Hart LLP, the largest law firm based in the Rocky Mountain West. His practice is focused on real estate transactions including acquisitions and sales, commercial leasing, title-related issues, financing, entity formation and shopping center, office and other commercial development. Matthew is a graduate of the Leadership Boise program and a member of the Board of Advisors of the Boise Metro Chamber of Commerce. He earned his J.D. from the University of Notre Dame and his B.A. in history from Baylor University.

David R. Lombardi and John M. Marshall partners in Givens Pursley LLP have joined the Givens Pursley Executive Committee.

David Lombardi joined Givens Pursley LLP in 1990 and has over 30 years of experience handling major cases and trials related to commercial disputes, professional liability, hospital liability and peer review, property damage and personal injury. David is listed in Best Lawyers in America and is certified as a Civil Trial Specialist in Idaho. He is a member of the American Board of Trial Advocates (ABOTA), the Defense Research Institute and is past President of American Inns of Court No. 130. He has lectured for the Idaho Law Foundation, the Idaho Trial Lawyers Association, the Idaho State Tax Commission, Catholic Health Initiatives, local hospitals and other organizations on litigation, professional liability, and related topics.

John Marshall is a partner at Givens Pursley, LLP where his practice focuses primarily on real estate, commercial transactions, and environmental matters. He has a specialty practice in the field of water where he assists clients in the acquisition and disposition of water rights and in adversarial proceedings before courts and administrative agencies. John also regularly assists clients in all aspects of real estate and business transactions and in commercial litigation. He is a frequent speaker on water rights issues and a contributor to the Rocky Mountain Mineral Foundation's Mineral Law and Water Law Newsletters. John is active in the community, serving as a volunteer lawyer for the CASA program and as a board member for several local non-profit organizations.

MCLE Extensions

March 1, 2008 is the deadline for the MCLE extension to complete your MCLE requirements. Visit our website at www.idaho.gov/isb for information on upcoming live courses, recorded programs available for rent and online courses. Contact the Membership Department at (208) 334-4500 or jhunt@isb.idaho.gov if you have any questions on MCLE compliance.

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*from
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COMING EVENTS

2/1/2008 - 3/31/2008

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 (www.idaho.gov/isb) 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)

FEBRUARY

1	<i>The Advocate</i> Deadline
1	Licensing Deadline
2	Mock Trial Competitions: Boise
7-9	ABA NCBP Meeting: Los Angeles, CA
8	Mock Trial Competitions: Coeur d'Alene
9	Mock Trial Competitions: Twin Falls
18	Presidents Day, Law Center Closed
20	<i>The Advocate</i> Editorial Advisory Board Committee Meeting
22	Attorneys Against Hunger, Boise
25-27	Idaho State Bar Exam, Boise
29	Idaho State Bar Board of Commissioners Meeting

MARCH

3	<i>The Advocate</i> Deadline
3	Final Licensing Deadline
3	Initial July Bar Exam Deadline
13-14	Mock Trial Competitions: Boise
13-15	Bar leadership Institute: Chicago, IL
19-22	Western States Bar Conference: Tucson, AZ
19	<i>The Advocate</i> Editorial Advisory Board Committee Meeting

February/March CLE Courses

FEBRUARY 2008

February 8

*Seven Keys to Winning
Performance in the Courtroom—*

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Foundation

6.0 CLE Credits

Boise Centre on the Grove,
Boise, ID

February 22

*Real Property Section Annual
CLE*

✿Resourceful Uses of
Conservation

✿Easements and Their Tax
Advantages

✿Wind Easements and Wind
Energy

✿Development Impacts on Real
Property

5.0 CLE Credits (pending)

Boise Centre on the Grove
Boise, ID

February 28 - March 1

26th Annual Bankruptcy Seminar

Sponsored by the Commercial
Law and Bankruptcy Section

13.75 CLE Credits of which 1.0
is Ethics Credit

Best Western University Inn,
Moscow, ID

February 28

*Working with In-House Counsel:
Tips from an In-House Litigator*

Sponsored by the Young
Lawyers Section

12:00 noon - 1:00 p.m.

1.0 CLE Credits

Law Center, Boise, ID

MARCH 2008

March 5

*An Introduction to Liability and
Immunities Under 42 U.S.C.*

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and Public Sector Lawyers
Section

8:30 am - 9:30 am

1.0 CLE Credits

Law Center, Boise

March 7

*Workers Compensation Annual
Seminar*

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Compensation Section

Sun Valley Resort, Sun Valley,
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April 25

Idaho Practical Skills Training

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May 16

*Business and Corporate Law
Annual Seminar*

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Corporate Law Section

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Boise, ID

June 19 - 20

Litigation Section Seminar

Sun Valley Resort, Sun Valley,
ID

September 11 - 13

Annual Estate Planning Update

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Probate and Trust Section

Sun Valley Resort, Sun Valley,
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OCTOBER 8 - 10

ISB Annual Conference

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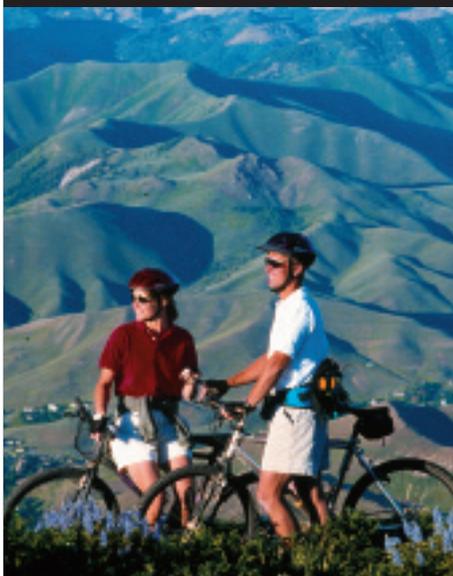
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